

## RESOLUTION NO. 21-009

RESOLUTION AUTHORIZING AND APPROVING THE ISSUANCE, SALE AND DELIVERY OF TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS MULTIFAMILY HOUSING REVENUE BONDS (THE MONTAGE APARTMENTS), SERIES 2021; APPROVING THE FORM AND SUBSTANCE AND AUTHORIZING THE EXECUTION AND DELIVERY OF DOCUMENTS AND INSTRUMENTS PERTAINING THERETO; AUTHORIZING AND RATIFYING OTHER ACTIONS AND DOCUMENTS; AND CONTAINING OTHER PROVISIONS RELATING TO THE SUBJECT

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

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

WHEREAS, the Board has determined to authorize the issuance of its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (the "Bonds") pursuant to and in accordance with the terms of an Indenture of Trust (the "Indenture") between the Department and BOKF, NA, as trustee (the "Trustee"), for the purpose of 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 Saddlespur Pass Apartments, LP, a Texas limited partnership (the "Borrower") in connection with the cost of the acquisition, construction and equipping of a qualified residential rental development described in Exhibit A attached hereto (the "Development") located within

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

WHEREAS, the Board, by a resolution adopted on June 25, 2020, declared its intent to issue its revenue bonds to provide financing for the Development; and

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

WHEREAS, it is anticipated that the Department, the Borrower and Red Stone Servicer, LLC, as initial Controlling Person 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 promissory note (the "Note") in an original principal amount equal to the original aggregate principal amount of the Bonds, and providing for payment of interest on such principal amount equal to the interest on the Bonds and to pay other costs described in the Loan Agreement; and

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

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

WHEREAS, the Board has determined that the Department, the Trustee, Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, as fee owner (the "Fee Owner"), 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 Bexar County, Texas; and

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

WHEREAS, the Board has further determined that the Department will enter into a Bond Purchase Agreement (the "Bond Purchase Agreement") with the Borrower and RSZ TAC LLC or an entity designated by RSZ TAC LLC (the "Purchaser"), setting forth certain terms and conditions

upon which the Purchaser will purchase all of the Bonds from the Department and the Department will sell the Bonds to the Purchaser; and

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

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

## ARTICLE 1

### ISSUANCE OF BONDS; APPROVAL OF DOCUMENTS

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

Section 1.2 Interest Rate, Principal Amount, Maturity and Price. The Bonds shall bear interest at the Bond Coupon Rate, as defined in the Indenture and subject to adjustment as described in the Indenture; provided that (i) in no event shall the interest rate (including any default rate) exceed the maximum interest rate permitted by applicable law; (ii) the aggregate principal amount of the Bonds shall be \$34,000,000; (iii) the final maturity of the Bonds shall be January 1, 2061; and (iv) the price at which the Bonds are sold to the Purchaser shall be the principal amount thereof.

Section 1.3 Approval, Execution and Delivery of the Indenture. That the form and substance of the Indenture are hereby approved, and that the Authorized Representatives (as defined in Section 1.13 below) each are hereby authorized to execute the Indenture, and to deliver the Indenture to the Trustee.

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

Section 1.5 Approval, Execution and Delivery of the Regulatory Agreement. That the form and substance of the Regulatory Agreement are hereby approved, and that the Authorized Representatives each are hereby authorized to execute, attest and affix the Department's seal to the Regulatory Agreement, and to deliver the Regulatory Agreement to the Borrower, the Fee Owner and the Trustee and to cause the Regulatory Agreement to be filed of record in the real property records of Bexar County, Texas.

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

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

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

Section 1.9 Approval, Execution and Delivery of the Assignment of Mortgage. That the form and substance of the Assignment of Mortgage are hereby approved, and that the Authorized Representatives each are hereby authorized to execute the Assignment of Mortgage, and to deliver the Assignment of Mortgage to the Trustee.

Section 1.10 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 1.11 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 1.12 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 - Tax Exemption Agreement
- Exhibit F - Bond Purchase Agreement
- Exhibit G - Note
- Exhibit H - Mortgage
- Exhibit I - Assignment of Mortgage

Section 1.13 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 Authority to Invest Proceeds. That the Department is authorized to invest and reinvest the proceeds of the Bonds and the fees and revenues to be received in connection with the financing of the Development in accordance with the Indenture and the Tax Exemption Agreement and to enter into any agreements relating thereto only to the extent permitted by the Indenture and the Tax Exemption Agreement.

Section 2.5 Engagement of Other Professionals. That the Executive Director of the Department or any successor is authorized to engage auditors to perform such functions, audits, yield calculations and subsequent investigations as necessary or appropriate to comply with the Bond Purchase Agreement and the requirements of Bond Counsel, provided such engagement is done in accordance with applicable law of the State.

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

### ARTICLE 3

#### CERTAIN FINDINGS AND DETERMINATIONS

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

(a) Need for Housing Development.

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

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

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

(b) Findings with Respect to the Borrower.

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

(ii) that the Borrower is financially responsible, and

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

(c) Public Purpose and Benefits.

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

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

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

Section 3.3 Sufficiency of Loan Interest Rate. That the Board hereby finds and determines that the interest rate on the Loan established pursuant to the Loan Agreement will produce the amounts required, together with other available funds, to pay for the Department's

costs of operation with respect to the Bonds and the Development and enable the Department to meet its covenants with and responsibilities to the holders of the Bonds.

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

#### ARTICLE 4

##### GENERAL PROVISIONS

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

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

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

Section 4.4 Notice of Meeting. This Resolution was considered and adopted at a meeting of the Governing Board that was noticed, convened, and conducted in full compliance with the Texas Open Meetings Act, Chapter 551 of the Texas Government Code, and with 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 14th day of January, 2021.

**EXHIBIT A**

**Description of Development**

Borrower: Saddlespur Pass Apartments, LP, a Texas limited partnership

Development: The Development is a 216 unit affordable, multifamily housing development to be known as The Montage Apartments, to be located at 7554 FM 78, San Antonio, Bexar County, Texas 78244. It consists of five (5) residential apartment buildings with approximately 222,972 net rentable square feet. The unit mix will consist of:

60	one-bedroom/one-bath units
96	two-bedroom/two-bath units
60	three-bedroom/two-bath units
<hr/>	
216	Total Units

Unit sizes will range from approximately 770 square feet to approximately 1,283 square feet.

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**INDENTURE OF TRUST**

**by and between**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**and**

**BOKF, NA,**

**as Trustee**

**Dated as of January 1, 2021**

**Relating to:**

**\$34,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021**

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## TABLE OF CONTENTS

Article I DEFINITIONS .....	3
Section 1.1 Defined Terms.....	3
Section 1.2 Rules of Construction.....	22
Article II THE BONDS .....	23
Section 2.1 Authorized Amount of Bonds .....	23
Section 2.2 Issuance of Bonds.....	23
Section 2.3 Interest Rate on Bonds .....	24
Section 2.4 Execution; Limited Obligation.....	24
Section 2.5 Certificate of Authentication .....	25
Section 2.6 Form of Bonds.....	26
Section 2.7 Delivery of Bonds .....	26
Section 2.8 Mutilated, Lost, Stolen or Destroyed Bonds .....	27
Section 2.9 Exchangeability and Transfer of Bonds; Persons Treated as Owners.....	27
Section 2.10 Non-presentment of Bonds.....	28
Section 2.11 Ratably Secured.....	28
Section 2.12 Redemption of Bonds.....	29
Section 2.13 Notice of Redemption .....	32
Article III SECURITY .....	32
Section 3.1 Security.....	32
Section 3.2 Payment of Bonds and Performance of Covenants .....	32
Section 3.3 Authority .....	32
Section 3.4 No Litigation .....	33
Section 3.5 Further Assurances .....	33
Section 3.6 No Other Encumbrances; No Dissolution .....	33
Section 3.7 No Personal Liability.....	33
Article IV FUNDS .....	33
Section 4.1 Establishment of Funds and Accounts; Applications of Proceeds of the Bonds and Other Amounts .....	33
Section 4.2 Bond Fund .....	34
Section 4.3 Project Fund .....	35
Section 4.4 Surplus Fund .....	36
Section 4.5 Use of Certain Additional Funds and Accounts. ....	36
Section 4.6 Records.....	38
Section 4.7 Investment of Funds .....	38
Section 4.8 Guaranties.....	39
Article V DISCHARGE OF LIEN.....	39
Section 5.1 Discharge of Lien and Security Interest.....	39
Section 5.2 Provision for Payment of Bonds .....	39
Section 5.3 Discharge of this Indenture .....	40
Article VI DEFAULT PROVISIONS AND REMEDIES .....	40
Section 6.1 Events of Default.....	40
Section 6.2 Acceleration .....	41
Section 6.3 Other Remedies; Rights of Holders.....	41
Section 6.4 Right of Controlling Person to Direct Proceedings.....	42
Section 6.5 Discontinuance of Default Proceedings .....	42
Section 6.6 Waiver .....	42
Section 6.7 Application of Moneys.....	42

Section 6.8	Default Interest and Acceleration Premium .....	44
Article VII	THE TRUSTEE.....	44
Section 7.1	Appointment of Trustee.....	44
Section 7.2	Compensation and Indemnification of Trustee; Trustee’s Prior Claim.....	47
Section 7.3	Intervention in Litigation.....	48
Section 7.4	Resignation; Successor Trustees .....	48
Section 7.5	Removal of Trustee .....	48
Section 7.6	Instruments of Holders .....	48
Section 7.7	Power to Appoint Co-Trustees .....	49
Section 7.8	Filing of Financing Statements.....	51
Article VIII	AMENDMENTS, SUPPLEMENTAL INDENTURES .....	52
Section 8.1	Supplemental Indentures .....	52
Section 8.2	Amendments to Indenture; Consent of Majority Owner, Holders, and Borrower.....	52
Section 8.3	Amendments to the Loan Agreement or the Note Not Requiring Consent of Holders .....	53
Section 8.4	Amendments to the Loan Agreement or the Note Requiring Consent of Holders .....	53
Section 8.5	Notice to and Consent of Holders .....	54
Article IX	CONTROLLING PERSON; SERVICING .....	54
Section 9.1	Majority Owner to Appoint Controlling Person.....	54
Section 9.2	Servicing.....	54
Article X	MISCELLANEOUS .....	57
Section 10.1	Right of Trustee to Pay Taxes and Other Charges .....	57
Section 10.2	Limitation of Rights .....	57
Section 10.3	Severability.....	57
Section 10.4	Notices.....	57
Section 10.5	Payments Due on Non-Business Days .....	59
Section 10.6	Binding Effect .....	59
Section 10.7	Captions.....	59
Section 10.8	Governing Law.....	59
Section 10.9	Limited Liability of Issuer.....	59
Section 10.10	Execution in Counterparts; Electronic Signatures.....	59
EXHIBIT A	FORM OF BOND .....	A-1
EXHIBIT B	FORM OF INVESTOR LETTER.....	B-1

## **INDENTURE OF TRUST**

This **INDENTURE OF TRUST** (as amended, modified or supplemented from time to time, this “Indenture”), dated as of January 1, 2021, made and entered into by and between TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State (together with its successors and assigns, the “Issuer”), and BOKF, NA, a national banking association, as trustee (together with any successor trustee hereunder and their respective successors and assigns, (the “Trustee”),

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

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

**WHEREAS**, the Issuer has determined to issue and sell its Multifamily Housing Revenue Bonds (The Montage Apartments) Series 2021 in the original aggregate principal amount of \$34,000,000 (the “Bonds”), for the purpose of financing the cost of the acquisition, construction and equipping of a multifamily rental housing facility, consisting of a total of 216 units and related personal property and equipment, and located in San Antonio, Texas (the “Project Facilities”) all pursuant to this Indenture and the Loan Agreement, dated as of the date hereof (as amended, modified or supplemented from time to time, the “Loan Agreement”), by and among the Issuer, Red Stone Servicer, LLC as initial Controlling Person and Saddlespur Pass Apartments, LP, a limited partnership duly organized and existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”); and

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

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

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

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

### **GRANTING CLAUSES**

The Issuer, in consideration of the premises, the acceptance by the Trustee of the trusts hereby created, the purchase and acceptance of the Bonds by the Holders thereof, and of other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and in order to secure the payment of the principal of, premium, if any, and interest on the Bonds according to their tenor and effect, and to secure the performance and observance by the Issuer of all the covenants, agreements and conditions

herein and in the Bonds contained, does hereby transfer, pledge and assign, without recourse, to the Trustee and its successors and assigns in trust forever, and does hereby grant a security interest unto the Trustee and its successors in trust and its assigns, in and to all and singular the property described in paragraphs (a), (b), (c) and (d) below (said property being herein referred to as the "Security"), to wit:

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

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

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

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

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

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

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

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

## **ARTICLE I** **DEFINITIONS**

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

**“Accountant”** means \_\_\_\_\_, or such other accounting firm approved in writing by the Controlling Person.

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

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

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

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

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

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

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

**“Architect”** means \_\_\_\_\_.

**“Architect’s Agreement”** means the contract dated \_\_\_\_\_, 2020, between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the construction thereof, including ongoing monthly inspection of the Improvements, certification of Requisitions and certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

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

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

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

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

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

**“Authorized Officer”** means the Chair or Vice Chair of the Board, the Executive Director of the Issuer, the Director of Administration of the Issuer, the Director of Financial Administration of the Issuer, the Director of Bond Finance and Chief Investment Officer of the Issuer, the Director of Multifamily Bonds of the Issuer, the Director of Texas Homeownership of the Issuer, and the Secretary or Assistant Secretary to the Board.

**“Authorized Borrower Representative”** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Borrower Representative is Jeffrey L. Kittle.

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

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

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

**“Bond Counsel”** means Bracewell LLP, or any law firm of nationally recognized standing in the field of municipal finance law appointed by the Issuer, and reasonably acceptable to the Controlling Person, whose opinions are generally accepted by purchasers of tax-exempt obligations.

**“Bond Coupon Rate”** means \_\_\_\_\_% per annum, which rate shall be equal to the sum of (a) 2.95%, plus (b) the product of (i) 87% and (ii) the fixed swap rate quoted ten (10) Business Days prior to the Issue Date utilizing 3-Month LIBOR as the floating rate leg with a 15 year term as determined by the Controlling Person after getting market quotations from a financial institution providing such interest rate swaps.

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

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

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

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

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

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

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

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

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

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

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

**“Completion Date”** means February 1, 2023, the date by which the construction of the Improvements must achieve Final Completion; provided, however, the Completion Date may be extended at the written direction of the Borrower, with written notice to each of the Controlling Person, the Trustee and the Issuer, but without the consent of any other person, one time for a period of twelve (12) months so long as (i) no Default or Event of Default shall have occurred and be then continuing, (ii) the Stabilization Date shall have been contemporaneously extended for the same period of time, (iii) the Borrower shall have provided such additional information as may be reasonably requested by the Controlling Person or the Majority Owner, and (iv) an extension fee for the extension of the Completion Date and the Stabilization Date equal to 0.125% multiplied by the original principal amount of the Bonds shall have been paid to the Red Stone Tax Exempt Funding II LLC; and provided further that so long as the completion of the Work and the other items required for Final Completion (as set forth in the definition of Final Completion) occur prior to this Completion Date, the Borrower shall have a period of not more than forty-five (45) days following the Completion Date to submit to the Controlling Person the forms of completion certificate and use of proceeds certificate and the necessary supporting documentation evidencing the achievement of Final Completion before an Event of Default shall occur as a result of the failure to achieve Final Completion.

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

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

**“Construction Contract”** means the contract, dated on or about \_\_\_\_\_, 2020, between the Borrower and the Contractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified or supplemented from time to time.

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

**“Continuing Disclosure Agreement”** means the Continuing Disclosure Agreement dated as of January 1, 2021, between the Borrower and the Trustee, as dissemination agent, as the same may be amended, modified or supplemented from time to time.

**“Contractor”** means Kittle Property Group, Inc., an Indiana corporation.

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

**“Controlling Person”** means any entity designated in writing by the Majority Owner by written notice to the Trustee and the Issuer to act as a Controlling Person hereunder, in accordance with Article IX hereof, together with such entity’s successors and assigns. If at any time a Controlling Person has not been designated by the Majority Owner, all references herein and in the other Bond Documents to “Controlling Person” shall refer to the Majority Owner. The initial Controlling Person is Red Stone Servicer, LLC.

**“Costs of Issuance Fund”** means the Costs of Issuance Fund created pursuant to Section 4.1(a) hereof.

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

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

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

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

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

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

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

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

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

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

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

**“Early Prepayment Premium”** means the greater of (a) \$0 and (b) the product of (i) the difference between (x) \_\_\_\_\_ percent (\_\_\_%) less (y) the then-current 17-year SIFMA Swap Rate with an end date of January 1, 2038, times (ii) the Outstanding principal amount of the Bonds, times (iii) the number of months remaining from the date of a prepayment to which this definition applies until January 1, 2038, divided by twelve (12). The Controlling Person shall calculate, or cause to be calculated, the Early Prepayment Premium and deliver the calculation thereof, in reasonable detail to the Trustee and Issuer, not later than five (5) Business Days prior to the date of a prepayment to which this definition applies.

**“Effective Gross Revenues”** of the Borrower means, for the period being tested, the historical or annualized aggregate revenues during such period generated from all tenants and others occupying or

having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person’s reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, and, if annualized, as adjusted in the Controlling Person’s judgment for factors including but not limited to: (i) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (ii) evidence of rent deterioration; (iii) concessions, reductions, inducements or forbearances (such as any cash reduction in monthly rent during the term of a lease, any free rent before, during or after the term of a lease, any rent coupons, gift certificates and tangible goods or any other form of rent reduction or forbearance); (iv) economic vacancy at the higher of: (1) five percent (5.0%), or (2) actual economic vacancy based on the annualized vacancies of the Project Facilities; (v) 30-day or more delinquencies; (vi) low-income restrictions required by any applicable federal, state or local subsidy program, any restrictive covenant or regulatory agreement; and (vii) other applicable adjustments as reasonably determined by the Controlling Person.

“**Engineer’s Agreement**” means the agreement dated \_\_\_\_\_, 2020 between the Borrower and Kittle Property Group, Inc., the structural engineer for the Project Facilities, relating to the construction of the Improvements, as the same may be amended, modified or supplemented from time to time.

“**Engineering Consultant**” means Hillman Consulting, LLC, or any other engineer licensed to practice in the State and chosen by the Controlling Person.

“**Environmental Audit**” means the written Phase I environmental site assessment for the Project Facilities prepared by ProGEA, Inc., dated November 11, 2020.

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

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

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

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

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

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

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

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

“Expenses” means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person. In determining Expenses (if annualized), the Controlling Person will take into account: (i) the actual amount of aggregate annualized Expenses, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (ii) the annual Expenses that the Controlling Person used in the original underwriting of the Project Facilities, as set forth on Schedule 11 of the Loan Agreement, except for expense line items relating to property taxes (if any), insurance premiums and utilities, which in all cases shall be the actual amounts for such line items. Any expense adjustment as reasonably determined by the Controlling Person may result in a line item which may be more or less than the actual annual expense for that line item for the period covered by the financial statements submitted by the Borrower to the Controlling Person.

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

“Fee Owner” shall have the meaning ascribed to such term in the Regulatory Agreement.

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

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

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

Engineering Consultant (or one hundred and twenty-five percent (125%), with respect to the items described in subsection (A) as being subject to seasonal conditions) have been deposited into the Project Fund;

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

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

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

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

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

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

(ix) the Trustee shall have received an as-built TLTA/ACSM Urban Class Survey certified to the Trustee and the Controlling Person, and an endorsement down dating the Title Policy insuring the Mortgage as a first lien, subject to Permitted Encumbrances.

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

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

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

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

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

**“General Partner”** means BMDC Saddlespur Pass Apartments GP, LLC, a limited liability company organized and existing under the laws of the State, in its capacity as the sole general partner of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of “Permitted Transfer” herein.

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

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

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

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

**“Guarantor”** means, together, jointly and severally, Jeffrey L. Kittle, an individual and a resident of the State of Indiana, and Kittle Property Group, Inc., a corporation organized and existing under the laws of the State of Indiana, together with their respective heirs, executors, personal and legal representatives and permitted successors and assigns.

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

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

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

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

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

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

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

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

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

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

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

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

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

**“Interest Payment Date”** means the first Business Day of each month that the Bonds are Outstanding, beginning March 1, 2021.

**“Investor Letter”** means an investor letter substantially in the form attached hereto as Exhibit B.

**“Issue Date”** means the date of initial delivery of the Bonds to the Purchaser in exchange for the purchase price thereof.

**“Issuer”** means the Texas Department of Housing and Community Affairs a public and official agency of the State, and its successors and assigns.

**“Issuer Administration Fee”** means the fee payable annually in advance to the Issuer on each January 1, in the amount of .10% per annum of the aggregate principal amount of Bonds Outstanding at the inception of each payment period. On the Issue Date, the Borrower will pay the Issuer Administration Fee in advance to the Issuer for the period from the Issue Date to December 31, 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 Administration Fee due on or after January 1, 2023.

**“Issuer Assignment”** means that certain Assignment of Mortgage Documents dated as of January 1, 2021 from the Issuer to the Trustee and acknowledged by the Borrower, as the same may be amended, modified or supplemented from time to time.

**“Issuer Compliance Fee”** means the fee payable annually in advance to the Issuer on each January 1, in the amount of \$25 per Low-Income Unit in the Project for the duration of the State Restrictive Period (as defined in the Regulatory Agreement). The first annual Issuer Compliance Fee shall be paid on the Issue 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 January 1, 2024. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

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

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

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

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

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

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

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

**“Majority Owner”** means any one Person that is the Owner of the Outstanding Bonds; provided, however, if no one Person owns all of the Outstanding Bonds, “Majority Owner” means the Owner or Owners of at least a majority in aggregate principal amount of all Outstanding Bonds.

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

**“Manager”** means Kittle Property Group, Inc., a corporation organized and existing under the laws of the State of Indiana, together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

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

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

**“Maturity Date”** means January 1, 2061.

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

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

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

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

**“Moody’s”** means Moody’s Investors Service, Inc., a corporation organized and existing under the laws of the State of Delaware, its successors and assigns and, if such corporation shall be dissolved or liquidated or shall no longer perform the functions of a securities rating agency, “Moody’s” shall be deemed

to refer to any other nationally recognized securities rating agency designated by the Controlling Person, by notice to the Borrower, the Issuer and the Trustee.

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

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

**“Obligations”** means any and all obligations of the Borrower for the payment of money including without limitation any and all (i) obligations for money borrowed, (ii) the Indebtedness and all other obligations evidenced by bonds, debentures, notes, guaranties or other similar instruments, (iii) construction contracts, installment sale agreements and other purchase money obligations in connection with the performance of work, sale of property or rendering of services, (iv) leases evidencing the acquisition of capital assets, (v) obligations under any applicable ground lease, (vi) reimbursement obligations in connection with letters of credit and other credit enhancement facilities, (vii) obligations for unfunded pension liabilities, (viii) guaranties of any such obligation of a third party, and (ix) any such obligations of third parties secured by assets of the Borrower; but excluding obligations incurred and payable in the ordinary course of Borrower’s business under contracts for supplies, services and pensions allocable to current Expenses during the current or future Fiscal Years in which the supplies are to be delivered, the services rendered or the pension paid and paid within thirty (30) days of the date such amounts are due.

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

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

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

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

- (i) Bonds cancelled or delivered for cancellation at or prior to such date;
- (ii) Bonds deemed to be paid in accordance with Section 5.2 hereof;
- (iii) Bonds in lieu of which others have been authenticated under Sections 2.8 and 2.9 hereof; and
- (iv) For purposes of any consent, request, demand, authorization, direction, notice, waiver or other action to be taken by the Holders of a specified percentage of Outstanding Bonds hereunder, all Bonds held by or for the account of the Issuer, the Borrower or any Affiliate of the Borrower; provided, however, that for purposes of any such consent, request, demand, authorization, direction, notice, waiver or action the Trustee shall be obligated to consider as not being outstanding only Bonds known by the Trustee by actual notice thereof to be so held; provided, further, that if all of the Bonds are at any time held by or for the account of the Borrower or any Affiliate of the Borrower, then such Bonds shall be deemed to be Outstanding at such time for the purposes of this subparagraph (iv).

**“Partnership Agreement”** means the First Amended and Restated Agreement of Limited Partnership of the Borrower dated as of January \_\_, 2021, as the same may be amended, modified, supplemented or restated from time to time in accordance with the terms thereof, and as permitted under the Bond Documents.

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

**“Permitted Encumbrances”** means only:

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

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

- (i) Bonds or other obligations of the United States;
- (ii) Bonds or other obligations, the payment of the principal and interest of which is unconditionally guaranteed by the United States;
- (iii) Direct obligations issued by the United States or obligations guaranteed in full as to principal and interest by the United States or repurchase agreements with a qualified depository bank or securities dealers fully collateralized by such obligations, maturing on or before the date when such funds will be required for disbursement;
- (iv) Obligations of state and local government and municipal bond issuers, which are rated investment-grade by either S&P or Moody’s or other non-rated obligations of such issuers

guaranteed or credit enhanced by a Person whose long-term debt or long-term deposits or other obligations are rated investment-grade by either S&P or Moody's;

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

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

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

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

**"Permitted Transfer"** means (i) a transfer by devise or descent or by operation of law upon the death of a direct or indirect owner in the Borrower, so long as such transfer does not result in a change of management or control of the affected entity, (ii) the transfer of a direct or indirect ownership interest in the General Partner for estate planning purposes, so long as such transfer does not result in a change of management or control of the General Partner, (iii) a transfer of partnership interests in Borrower to the Tax Credit Investor and/or the Special Limited Partner, (iv) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to an Affiliate of such Tax Credit Investor and/or Special Limited Partner, (v) a transfer of the limited partner interests of the Tax Credit Investor and/or the Special Limited Partner in the Borrower to non-Affiliates of such Tax Credit Investor and/or Special Limited Partner with the prior written consent of the Controlling Person, which shall not be unreasonably withheld, conditioned or delayed, (vi) a transfer of any shares or ownership interests in the Tax Credit Investor and/or Special Limited Partner after the payment of all of the installments of capital contributions by the Tax Credit Investor to the Partnership (as defined in and pursuant to the terms and conditions of the Partnership Agreement), (vii) transfers of any interests in the General Partner so long as the Guarantor, or one or more members of the Guarantor, controls the Borrower after such transfer occurs, (viii) the removal and replacement of the General Partner pursuant to the Partnership Agreement, (ix) after the payment of all capital contributions required pursuant to the terms and conditions of the Partnership Agreement, any other transfer, assignment, pledge, hypothecation or conveyance of limited partner interests in, or change in the limited partners of, the Borrower (and the owners of such limited partners) not described above, in accordance with the terms of the Partnership Agreement, or (x) the extension, amendment or replacement of commercial leases approved by the Controlling Person; provided, however, to constitute a "Permitted Transfer" under the Bond Documents, any such transfer described in items (i) through (ix) above shall have received the prior written consent of the Issuer, as required by the applicable provisions of Section 10 of the Regulatory Agreement.

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

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

**“Principal Operations Office of the Trustee”** means the office of the Trustee located at c/o US Bank Corporate Trust Services, 60 Livingston Avenue, EP MN W52N, St. Paul, Minnesota 55107, or such other location designated by the Trustee.

**“Principal Payment Date”** means (i) the first (1st) Business Day of each January, April, July and October that the Bonds are Outstanding, commencing on January 1, 2026, (ii) any other redemption date for the Bonds and (iii) the Maturity Date for the Bonds.

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

**“Project Facilities”** or **“Project”** means the multifamily apartment housing facilities consisting of a total of 216 units and related improvements, personal property and equipment, located in San Antonio, Texas, the acquisition, construction and equipping of which are being financed by the proceeds of the Bonds.

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

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

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

**“Purchase Agreement”** means the Bond Purchase Agreement, dated January \_\_, 2021, among the Issuer, the Borrower and the Purchaser, relating to the initial sale of the Bonds.

**“Purchaser”** means RSZ TAC LLC, or its designee, together with such purchaser’s successors and assigns under the Purchase Agreement.

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

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

**“Rebate Analyst”** shall have the meaning ascribed to such term in the Tax Exemption Agreement and shall be reasonably acceptable to the Controlling Person.

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

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

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

**“Redemption Price”** means, from January 1, 2033 through and including December 31, 2037, one hundred and one percent (101%) of the principal amount thereof plus the Early Prepayment Premium, [and from and after January 1, 2038, one hundred percent (100%) of the principal amount thereof.]

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

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

**“Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, dated as of the date hereof, among the Issuer, the Trustee, the Fee Owner and the Borrower, as the same may be amended, modified or supplemented from time to time.

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

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

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

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

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

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

**“Required Equity Funds”** means \$ \_\_\_\_\_, comprised of \_\_\_\_ ( ) separate installments of equity contributions to be made to the Borrower by the Tax Credit Investor, subject to and in accordance with the terms of the Partnership Agreement.

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

**“Reserved Rights”** of the Issuer means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 2.2(c) of the Loan Agreement, including the Issuer Fees; (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 Loan Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower relating to the Issuer set forth in the Loan Agreement, in the Tax Exemption Agreement and in the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage 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 Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, or the Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Loan Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage and the Note; (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in this Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Loan Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Loan Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

**“Retainage”** means a holdback of [ten percent (10%) of the hard costs of construction of the Improvements (other than materials) under each contract or subcontract.]

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

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

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

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

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

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

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

“**Special Limited Partner**” means \_\_\_\_\_, a \_\_\_\_\_ organized and existing under the laws of the State of \_\_\_\_\_, in its capacity as a special limited partner of the Borrower, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

“**Stabilization**” means the point at which (i) the Improvements have been ninety percent (90%) occupied by tenants meeting the requirements of the Bond Documents averaged over the prior three (3) consecutive months; (ii) the ratio of Stabilized NOI in the prior three (3) consecutive months in the aggregate to the maximum principal, interest, Issuer Fees and Trustee Fees payable in any three (3) consecutive month period in the aggregate on the amount of Bonds Outstanding equals or exceeds 1.15 to 1.0; (iii) no Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be then continuing under the Bond Documents; (iv) the Project Facilities shall have achieved Final Completion; and (v) the Bonds shall have been redeemed in part in the amount required under Section 2.12(b)(iii), all as determined or approved by the Controlling Person.

“**Stabilization Date**” means February 1, 2024; provided, however, the Stabilization Date may be extended at the written direction of the Borrower, with written notice to each of the Controlling Person, the Trustee and the Issuer, but without the consent of any other person, one time for a period of twelve (12) months so long as (i) no Default or Event of Default shall have occurred and be then continuing, (ii) the Completion Date shall have been contemporaneously extended for the same period of time, (iii) the Borrower shall have provided such additional information as may be reasonably requested by the Controlling Person or the Majority Owner, and (iv) an extension fee for the extension of the Completion Date and the Stabilization Date equal to 0.125% multiplied by the original principal amount of the Bonds shall have been paid to the Red Stone Tax Exempt Funding II LLC; and provided further that so long as the items required for Stabilization (as set forth in the definition of Stabilization) occur prior to this Stabilization Date, the Borrower shall have a period of not more than forty-five (45) days following the Stabilization Date to submit to the Controlling Person the forms of completion certificate and use of proceeds certificate and the necessary supporting documentation evidencing the achievement of Stabilization before an Event of Default shall occur as a result of the failure to achieve Stabilization.

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

“**State**” means the State of Texas.

“**Substantial User**” means, with respect to any “facilities” (as the term “facilities” is used in Section 144(a) of the Code), a “substantial user” of such “facilities” within the meaning of Section 147(a) of the Code and Section 1.103-11 of the Regulations.

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

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

**Tax Abatement”** means the abatement in full of the property taxes on the Project Facilities pursuant to \_\_\_\_\_, as approved by the \_\_\_\_\_, on \_\_\_\_\_, 20\_\_\_\_, a copy of which approval is attached to the Loan Agreement as Schedule 14.

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

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

**“Tax Credit Investor”** means Wincopin Circle LLLP, a limited liability limited partnership organized and existing under the laws of the State of Maryland, as limited partner of the Borrower, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

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

**“Title Company”** means First American Title Insurance Company.

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

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

**“Trustee Fees”** means the fees and expenses charged or incurred by the Trustee in the fulfillment of its obligations hereunder, including (i) an acceptance/setup fee of \$2,500, which shall be paid on the Issue Date; (ii) an annual fee of no less than \$4,500 to be billed in advance; provided that the annual fee for the first year shall be paid on the Issue Date; and (iii) from time to time all reasonable expenses, charges, counsel fees and other disbursements, including those of its attorneys, agents, and employees, incurred in and about the performance of their powers and duties under this Indenture.

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

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

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

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

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

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

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

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

**ARTICLE II**  
**THE BONDS**

**Section 2.1 Authorized Amount of Bonds.** No Bonds may be issued under the provisions of this Indenture except in accordance with this Article II. The total principal amount of Bonds that may be issued and Outstanding hereunder is expressly limited to \$34,000,000. The Bonds shall be designated “Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021”. The form of Bonds attached as Exhibit A to this Indenture shall be the form of Bonds referred to herein.

**Section 2.2 Issuance of Bonds.**

(a) The Bonds shall bear interest from the Issue Date until paid or exchanged, as applicable, at the rate set forth in Section 2.3 hereof computed on the basis set forth in the form of the Bonds, and the Bonds shall mature, unless sooner paid, on the Maturity Date, on which date all unpaid principal of and interest on the Bonds shall be due and payable.

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

(c) The Initial Bond, which shall be numbered I-1 and payable to the Purchaser and registered by the Comptroller, shall be identical to the form of Bond attached as Exhibit A, except that the third-to-last paragraph of the Initial Bond shall be replaced as follows:

“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 hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts by manual signature.”

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. _____

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 duly registered by the Texas Comptroller of Public Accounts.

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

(d) The Bonds shall be dated the Issue Date and initially issued as provided herein and in the written instructions from the Issuer. Interest on the Bonds shall be computed from the most recent Interest Payment Date to which interest has been paid or duly provided for or if no interest has been paid or provided for, from the Issue Date. The Bonds shall mature on the Maturity Date, on which date all unpaid principal of, premium, if any, and interest on the Bonds shall be due and payable. The Bonds are subject to mandatory sinking fund redemption as provided in Section 2.12(c) hereof.

(e) The principal of, premium, if any, and the interest on the Bonds shall be payable in lawful currency of the United States. The principal of, premium, if any, the Bonds shall be payable at the principal office of the Trustee upon presentation and surrender of the Bonds; provided, however, that Bonds need not be presented for payment upon redemption pursuant to Section 2.12(c) of this Indenture. Payments of interest on the Bonds will be mailed to the persons in whose names the Bonds are registered on the Register at the close of business on the Record Date next preceding each Interest Payment Date; provided that, any Holder of a Bond or Bonds in an aggregate principal amount of not less than \$250,000 may, by prior written instructions filed with the Trustee ten (10) Business Days prior to the Record Date (which instructions shall remain in effect until revoked by subsequent written instructions), instruct that interest payments be made by wire transfer to an account in the continental United States or other means acceptable to the Trustee.

**Section 2.3 Interest Rate on Bonds.** The Bonds shall bear interest at the Bond Coupon Rate from the Issue Date to the date of payment in full of the Bonds, calculated in the manner set forth in the form of the Bonds. Interest accrued on the Bonds shall be paid on each Interest Payment Date and on the Maturity Date and any date of redemption prior to the Maturity Date; provided however, that in the event that principal of, premium, if any, or interest payable on the Bonds is not paid when due or when any other Event of Default shall occur and be continuing, there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, as more fully set forth in Section 6.8 hereof.

**Section 2.4 Execution; Limited Obligation.**

(a) The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of the Chair or Vice Chair of the Issuer, and the seal of the Issuer or a facsimile thereof shall be impressed or otherwise reproduced thereon and attested by the manual or facsimile signature of an authorized officer of the Issuer. In case any officer whose manual or facsimile signature shall appear on

the Bonds shall cease to be such officer before the delivery of such Bonds, such manual or facsimile signatures shall nevertheless be valid and sufficient for all purposes.

(b) The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof. The Bonds and the interest thereon and premium, if any, shall not be deemed to constitute or create an indebtedness, liability or obligation of the Issuer, the State or any political subdivision or agency thereof within the meaning of any State constitutional provision or statutory limitation or a pledge of the faith and credit or the taxing power of the State or any such political subdivision or agency. The Bonds and the interest thereon are payable solely from and secured by the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof, all as described in and subject to limitations set forth in this Indenture, for the equal and ratable benefit of the Holders, from time to time, of the Bonds.

(c) **THE BONDS, TOGETHER WITH INTEREST THEREON, AND PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE SECURITY, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE SECURITY (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 SECURITY, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, 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 PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** The foregoing statement of limitation shall appear on the face of each Bond.

**Section 2.5 Certificate of Authentication.** No Bonds shall be secured hereby or entitled to the benefit hereof or shall be or become valid or obligatory for any purpose unless such Bond has been duly registered by the Comptroller by the execution of a registration certificate of the Comptroller substantially in the form set forth in Exhibit A to this Indenture and appearing on the Initial Bond, or there shall be endorsed thereon a certificate of authentication, substantially in the form as set forth in the form of Bond referred to in Section 2.6 hereof, executed by an authorized representative of the Trustee and such registration or certificate on any Bond issued by the Issuer shall be conclusive evidence and the only competent evidence that it has been duly authenticated and delivered hereunder. The Initial Bond shall be the Bond delivered to the Attorney General of Texas and registered by the Comptroller. The registration certificate of the Comptroller shall be manually executed by said Comptroller (or a deputy designated in writing to act for said Comptroller) and the seal of the Comptroller shall be impressed, or placed in facsimile, on the registration certificate. The execution of the registration certificate shall be conclusive evidence that the Initial Bond has been duly issued under this Indenture and that the holder thereof is entitled to the benefits of this Indenture. Upon receipt of the Initial Bond by the Issuer, with the registration certificate thereon so executed and sealed as aforesaid, the Issuer shall deliver such Initial Bond to the Trustee. The Trustee, upon satisfaction of the conditions specified in Section 2.7 hereof, shall cancel the

Initial Bond and shall deliver the definitive Bonds to the initial Purchaser thereof or its designee, in substitution of the Initial Bond.

**Section 2.6 Form of Bonds.**

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

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

**Section 2.7 Delivery of Bonds.**

(a) Upon the execution and delivery hereof, the Issuer shall execute the Bonds and deliver them to the Trustee, and the Trustee shall authenticate the Bonds and deliver them to the purchaser thereof in physical certificated form.

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

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

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

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

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

(v) An executed counterpart of the Tax Exemption Agreement; and

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

(vii) An approving Opinion of Bond Counsel that, under existing law, the Bonds have been duly authorized and validly issued, that this Indenture creates a valid lien on the Security, that interest on the Bonds is excludable from gross income of the Holders thereof for federal income tax purposes except with respect to interest on any Bond during any period while it is held by a Substantial

User of the Project Facilities or a Related Person of such a Substantial User and is not subject to the alternative minimum tax, that the Bonds are not required to be registered under the Securities Act of 1933, as amended, and that the Indenture need not be qualified under the Trust Indenture Act of 1939, as amended; and

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

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

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

(xi) An Investor Letter executed by the Purchaser, and with a copy to the Issuer, substantially in the form attached hereto as Exhibit B

(xii) Such other documents, opinions and certificates as may be required by the Issuer, the Trustee, Bond Counsel, the Majority Owner or the Controlling Person.

The Trustee shall deem the requirements of clauses (iii), (viii), (ix) and (xi) satisfied upon delivery to the Trustee of the Opinions of Bond Counsel referenced in Sections 2.7(b)(vi) and 2.7(b)(vii).

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

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

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

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

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

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

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

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

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

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

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

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

**Section 2.11 Ratably Secured.** All Bonds issued hereunder are and are to be, to the extent provided in this Indenture, equally and ratably secured by this Indenture without preference, priority or distinction on account of the actual time or times of the authentication, delivery or maturity of the Bonds so that subject as aforesaid, all Bonds at any time Outstanding shall have the same right, lien and preference under and by virtue of this Indenture and shall all be equally and ratably secured hereby with like effect as

if they had all been executed, authenticated and delivered simultaneously on the date hereof, whether the same, or any of them, shall actually be disposed of at such date, or whether they, or any of them, shall be disposed of at some future date.

## **Section 2.12 Redemption of Bonds.**

(a) Optional Redemption of Bonds. The Bonds are subject to optional redemption in whole but not in part, at the direction of the Borrower upon not less than forty-five (45) days written notice to the Trustee, the Issuer and the Controlling Person (which notice shall, upon deposit by Borrower with Trustee of funds sufficient to pay the Redemption Price on or prior to the date fixed for redemption, be unconditional and irrevocable), in Authorized Denominations on any Interest Payment Date occurring on or after January 1, 2033, at the Redemption Price, plus accrued interest thereon to, but not including, the redemption date.

(b) Mandatory Redemption of Bonds.

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

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

(iii) Prior to the Stabilization Date and as a condition to Stabilization, upon at least five (5) Business Days written notice thereof, the Bonds are subject to mandatory redemption in part in the amount equal to (1) \$9,000,000, plus (2) such amount as specified by the Controlling Person in writing to the Trustee and the Issuer necessary to cause the Project Facilities to meet the requirements of clause (ii) of the definition of "Stabilization," at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date. The Controlling Person estimates, and the Borrower acknowledges, that based on the projected Stabilized NOI the redemption amount required pursuant to part (2) herein will be approximately \$3,000,000.

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

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the reasonable judgment of the Controlling Person (A) it cannot reasonably be restored within a period of twelve (12) consecutive months to the condition thereof

immediately preceding such damage or destruction, (B) the Borrower is thereby prevented from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

(2) title in and to, or the temporary use of, all or substantially all of the Project Facilities shall have been taken under the exercise of the power of eminent domain by any Governmental Authority or any Person acting under Governmental Authority (including such a taking as, in the reasonable judgment of the Controlling Person, results in the Borrower being prevented thereby from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months);

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

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

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

(6) legal curtailment of the Borrower's use and occupancy of all or substantially all of the Project Facilities for any reason other than that set forth in (2) above, which curtailment shall, in the judgment of the Controlling Person, prevent the Borrower from carrying on its normal operations at the Project Facilities for a period of twelve (12) consecutive months; or

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

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

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

(vi) The Bonds are subject to mandatory redemption in whole on any Interest Payment Date specified by the Controlling Person on or after January 1, 2038, if the Controlling Person directs redemption by providing written notice to the Borrower, the Trustee and the Issuer at least six (6) months prior to the Interest Payment Date specified in such written notice on which the Bonds are to be redeemed at a redemption price equal to one hundred percent (100%) of the principal amount thereof plus interest accrued thereon to, but not including, the redemption date. The direction of the Controlling Person to redeem the Bonds shall be irrevocable and shall be binding on the Holders of all of the Bonds and on any transferee(s) of such Holders.

(c) Mandatory Sinking Fund Redemption. The Bonds are subject to mandatory sinking fund redemption in part on each Principal Payment Date, from amounts paid by the Borrower to the Trustee for deposit into the Redemption Fund pursuant to Sections 2.3(d) and 8.4 of the Loan Agreement (in the amount set forth on Schedule 3 of the Loan Agreement), at a redemption price equal to one hundred percent (100%) of the principal amount of the Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date.

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

(e) Partial Redemption of Bonds; Reamortization. In case part but not all of a Bond shall be selected for redemption, upon presentation and surrender at the operations office of the Trustee of such Bond by the Holder thereof or his attorney duly authorized in writing (with due endorsement for transfer or accompanied by written instrument of transfer in form satisfactory to the Trustee), the Issuer shall execute and the Trustee shall authenticate and deliver to or upon the order of such Holder, without charge therefor, for the unredeemed portion of the principal amount of the Bond so surrendered, a Bond or Bonds, at the option of such Holder, of any Authorized Denomination of like tenor, or if less than the minimum Authorized Denomination, an amount necessary to equal the unredeemed portion of the principal amount of the Bond; provided, however, such surrender of Bonds shall not be required for payment of the redemption price pursuant to Section 2.12(c) hereof. For all purposes of this Indenture (including exchange and transfer), the Bond so issued in less than a minimum Authorized Denomination shall be deemed to have been issued in an Authorized Denomination. Bonds so presented and surrendered shall be canceled in accordance with this Indenture. In the event of a partial redemption of Bonds other than pursuant to Section 2.12(b)(iii)(1) or Section 2.12(c), the mandatory sinking fund schedule set forth on Schedule 3 of the Loan Agreement shall be adjusted to provide for level debt service in respect of the Bonds remaining Outstanding after such partial redemption, on the basis of the original amortization schedule. The Controlling Person shall provide the Trustee, the Issuer and the Borrower with a new Schedule 3 reflecting such adjustment promptly following any such partial redemption.

(f) Redemption Price. Other than as described in Section 2.12 (a) and Section 6.8 hereof, any redemption of Bonds shall be at a redemption price equal to one hundred percent (100%) of the principal amount of Bonds to be redeemed plus interest accrued thereon to, but not including, the redemption date, without premium, penalty or charge.

(g) Right of Borrower to Purchase Bonds. Subject to delivery of a Favorable Opinion of Bond Counsel, provided that such opinion shall not be required if the Bonds are held by a Substantial User or Related Person to a Substantial User, the Borrower shall have the option, by written notice to the

Trustee, the Issuer and the Controlling Person given not less than five (5) Business Days (forty-five (45) days in case of a redemption pursuant to Section 2.12(b)(vi) hereof), in advance of any redemption date, to cause purchase of the Bonds in lieu of redemption on the redemption date. The purchase price of the Bonds so purchased in lieu of redemption shall be equal to the redemption price thereof (including any applicable redemption premium), and shall be payable on the redemption date. Bonds so purchased in lieu of redemption shall be registered to or upon the direction of the Borrower.

**Section 2.13 Notice of Redemption.** Notice of redemption shall be mailed by the Trustee by first-class mail, postage prepaid, at least thirty (30) days before the redemption date to each Holder of the Bonds to be redeemed in whole or in part at his/her last address appearing on the Register, with a copy to the Controlling Person, the Issuer and the Borrower, but no defect in or failure to give such notice of redemption shall affect the validity of the redemption; provided, however, that (i) notice of redemption shall be mailed by the Trustee not less than five (5) Business Days prior to the date fixed for redemption pursuant to Section 2.12(b)(iii) hereof, and (ii) no notice of redemption shall be required for mandatory sinking fund redemption pursuant to Section 2.12(c) hereof. All Bonds properly called for redemption will cease to bear interest on the date fixed for redemption, and, thereafter, the Holders of such Bonds called for redemption shall have no rights in respect thereof except to receive payment of the redemption price (including any applicable premium) from the Trustee and a new Bond for any portion not redeemed.

### **ARTICLE III SECURITY**

**Section 3.1 Security.** The Bonds and the interest and any premium thereon shall be limited obligations of the Issuer as provided in Section 10.9 hereof, and shall be secured by and payable from the Security pledged and assigned to the Trustee by the Issuer pursuant to the Granting Clauses hereof.

**Section 3.2 Payment of Bonds and Performance of Covenants.** The Issuer shall promptly pay, but only out of the Security, the principal of, premium, if any, and interest on the Bonds at the place, on the dates and in the manner provided in the Bonds. The Issuer shall promptly perform and observe all covenants, undertakings and obligations set forth herein, in the Bonds or in the other Bond Documents to which the Issuer is a party on its part to be performed or observed. The Issuer shall fully cooperate with the Trustee in the enforcement by the Trustee of any such rights granted to the Issuer under the Loan Agreement and the other Bond Documents to which the Issuer is a party.

**Section 3.3 Authority.** The Issuer represents and warrants that (i) it is duly authorized under the laws of the State to issue the Bonds, and to execute, deliver and perform the terms of the Loan Agreement and this Indenture; (ii) all action on its part for the issuance of the Bonds and execution and delivery of the Bond Documents to which it is a party has been duly taken; (iii) the Bonds, upon issuance and authentication, and the Bond Documents to which it is a party upon delivery, assuming that they are the respective legal, valid, binding and enforceable obligations of the other parties thereto, shall be valid and enforceable obligations of the Issuer in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency or other similar laws affecting the enforcement of creditors' rights generally and general equitable principles; (iv) it has not heretofore conveyed, assigned, pledged, granted a security interest in or otherwise disposed of the Security; (v) it has not received any payments under the Loan Agreement; (vi) without making any independent investigation, it has no knowledge of any right of set-off, defense or counterclaim to payment or performance of the terms or conditions of the Loan Agreement; and (vii) the execution, delivery and performance of the Bond Documents to which it is a party and issuance of the Bonds are not in contravention of law or any agreement, instrument, indenture or other undertaking to which it is a party or by which it is bound and no other approval, consent or notice from any Governmental Authority is required on the part of the Issuer.

**Section 3.4 No Litigation.** The Issuer represents and warrants that there is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, this Indenture or the other Bond Documents to which the Issuer is a party, or (ii) the excludability of interest on the Bonds from gross income for federal income tax purposes.

**Section 3.5 Further Assurances.** The Issuer covenants that it will cooperate to the extent necessary with the Borrower and the Trustee in their defenses of the Security against the claims and demands of all Persons and, upon payment or provision for payment of the fees and expenses to be incurred by the Issuer in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such indentures supplemental hereto and such further acts, instruments and transfers as the Trustee may reasonably require for the better pledging of the Security. Except for any amendment, modification, supplement, waiver or consent related to the Reserved Rights, the Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement without the prior written consent of the Trustee, which consent shall be governed by Article VIII hereof.

**Section 3.6 No Other Encumbrances; No Dissolution.** The Issuer covenants that, (i) except as otherwise provided herein and in the Loan Agreement, it will not sell, convey, mortgage, encumber or otherwise dispose of any portion of the Security, and (ii) to the fullest extent permitted by applicable law, for so long as the Bonds are Outstanding, it will not dissolve, terminate or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Bonds having assumed its obligations hereunder and under the Bonds.

**Section 3.7 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise or agreement of the Issuer contained herein or in the Bonds or the other Bond Documents to which the Issuer is a party or for any claim based hereon or thereon or otherwise in respect hereof or thereof against any director, member, officer, agent, attorney or employee, as such, in his/her individual capacity, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity whether by virtue of any constitutional provision, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise. No personal liability whatsoever shall attach to, or be incurred by, any director, member, officer, agent, attorney or employee as such, past, present or future, of the Issuer or of any successor entity, either directly or through the Issuer or any successor entity, under or by reason of any of the obligations, promises or agreements entered into in the Bonds or between the Issuer and the Trustee, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such trustee, member, officer, agent, attorney and employee is, by the execution of this Indenture and as a condition of, and as part of the consideration for, the execution of this Indenture, expressly waived and released.

## **ARTICLE IV**

### **FUNDS**

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

- (a) The following Funds and Accounts are hereby created and established as special trust funds:
- (i) the Project Fund, consisting of:

- (A) the Bond Proceeds Account;
- (B) the Equity Account;
- (C) the Capitalized Interest Account;
- (D) the Insurance and Condemnation Proceeds Account;
- (ii) the Costs of Issuance Fund;
- (iii) the Replacement Reserve Fund;
- (iv) the Tax and Insurance Escrow Fund;
- (v) the Rebate Fund;
- (vi) the Bond Fund;
- (vii) the Surplus Fund;
- (viii) the Redemption Fund; and
- (ix) the Operating Reserve Fund.

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

(c) The proceeds of the sale of the Bonds (\$34,000,000), amounts received from the Special Limited Partner (\$[\_\_\_\_\_]), and the initial installment of Required Equity Funds (\$[\_\_\_\_\_]) shall be applied as follows:

(i) \$[\_\_\_\_\_], representing a portion of the proceeds of the sale of the Bonds, shall be deposited in the Bond Proceeds Account of the Project Fund;

(ii) \$[\_\_\_\_\_], representing a portion of the proceeds of the sale of the Bonds, and \$[\_\_\_\_\_], representing a portion of the initial installment of Required Equity Funds, shall be deposited in the Capitalized Interest Account of the Project Fund;

(iii) \$[\_\_\_\_\_], representing a portion of the initial installment of Required Equity Funds shall be deposited in the Costs of Issuance Fund; and

(iv) \$[\_\_\_\_\_], representing the balance of the initial installment of Required Equity Funds, shall be deposited in the Equity Account of the Project Fund.

**Section 4.2 Bond Fund.**

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

(b) Moneys in the Bond Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the payment of the interest on the Bonds, for the payment of principal of the Bonds upon maturity, whether stated or accelerated, or upon mandatory or optional redemption prior to the Maturity Date, and for the payment of any premium required under Section 2.12(a) or Section 6.8 hereof.

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

**Section 4.3 Project Fund.**

(a) The Trustee shall deposit all amounts specified in Section 4.1 hereof into the specified accounts and subaccounts of the Project Fund. The Trustee will receive and deposit into the Equity Account amounts received as future installments of Required Equity Funds from the Tax Credit Investor and the General Partner, in accordance with written directions received with such deposit, upon which directions the Trustee may rely as to compliance of such deposit with the provisions of the Partnership Agreement and the Assignment of Capital Contributions.

(b) The Trustee is hereby authorized and directed to use moneys in the Project Fund for payment or reimbursement of Project Costs (or, in the case of moneys on deposit in the Bond Proceeds Account of the Project Fund, at least ninety-five percent (95%) of such funds for payment or reimbursement of Qualified Project Costs) to the Borrower upon the receipt of a fully executed Requisition approved in writing by the Controlling Person, in accordance with the provisions of the Loan Agreement; provided, however, after Final Completion of the Project Facilities, but in no event later than the Stabilization Date, all Surplus Bond Proceeds remaining in the Bond Proceeds Account of the Project Fund shall be transferred to the Surplus Fund. All remaining amounts in the Equity Account of the Project Fund upon Stabilization shall be paid to the Borrower upon receipt of the prior written approval of the Controlling Person, which approval shall not be unreasonably withheld or delayed.

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

(d) [Reserved].

(e) [Reserved].

(f) Moneys representing a Condemnation Award or Insurance Proceeds shall be deposited into the Insurance and Condemnation Proceeds Account of the Project Fund, and notice of such deposit thereof shall be given by the Trustee to the Controlling Person and the Majority Owner. To the extent there has been a determination pursuant to the Bond Documents to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be expended for such purposes in accordance with the provisions of the Bond Documents. In the event there is a determination pursuant to the Bond Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) transferred to the Bond Fund and applied to the extraordinary mandatory redemption of Bonds in accordance with Section 2.12(b)(ii) hereof, or (ii) released to the Borrower if the Borrower obtains a

Favorable Opinion of Bond Counsel, all in accordance with direction of the Controlling Person to the Trustee and subject to the provisions of the Bond Documents.

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

**Section 4.4 Surplus Fund.** The Surplus Fund shall receive all Surplus Bond Proceeds transferred thereto in accordance with the provisions of this Indenture. The deposit of Surplus Bond Proceeds in the Surplus Fund shall be, and shall be deemed to be, a joint direction by the Borrower and the Controlling Person to the Trustee to redeem the greatest principal amount of the Bonds possible to be redeemed from such deposit pursuant to Section 2.12(b)(i) hereof on the earliest redemption date on which the Bonds may be redeemed, and on such redemption date (or, if such day is not a Business Day, the immediately preceding Business Day) an amount equal to the principal amount of Bonds to be redeemed plus interest accrued thereon to the redemption date shall be transferred from the Surplus Fund to the Bond Fund and used for such redemption. After such transfer, if and to the extent that there are moneys remaining in the Surplus Fund, such moneys in the Surplus Fund shall be transferred to the Bond Fund and shall be used for payment of interest on or principal of the Bonds on the next occurring Interest Payment Date or Principal Payment Date, as the case may be.

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

(a) Redemption Fund.

(i) There shall be deposited in the Redemption Fund (a) all payments specified in Section 8.4 of the Loan Agreement to be deposited in the Redemption Fund, and (b) all other moneys received by the Trustee under the Loan Agreement or this Indenture for deposit by it in the Redemption Fund. Moneys in the Redemption Fund shall be held in trust for the Holders and, except as otherwise expressly provided herein, shall be used solely for the redemption of Bonds pursuant to Section 2.12 hereof. On each Principal Payment Date or redemption date and as otherwise required hereunder or at the written direction of the Controlling Person, the Trustee shall transfer such amounts from the Redemption Fund to the Bond Fund and call and redeem Bonds as provided in Section 2.12 hereof. After payment in full of the Bonds, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and the payment of any amounts owing to the United States pursuant to any rebate requirement and any other amounts owing hereunder, any amounts remaining in the Redemption Fund shall be paid to the Borrower.

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

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

and expenses of the Project Facilities, to pay costs of enforcement of the Bond Documents and to pay any and all amounts owed by the Borrower under any of the Bond Documents, in whatever amounts and in whatever order the Controlling Person may determine. Upon the payment in full of the Bonds and the fees and expenses of the Issuer and the Trustee, or provision for the payment of the Bonds having been made pursuant to Section 5.2 hereof, and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower.

(c) Rebate Fund. The Issuer recognizes that investment of the Bond proceeds will be at the written direction of the Borrower but agrees that it will commit no act, or omit any action, that would cause the Bonds to be “arbitrage bonds” within the meaning of Section 148 of the Code and the applicable regulations thereunder. There is hereby established with the Trustee a Rebate Fund. Any provisions in this Indenture to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder. The Issuer and the Trustee will observe the covenants contained in the Tax Exemption Agreement as if fully set forth herein.

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

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

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

#### **Section 4.6 Records.**

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

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

**Section 4.7 Investment of Funds.** Subject to the provisions of the Tax Exemption Agreement, moneys held as part of all Funds and Accounts hereunder shall be invested and reinvested in Permitted Investments as instructed in writing by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Trustee to pay the principal of, premium, if any, or interest that has become payable with respect to the Bonds shall not be invested. The Trustee may conclusively rely on written instructions received from the Borrower, including written instructions received by electronic means. All Permitted Investments shall be held by or under the control of the Trustee and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Trustee may act as principal or agent in the making or disposing of any investment and may utilize its investment department or that of its Affiliate and charge its standard investment handling fees. All interest accruing thereon and any profit realized from Permitted Investments shall be credited to the respective Fund or Account and any loss resulting from Permitted Investments shall be similarly charged. The Trustee is authorized to cause to be sold and reduced to cash a sufficient amount of Permitted Investments whenever the cash balance in any fund or account hereunder is or will be insufficient to make a requested or required disbursement. The Trustee shall not be responsible for any depreciation in the value of any Permitted Investment or for any loss resulting from such sale, so long as the Trustee performs its obligations hereunder in accordance with the terms of this Indenture. The Trustee shall have no discretion for investing funds or advising any parties on investing funds. The Trustee may invest in its own proprietary money market funds or deposit products. Absent specific written instructions from the Borrower (approved by the Controlling Person) to invest cash balances in Permitted Investments hereunder, the Trustee shall invest in Federated Treasury Obligations Fund (TOSXX) CUSIP 60934N120 as standing instructions or, if such fund is not available, in Permitted Investments constituting obligations of the U.S. Treasury or its agencies having a term to maturity of not more than thirty (30) days or any money market fund or similar investment fund

that purchases and holds exclusively obligations of the United States of America or its agencies that have a term to maturity of not more than thirty (30) days.

**Section 4.8 Tax Covenants.**

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

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

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

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

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

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

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

**ARTICLE V**  
**DISCHARGE OF LIEN**

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

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

(a) there shall have been irrevocably deposited in the Bond Fund sufficient money or Government Obligations of such maturities and interest payment dates and bearing such interest as will, in the opinion of a nationally recognized firm of certified public accountants, without further investment or reinvestment of either the principal amount thereof or the interest earnings thereon (said earnings also to be held in trust), be sufficient for the payment at their respective maturities or redemption dates prior to maturity of the principal of the Bonds, premium, if any, and interest to accrue thereon through such maturity or redemption dates, as the case may be;

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

(c) if any Bonds are to be redeemed on any date prior to their maturity, the Trustee shall have received in form satisfactory to it irrevocable instructions from the Borrower or the Controlling Person, as the case may be, in accordance with Section 2.12 hereof to cause a redemption of the Bonds, to redeem such Bonds on such date and either evidence satisfactory to the Trustee that all redemption notices required by this Indenture have been given or irrevocable power authorizing the Trustee to give such redemption notices has been granted to the Trustee.

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

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

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

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

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

**Section 6.2 Acceleration.**

- (a) Upon the occurrence of an Event of Default, at the direction of the Controlling Person, the Trustee immediately shall, by notice in writing sent to the Issuer, the Borrower, the Tax Credit Investor, the Majority Owner and the Controlling Person, declare the principal of all Bonds then Outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon said declaration, such principal and interest shall become and be immediately due and payable. Upon any declaration of acceleration hereunder, the Trustee shall immediately exercise such rights as it may have under the Loan Agreement and the Note to declare all Repayments to be immediately due and payable. In such event, there shall be due and payable on the Bonds an amount equal to the total principal amount of all such Bonds, plus all interest accrued thereon (including Default Interest, if any) and which will accrue thereon to the date of payment and all unpaid interest on the Bonds on the date of payment, and the acceleration premium described in Section 6.8 (if applicable).
- (b) Immediately following any such declaration of acceleration, the Trustee shall cause to be mailed notice of such declaration by first-class mail, postage prepaid, to each Holder of a Bond at his/her last address appearing on the Register. Any defect in or failure to give such notice of such declaration shall not affect the validity of such declaration.

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

- (a) Upon the happening and continuance of an Event of Default hereunder, the Trustee may, with the prior written consent of the Controlling Person, and shall upon the direction of the Controlling Person, with or without taking action under Section 6.2 hereof, pursue any available remedy to enforce the performance of or compliance with any Bond Documents.
- (b) No remedy by the terms of this Indenture conferred upon or reserved to the Trustee, the Controlling Person, the Majority Owner or the Holders is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee, the Majority Owner, the Controlling Person or to the Holders hereunder or now or hereafter existing.
- (c) No delay or omission to exercise any right or power accruing upon any Default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such

Default or Event of Default or acquiescence therein and every such right and power may be exercised from time to time and as often as may be deemed expedient.

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

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

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

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

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

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

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

**Section 6.7 Application of Moneys.** Except for moneys deposited pursuant to Article V hereof, all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Bond Fund and, after payment (out of moneys derived from a source

other than moneys held for the redemption of Bonds) of (i) the cost and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, including reasonable attorneys' fees, and all other outstanding fees and expenses of the Trustee, and (ii) any sums due to the Issuer under the Loan Agreement (other than Repayments), such moneys shall be applied in the order set forth below:

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

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

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

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

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

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

(c) If the principal on all Bonds shall have been declared due and payable, and if such declaration shall thereafter have been rescinded under this Article then, subject to subsection (b) of this Section in the event that the principal of all the Bonds shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section 6.7.

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

(e) Whenever moneys are to be applied pursuant to this Section 6.7, the Trustee shall fix the date, which shall be not more than seven (7) calendar days after receipt of such moneys, upon which such application is to be made and upon such date interest on the principal amount of Bonds to be paid on such dates shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any such moneys and of the fixing of any such date.

**Section 6.8 Default Interest and Acceleration Premium.** In the event that principal of, premium, if any, or interest payable on the Bonds is not paid when due or upon the occurrence and during the continuance of any other Event of Default, there shall be payable on the Bonds or on any amount not timely paid, interest at the Default Rate, to the extent permitted by law. This interest shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full. In the event there shall have occurred an acceleration of the Bonds or the Borrower's obligations under the Loan Agreement following an Event of Default on or before January 1, 2038, any tender of payment of any amount necessary to pay the Bonds in full shall include the acceleration premium set forth in Section 2.3(c) of the Loan Agreement.

## **ARTICLE VII** **THE TRUSTEE**

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

(a) The Trustee may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers or employees, shall not be responsible for the misconduct or negligence of any such attorney, agent or receiver appointed with due care, and any expenses incurred in hiring such attorneys, agents or receivers shall be reimbursed by the Borrower. The Trustee shall be entitled to advice of Counsel concerning all matters hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees at the sole expense of the Borrower. The Trustee may conclusively rely and act upon the opinion or advice of Counsel, accountants, engineers or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Issuer, approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice. The Trustee is under no duty to perform an independent investigation as to any statement or fact contained in any certificate, opinion or advice it obtains regarding the accuracy or truth of any statement or correctness of any opinion.

(b) Except as provided in Section 7.8 hereof or in the other Bond Documents, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the recording, re-recording, filing or re-filing of this Indenture, of any Financing Statements, or for insuring the Security or the Project Facilities or collecting any insurance moneys, or for the validity of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security, for the technical or financial feasibility of the project, or for the compliance of the project with the Act, or the tax-exempt status of the Bonds. The Trustee shall not be liable to the Borrower, any Holder or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 or Section 4.9 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Indenture, and with the prior written consent of the Controlling Person, as applicable. The Trustee shall have no duty or responsibility to analyze, examine or review any financial report received by the Trustee or express any opinion concerning the contents of any financial report, shall have no liability for the contents of any documents submitted to or delivered to any Holder in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document, and shall have no duty to express any opinion concerning the contents or accuracy of any of the foregoing.

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

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

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

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

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

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

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

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

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

(k) The Trustee shall, prior to any Event of Default and after the curing of all Events of Default which may have occurred, perform such duties and only such duties of the Trustee as are specifically set forth in this Indenture. The Trustee shall, during the existence of any Event of Default which has not been cured, exercise such of the rights and powers vested in it by this Indenture and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs. Such standard of care is not considered a fiduciary standard nor shall the Trustee be considered a fiduciary in the performance of its duties. The Trustee shall not be answerable for other than its gross negligence or willful misconduct. The Trustee shall not be liable for an error of judgment made in good faith.

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

(m) The Trustee shall have the right but not the responsibility or duty to inspect or oversee the construction or completion of the Improvements, including to inspect all books and records, or to verify the truthfulness or accuracy of the certifications made by the Borrower in any Requisition.

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

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

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

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

(r) The Trustee's immunities and protections from liability and its rights to indemnification in connection with the performance of its duties under this Indenture shall likewise extend

to the Trustee's officers, directors, agents, attorneys and employees. Such immunities and protections and rights to indemnification, together with the Trustee's rights to compensation, shall survive the Trustee's resignation or removal, the discharge of this Indenture and the final payment of the Bonds.

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

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

(u) The Trustee agrees to accept and act upon instructions or directions pursuant to this Indenture sent in writing or by electronic notice, provided, however, that such instructions or directions shall be signed by an authorized representative. If any person entitled hereunder to give direction or instruction to the Trustee elects to give the directions or instructions by electronic notice, the Trustee may deem such instructions 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 Issuer agrees to assume all risks arising out of the use of such electronic notice 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.

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

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

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

under this Section shall survive the termination of this Indenture or the removal or resignation of the Trustee.

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

**Section 7.4 Resignation; Successor Trustees.**

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

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

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

**Section 7.6 Instruments of Holders.**

(a) Any instrument required by this Indenture to be executed by Holders may be in any number of writings of similar tenor and may be executed by Holders in person or by agent appointed in writing. Proof of the execution of any such instrument or of the writing appointing any such agent and

of the ownership of Bonds given in any of the following forms shall be sufficient for any of the purposes of this Indenture:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Section 7.9 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 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 VIII**  
**AMENDMENTS, SUPPLEMENTAL INDENTURES**

**Section 8.1 Supplemental Indentures.**

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) The Issuer shall not cause or permit to exist any amendment, modification, supplement, waiver or consent with respect to the Loan Agreement or the Note without the prior written consent of the Trustee, the Borrower and the Controlling Person. The Issuer may, with the consent of the Controlling Person, but without the consent of or notice to any other Holders, enter into or permit (and the Trustee shall consent to) any amendment of the Loan Agreement or the Note acceptable to the Borrower as may be required (i) for the purpose of curing any ambiguity or formal defect or omission that shall not adversely affect the interest of the Holders, (ii) to grant or pledge to the Issuer or Trustee, for the benefit of the Holders any additional security, (iii) to make any change therein necessary, in the opinion of Bond Counsel, to maintain the excludability of interest on any Outstanding Bonds from gross income of the Holders thereof for federal income tax purposes, or (iv) in connection with any other change therein which, in the judgment of the Trustee acting in reliance upon an opinion of Counsel, is not materially prejudicial to the interests of the Trustee and the Holders of the Bonds; provided, however, that without the written consent of the Trustee, the Trustee shall not be required to join in the execution of any such amendment that affects the rights, duties, obligations or immunities of the Trustee or that imposes additional obligations on the Trustee.

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

**Section 8.4 Amendments to the Loan Agreement or the Note Requiring Consent of Holders.** Except as provided in Section 8.3 hereof, the Issuer shall not enter into, and the Trustee shall not consent to, any other modification or amendment of the Loan Agreement or the Note, nor shall any such

modification or amendment become effective, without delivery of a Favorable Opinion of Bond Counsel and the prior written consent of the Majority Owner, such consent to be obtained in accordance with Section 8.5 hereof. No such amendment may, without the consent of the Holders of all the Outstanding Bonds, reduce the amounts or delay the times of payment of Repayments under the Loan Agreement or the Note. The Issuer and the Borrower shall file copies of all such amendments to the Loan Agreement or the Note with the Trustee, the Controlling Person and the Majority Owner.

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

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

**Section 9.1 Majority Owner to Appoint Controlling Person.** The Majority Owner may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Majority Owner's sole cost and expense, to act on behalf of the Majority Owner under the Bond Documents as the "Controlling Person". The Majority Owner may at any time and from time to time terminate or remove and replace any such Controlling Person. The Majority Owner shall give notice to the Trustee, the Borrower and the Issuer of its appointment, termination, removal and replacement of any Controlling Person, and the parties may rely on any such notice until any subsequent notice is given. Initially, the Majority Owner has engaged Red Stone Servicer, LLC to act as the "Controlling Person" hereunder and Red Stone Servicer, LLC has accepted such engagement. The Majority Owner is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Majority Owner, all references to the "Controlling Person" herein and in the other Bond Documents shall refer to the Majority Owner. Any opinion or certificate provided for herein, in the Loan Agreement or in any other Bond Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Majority Owner. The Majority Owner will have no liability to the Issuer, the Trustee or any other Person for any act or omission of the Controlling Person unless the Controlling Person is the Majority Owner or such act or omission was expressly approved by the Majority Owner in each particular case but not, in any event, with respect to any liabilities, damages, costs or expenses against which such Indemnified Party is indemnified under Section 2.5 of the Loan Agreement.

### **Section 9.2 Servicing.**

(a) The Majority Owner has appointed the Controlling Person to be the servicer of the Loan and the Controlling Person has accepted such appointment. Satisfactory arrangements have previously been made for the payment of servicing fees and expenses in connection with the Controlling Person's servicing obligations hereunder, and the Borrower, the Majority Owner and the Trustee have no

obligation for such payments. Without limiting the foregoing, the Controlling Person shall have no right or claim to any transfer or assumption fees, late charges, acceleration premium or Default Interest payable under this Indenture or Bond Documents; provided, however that, to the extent permitted under the Bond Documents, the Controlling Person shall be entitled to collect from the Borrower its normal and customary incidental fees and charges for any requested review, approval or other action, including, without limitation, in connection with any proposed transfer, loan assumption, easement, subordinate financing, release of collateral, condemnation proceeding, non-disturbance agreement or other similar action, unless such review, approval or other action is performed solely by the Majority Owner.

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

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

(ii) The Controlling Person shall prepare and deliver monthly bills to the Borrower (with a copy to the Trustee) in accordance with the Bond Documents for payments to the Trustee of principal and interest under the Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund, upon which bills Trustee shall rely to determine the amounts for deposit into such Funds. On the third Business Day prior to the first Business Day of each calendar month, the Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Trustee on the Note on the next Business Day and will provide a copy thereof to the Trustee. Such notification may be delivered by electronic mail or by facsimile. The Controlling Person shall diligently attempt to collect all of the following, at the times they are due and payable under this Indenture and Bond Documents:

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

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

- (i) To the principal, premium, if any, and interest due and payable on the Note;
- (ii) To the Issuer Fees and Trustee Fee, as applicable;

- (iii) To the acceleration premium, if applicable;
- (iv) To required deposits to the Replacement Reserve Fund;
- (v) To required deposits in the Tax and Insurance Escrow Fund;
- (vi) To other escrow or reserve deposits required by this Indenture or the other Bond Documents;
- (vii) To Default Interest and any late fees; and
- (viii) To other amounts due under the Bond Documents.

Any payment received by the Controlling Person from or on behalf of the Borrower under this Indenture or the Bond Documents shall be remitted by the Controlling Person to the Trustee no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Indenture or Bond Documents.

(d) The Controlling Person shall make any remittance to the Trustee by wire transfer in accordance with the instructions received from the Trustee or to any other party entitled to such remittances pursuant this Indenture or the Bond Documents in accordance with the instructions received from the Majority Owner.

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

(f) The Controlling Person shall prepare monthly reports for the Majority Owner and the Trustee outlining the status of the Loan, including disbursements from the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Operating Reserve Fund or any other Account under this Indenture, loan history schedules, outstanding loan balances and escrow balances and consents, approvals or waivers given by the Controlling Person, which reports shall be furnished to the Majority Owner no later than the fifteenth (15th) day of each calendar month (or the next Business Day thereafter if such fifteenth (15th) day is not a Business Day).

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

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

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

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

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

## **ARTICLE X** **MISCELLANEOUS**

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

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

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

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

**To the Issuer:** Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, Texas 78711  
Attention: Director of Multifamily Bonds  
Telephone: (512) 475-3344  
Facsimile: (512) 475-1895

**To the Borrower:** Saddlespur Pass Apartments, LP  
c/o Kittle Property Group, Inc.  
310 East 96<sup>th</sup> Street, Suite 400  
Indianapolis, Indiana 46240  
Attention: Jeffrey L. Kittle  
Telephone: (317)663-6800  
Facsimile: jkittle@hermankittle.com

**With a copy to:** Kittle Property Group, Inc.  
310 East 96<sup>th</sup> Street, Suite 400  
Indianapolis, Indiana 46240  
Telephone: 317-663-6814  
Attention: David D. Thompson, Esq.  
Email: dthompson@hermankittle.com

**To the Trustee:** BOKF, NA  
777 Main Street, Suite 3500  
Fort Worth, TX 76102  
Attention: Corporate Trust Department  
Telephone: 817-348-5703  
Email: courtney.miller@bokf.com

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

**To the Controlling Person** Red Stone Servicer, LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis  
Telephone: (516) 750-2243  
Facsimile: (516) 750-2251

**With a copy to** Greenberg Traurig, LLP  
1717 Arch Street, Suite 400  
Philadelphia, PA 19103  
Attention: Dianne Coady Fisher  
Telephone: (215) 988-7802  
Facsimile: (215) 988-7801

**If to Tax Credit Investor:** Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700

Columbia, MD 21044

**With a copy to:**

Gallagher Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, MD 21201  
Telephone: (410) 727-7702  
Attention: Kenneth S. Gross  
Email: kgross@gejlaw.com

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

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

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

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

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

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

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

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

**BOKF, NA, as trustee**

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A  
FORM OF BOND**

**\$34,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021**

No. R-\_\_\_

<u>DATED DATE</u>	<u>MATURITY DATE</u>	<u>BOND COUPON RATE</u>	<u>CUSIP NO.</u>
January __, 2021	January 1, 2061	[__%]	_____

REGISTERED OWNER:

PRINCIPAL AMOUNT: THIRTY-FOUR MILLION DOLLARS (\$34,000,000)

The Texas Department of Housing and Community Affairs (the "Issuer"), a public and official agency of the State of Texas, for value received, hereby promises to pay (but only out of the revenues and other assets pledged under the Indenture (hereinafter defined)) to the Registered Owner specified above or registered assigns (subject to any right of prior redemption), (A) on each Principal Payment Date and the Maturity Date specified above, the applicable portion of the Principal Amount specified above, and premium, if any, and (B) interest thereon, at the Bond Coupon Rate specified above, payable on the first Business Day of each month, commencing March 1, 2021, to the person whose name appears on the registration books on day before such day (whether or not a Business Day) (a "Record Date") and to pay any other amounts as specified in the Indenture (hereinafter defined).

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

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

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

This Bond is one of an issue of duly authorized Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 issued in the aggregate principal amount of \$34,000,000 (the "Bonds"), pursuant to the provisions of the Chapter 2306, Texas Government Code, as amended (the "Act").

The proceeds from the Bonds are to be used for the purpose of making a mortgage loan pursuant to a Loan Agreement, dated as of January 1, 2021 (as amended, modified or supplemented from time to time, the "Loan Agreement"), among the Issuer, Red Stone Servicing, LLC, as initial Controlling Person,

and the Borrower, to finance the acquisition, construction and equipping of a multifamily residential facility located in San Antonio, Texas, and known as “The Montage Apartments” (the “Project Facilities”). The Borrower’s payment obligations under the Loan Agreement will be evidenced by the Note and secured by the Mortgage.

The Bonds are issued under and are equally and ratably secured by an Indenture of Trust, dated as of January 1, 2021 (as amended, modified or supplemented from time to time, the “Indenture”), between the Issuer and the Trustee. All capitalized terms not defined herein shall have the meaning set forth in the Indenture.

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

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

If an Event of Default (as described in the Indenture) shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. Under certain conditions, as set forth in the Indenture, such declaration of acceleration and its consequences may be rescinded.

**THE BONDS OF WHICH THIS BOND IS A PART, TOGETHER WITH INTEREST THEREON, AND 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 SECURITY (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 SECURITY, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, 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 PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR, **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.****

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

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

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

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

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

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

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

Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance hereof, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.

This Bond shall not be entitled to any benefit under the Indenture or be valid or obligatory for any purpose until the Trustee shall have executed the Certificate of Authentication appearing hereon.

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

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

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

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

(SEAL)

ATTEST:

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

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

**CERTIFICATE OF AUTHENTICATION**

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

Date of Authentication:

BOKF, NA, as trustee

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

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

**COMPTROLLER'S REGISTRATION CERTIFICATE**

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

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

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

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

(Comptroller's Seal)

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

**ASSIGNMENT FOR TRANSFER**

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

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

\_\_\_\_\_  
Signature

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

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

As an alternative to the above "Signature Guaranty" the following or functionally equivalent Secretary Certificate may be executed:

**AUTHORIZED SIGNER CERTIFICATION**

I the undersigned, DO HEREBY CERTIFY that I hold the following title: Secretary, Assistant Secretary, Chief Financial Officer, Chief Executive Officer, President, Vice President, Treasurer, Managing Member, Manager, or Other \_\_\_\_\_ and I am authorized to certify on behalf of the Holder, as of the date of this Authorized Signer Certification, that the person(s) named above presently holds the office set forth below such person's name, and below the office designation is the genuine signature of such person.

That such person named above (an "Authorized Officer"), is authorized on behalf of the Holder to enter into or execute and deliver this request to transfer the Bonds including the above terms and conditions included in such request for an assignment of the Series 2021 Bond.

WITNESS WHEREOF, I have hereunto subscribed my name this \_\_\_\_ day of \_\_\_\_\_ 20\_\_.

By: \_\_\_\_\_  
(Signature)

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

**EXHIBIT B**

**FORM OF INVESTOR LETTER**

\_\_\_\_\_, 20\_\_

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, Texas 78701  
Attention: Director of Multifamily Bonds

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

RE: The Montage Apartments

Ladies and Gentlemen:

The undersigned representative of \_\_\_\_\_ (the “Purchaser”), the initial purchaser of the Texas Department of Housing and Community Affairs \$34,000,000 Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021, dated January 1, 2021 (the “Bonds”), does hereby certify, represent and warrant for the benefit of the Texas Department of Housing and Community Affairs (the “Issuer”) and BOKF, NA, as trustee (the “Trustee”), that the Purchaser is an “accredited investor” as defined under Regulation D of the Securities Act of 1933, as amended (an “Accredited Investor”), excluding Section 230.501(a)(4), (a)(5) and (a)(6), or a “qualified institutional buyer” as defined in Rule 144A under the Securities Act of 1933, as amended (a “QIB”).

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

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

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

(3) The Purchaser acknowledges that it has been provided with, and has had the opportunity to review, the documents relating to the issuance of the Bonds by the Issuer. The Purchaser either has been supplied with or has had access to information, including financial statements, and other financial information, and has had the opportunity to ask questions and receive answers from individuals concerning the Issuer, Saddlespur Pass Apartments, LP (the “Borrower”), and its credit standing, the Loan Agreement dated as of January 1, 2021, among the Issuer, Red Stone Servicing, LLC, as initial Controlling Person and the Borrower (the “Bond Loan Agreement”), the Indenture of Trust dated as of January 1, 2021, between the Issuer and the Trustee (the “Indenture”), and the Bonds so that, as a sophisticated investor, the Purchaser has been able to make its decision to purchase the Bonds.

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

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

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

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

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

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

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

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

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

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

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

Payment instructions: ( ) wire ( ) check

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

This letter and the representations and agreements contained herein are made for your benefit.

IN WITNESS WHEREOF, I have hereunto set my hand the \_\_\_\_\_ day of \_\_\_\_\_.

PURCHASER:

\_\_\_\_\_

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

**MUST BE SIGNED BY ACTUAL PURCHASER.  
MAY NOT BE SIGNED BY NOMINEE OR AGENT.**

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**LOAN AGREEMENT**

**by and among**

**SADDLESPUR PASS APARTMENTS, LP,**

**RED STONE SERVICER, LLC**

**and**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

**Dated as of January 1, 2021**

**Relating to:**

**\$34,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021**

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The amounts payable to Texas Department of Housing and Community Affairs (the “Issuer”) and other rights of the Issuer (except for Reserved Rights), under this Loan Agreement have been pledged and assigned to BOKF, NA, as trustee (the “Trustee”) under the Indenture of Trust between the Issuer and the Trustee dated as of January 1, 2021.

TABLE OF CONTENTS

ARTICLE 1 DEFINITIONS..... 1

SECTION 1.1 DEFINITIONS ..... 1

SECTION 1.2 RULES OF CONSTRUCTION; TIME OF DAY ..... 1

ARTICLE 2 LOAN AND PROVISIONS FOR REPAYMENT ..... 2

SECTION 2.1 BASIC LOAN AND REPAYMENT TERMS..... 2

SECTION 2.2 FEES..... 3

SECTION 2.3 TERMINATION; VOLUNTARY PREPAYMENT AND REDEMPTION ..... 3

SECTION 2.4 OBLIGATIONS ABSOLUTE ..... 4

SECTION 2.5 INDEMNIFICATION ..... 4

SECTION 2.6 INDEMNIFICATION; BORROWER’S ADDITIONAL OBLIGATIONS. .... 7

SECTION 2.7 AMOUNTS REMAINING ON DEPOSIT UPON PAYMENT OF THE BONDS ..... 9

ARTICLE 3 SECURITY ..... 9

SECTION 3.1 MORTGAGE AND OTHER SECURITY DOCUMENTS ..... 9

SECTION 3.2 FINANCING STATEMENTS ..... 9

ARTICLE 4 REPRESENTATIONS OF ISSUER..... 9

SECTION 4.1 REPRESENTATION BY THE ISSUER ..... 9

SECTION 4.2 NO LIABILITY OF ISSUER; NO CHARGE AGAINST ISSUER’S CREDIT..... 11

ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BORROWER ..... 11

SECTION 5.1 EXISTENCE ..... 11

SECTION 5.2 POWER, AUTHORIZATION AND NO CONFLICTS ..... 12

SECTION 5.3 GOVERNMENTAL AUTHORIZATIONS AND OTHER APPROVALS..... 12

SECTION 5.4 VALIDITY AND BINDING EFFECT ..... 12

SECTION 5.5 NO LITIGATION ..... 12

SECTION 5.6 NO VIOLATIONS ..... 13

SECTION 5.7 COMPLIANCE ..... 13

SECTION 5.8 TITLE TO PROPERTIES; LIENS AND ENCUMBRANCES ..... 13

SECTION 5.9 UTILITIES AND ACCESS ..... 13

SECTION 5.10 FINANCIAL INFORMATION..... 14

SECTION 5.11 ERISA ..... 14

SECTION 5.12 ENVIRONMENTAL REPRESENTATIONS ..... 15

SECTION 5.13 OUTSTANDING OBLIGATIONS AND MATERIAL CONTRACTS ..... 15

SECTION 5.14 SOLVENCY..... 15

SECTION 5.15 FULL DISCLOSURE ..... 15

SECTION 5.16 BOND DOCUMENTS ..... 16

SECTION 5.17 ILLEGAL ACTIVITY ..... 16

SECTION 5.18	EXECUTIVE ORDER 13224 .....	16
SECTION 5.19	NO BROKER .....	16
SECTION 5.20	CONSTRUCTION CONTRACT; ARCHITECT'S AGREEMENT .....	16
SECTION 5.21	DEVELOPMENT BUDGET .....	16
SECTION 5.22	PLANS AND SPECIFICATIONS .....	16
SECTION 5.23	SURVEY .....	17
SECTION 5.24	FLOOD PLAIN .....	17
SECTION 5.25	RENT ROLL .....	<b>ERROR! BOOKMARK NOT DEFINED.</b>
SECTION 5.26	REQUISITION .....	17
ARTICLE 6 GENERAL COVENANTS .....		17
SECTION 6.1	CONDUCT OF BUSINESS; MAINTENANCE OF EXISTENCE; MERGERS .....	17
SECTION 6.2	COMPLIANCE WITH LEGAL REQUIREMENTS; PAYMENT OF IMPOSITIONS .....	17
SECTION 6.3	MAINTENANCE OF GOVERNMENTAL AUTHORIZATIONS .....	18
SECTION 6.4	MAINTENANCE OF INSURANCE .....	18
SECTION 6.5	COMPLIANCE WITH OTHER CONTRACTS AND BOND DOCUMENTS .....	19
SECTION 6.6	MAINTENANCE OF PROJECT FACILITIES .....	19
SECTION 6.7	INSPECTION RIGHTS .....	19
SECTION 6.8	KEEPING OF BOOKS .....	20
SECTION 6.9	REPORTING REQUIREMENTS .....	20
SECTION 6.10	TAX-EXEMPT STATUS .....	22
SECTION 6.11	SINGLE PURPOSE ENTITIES .....	23
SECTION 6.12	NEGATIVE PLEDGE; NO SALE .....	23
SECTION 6.13	PAYMENT OF INDEBTEDNESS; ACCOUNTS PAYABLE; RESTRICTIONS ON INDEBTEDNESS .....	24
SECTION 6.14	ENVIRONMENTAL COVENANTS .....	24
SECTION 6.15	CONTROLLING PERSON .....	26
SECTION 6.16	TAX RETURNS .....	26
SECTION 6.17	LEASES .....	26
SECTION 6.18	FURTHER ASSURANCES .....	26
SECTION 6.19	MANAGEMENT AGREEMENT .....	27
SECTION 6.20	DETERMINATION OF TAXABILITY .....	27
SECTION 6.21	LIST OF BONDHOLDERS .....	27
SECTION 6.22	USE OF PROCEEDS .....	27
SECTION 6.23	COMPLIANCE WITH ANTI-TERRORISM REGULATIONS .....	27
SECTION 6.24	ADOPTION OF CAPITAL AND OPERATING BUDGETS .....	28
SECTION 6.25	BORROWER'S APPROVAL OF INDENTURE .....	29
SECTION 6.26	CONDITIONS PRECEDENT; PAYMENT OF CERTAIN FEES, DEPOSITS AND EXPENSES .....	29
SECTION 6.27	ADDITIONAL CONDITIONS PRECEDENT .....	29
SECTION 6.28	NO AMENDMENTS .....	29
SECTION 6.29	CONSTRUCTION OF IMPROVEMENTS .....	29
SECTION 6.30	EVIDENCE OF PAYMENT OF COSTS .....	29
SECTION 6.31	CORRECTION OF DEFICIENCIES IN IMPROVEMENTS .....	30
SECTION 6.32	SUFFICIENCY OF LOAN PROCEEDS .....	30
SECTION 6.33	USE OF LOAN PROCEEDS .....	30
SECTION 6.34	SPECIAL SERVICING COSTS .....	30

SECTION 6.35	COMPLIANCE WITH TEXAS GOVERNMENT CODE. ....	30
ARTICLE 7 DEFAULTS AND REMEDIES.....		31
SECTION 7.1	DEFAULTS.....	31
SECTION 7.2	REMEDIES .....	33
SECTION 7.3	NO WAIVERS; CONSENTS .....	35
SECTION 7.4	NO WAIVER; REMEDIES CUMULATIVE .....	35
SECTION 7.5	SET-OFF .....	35
SECTION 7.6	ISSUER AND BORROWER TO GIVE NOTICE OF DEFAULT .....	35
SECTION 7.7	CURE BY TAX CREDIT INVESTOR AND/OR SPECIAL LIMITED PARTNER.....	35
SECTION 7.8	DEFAULT RATE; ACCELERATION PREMIUM .....	35
SECTION 7.9	RESERVED RIGHTS; REGULATORY AGREEMENT DEFAULTS .....	36
ARTICLE 8 DEPOSITS TO FUNDS.....		37
SECTION 8.1	DEPOSITS TO AND DISBURSEMENTS FROM THE REPLACEMENT RESERVE FUND .....	37
SECTION 8.2	DEPOSITS TO TAX AND INSURANCE ESCROW FUND .....	37
SECTION 8.3	[RESERVED].....	37
SECTION 8.4	DEPOSITS TO REDEMPTION FUND.....	37
SECTION 8.5	DEPOSITS TO OPERATING RESERVE FUND .....	38
SECTION 8.6	RESERVED .....	38
SECTION 8.7	INVESTMENT.....	38
SECTION 8.8	SECURITY INTEREST IN ACCOUNTS .....	38
SECTION 8.9	REPORTS .....	38
SECTION 8.10	NO LIABILITY OF TRUSTEE .....	39
ARTICLE 9 CONSTRUCTION AND FUNDING OF ADVANCES .....		39
SECTION 9.1	CONSTRUCTION OF PROJECT FACILITIES; FINAL COMPLETION .....	39
SECTION 9.2	MAKING THE ADVANCES .....	39
SECTION 9.3	ADVANCES TO CONTRACTORS; TO OTHERS.....	39
SECTION 9.4	REQUISITION.....	39
SECTION 9.5	PROJECT COSTS.....	40
SECTION 9.6	RETAINAGE .....	40
SECTION 9.7	CONTINGENCY RESERVE .....	40
SECTION 9.8	STORED MATERIALS.....	40
SECTION 9.9	COST OVERRUNS AND SAVINGS .....	40
SECTION 9.10	RIGHT TO RETAIN THE ENGINEERING CONSULTANT.....	41
SECTION 9.11	INSPECTIONS.....	41
SECTION 9.12	INITIAL ADVANCE.....	41
SECTION 9.13	SUBSEQUENT ADVANCES .....	42
SECTION 9.14	EFFECT OF APPROVAL .....	44
ARTICLE 10 MISCELLANEOUS .....		44
SECTION 10.1	NOTICES .....	44
SECTION 10.2	SUCCESSORS AND ASSIGNS; THIRD PARTY BENEFICIARIES .....	46

SECTION 10.3	SURVIVAL OF COVENANTS.....	46
SECTION 10.4	COUNTERPARTS; ELECTRONIC SIGNATURE .....	46
SECTION 10.5	COSTS, EXPENSES AND TAXES .....	46
SECTION 10.6	SEVERABILITY; INTEREST LIMITATION .....	46
SECTION 10.7	CONFLICTS .....	47
SECTION 10.8	COMPLETE AGREEMENT .....	47
SECTION 10.9	CONSENT TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL....	47
SECTION 10.10	GOVERNING LAW .....	47
SECTION 10.11	HEADINGS.....	47
SECTION 10.12	SALE OF BONDS AND SECONDARY MARKET TRANSACTION .....	48
SECTION 10.13	NONRECOURSE.....	50
SECTION 10.14	PUBLICITY .....	53
SECTION 10.15	DETERMINATIONS BY THE MAJORITY OWNER AND CONTROLLING PERSON .....	53

EXHIBIT A	FORM OF PROMISSORY NOTE.....	A-1
EXHIBIT B	FORM OF WRITTEN REQUISITION OF THE BORROWER .....	B-1
EXHIBIT C	MOLD/MILDEW ADDENDUM.....	C-1
EXHIBIT D	SCHEDULE OF SERVICING FEES.....	D-1
SCHEDULE 1	SCHEDULE OF LITIGATION .....	S1-1
SCHEDULE 2	SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS.....	S2-1
SCHEDULE 3	SCHEDULE OF DEBT SERVICE PAYMENTS.....	S3-1
SCHEDULE 4	DEVELOPMENT BUDGET.....	S4-1
SCHEDULE 5	PLANS AND SPECIFICATIONS .....	S5-1
SCHEDULE 6	PERMITS AND APPROVALS .....	S6-1
SCHEDULE 7	CONDITIONS TO ADVANCES.....	S7-1
SCHEDULE 8	FORM OF COMPLETION CERTIFICATE.....	S8-1
SCHEDULE 9	FORM OF USE OF PROCEEDS CERTIFICATE .....	S9-1
SCHEDULE 10	FORM OF STABILIZATION CERTIFICATE .....	S10-1
SCHEDULE 11	ANNUAL EXPENSES.....	S11-1
SCHEDULE 12	RENT ROLL .....	S12-1
SCHEDULE 13	INITIAL INSURANCE REQUIREMENTS .....	S13-1
SCHEDULE 14	TAX ABATEMENT APPROVAL.....	S14-1

## LOAN AGREEMENT

This LOAN AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement”) made as of January 1, 2021, by and among TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS, a public and official agency of the State of Texas, (together with its successors and assigns, the “Issuer”), RED STONE SERVICER, LLC, as initial Controlling Person (the “Controlling Person”) and SADDLESPUR PASS APARTMENTS, LP, a limited partnership duly organized and validly existing under the laws of the State of Texas (together with its permitted successors and assigns, the “Borrower”),

### WITNESSETH:

**WHEREAS**, the Issuer is authorized under Chapter 2306, Texas Government Code, as amended (the “Act”) to enter into loan agreements with respect to one or more projects authorized under the Act for such payments and upon such terms and conditions as the Issuer may deem advisable in accordance with the provisions of the Act; and

**WHEREAS**, the Issuer has determined that the public purposes set forth in the Act will be furthered by the issuance, sale and delivery of \$34,000,000 in original aggregate principal amount of the Issuer’s Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (the “Bonds”), pursuant to an Indenture of Trust (as amended, modified or supplemented from time to time, the “Indenture”), dated as of January 1, 2021, between the Issuer and BOKF, NA, a national banking association, as trustee (together with any successor trustee under the Indenture and their respective successors and assigns, the “Trustee”), to provide funds to finance the costs of the acquisition, construction and equipping of the Project Facilities (as hereunder defined); and

**WHEREAS**, the proceeds of the Bonds are being applied to finance the acquisition, construction and equipping of a multifamily apartment housing facility consisting of total of 216 units and related tangible and intangible personal property and equipment, located in San Antonio, Texas and known as “The Montage Apartments” (the “Project Facilities”).

NOW, THEREFORE, IN CONSIDERATION OF THE FOREGOING AND THE UNDERTAKINGS HEREIN SET FORTH AND OTHER GOOD AND VALUABLE CONSIDERATION, THE ADEQUACY AND RECEIPT OF WHICH ARE HEREBY ACKNOWLEDGED, AND INTENDING TO BE LEGALLY BOUND, THE BORROWER AND THE ISSUER HEREBY AGREE AS FOLLOWS:

### ARTICLE 1 DEFINITIONS

Section 1.1 Definitions. In this Agreement (except as otherwise expressly provided for or unless the context otherwise requires), any capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Indenture or the Tax Exemption Agreement among the Issuer, the Trustee, and the Borrower dated as of January 1, 2021.

Section 1.2 Rules of Construction; Time of Day. In this Agreement, unless otherwise indicated, (i) defined terms may be used in the singular or the plural and the use of any gender includes all genders, (ii) the words “hereof”, “herein”, “hereto”, “hereby” and “hereunder” refer to this entire Agreement, and (iii) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement, (iv) the terms “agree” and “agreements” contained herein are intended to include and mean “covenant” and “covenants”, (v) the term “including” shall mean “including, but not limited to,” and

(vi) the terms “best knowledge” or “knowledge” shall mean the actual knowledge of any Authorized Person of the Borrower after due inquiry. References to any time of the day in this Agreement shall refer to Eastern standard time or Eastern daylight saving time, as in effect in New York, New York on such day.

## ARTICLE 2

### LOAN AND PROVISIONS FOR REPAYMENT

#### Section 2.1 Basic Loan and Repayment Terms.

(a) The Issuer agrees, upon the terms and conditions contained in this Agreement and the Indenture, to lend to the Borrower the proceeds received by the Issuer from the sale of the Bonds. The Loan shall be made by depositing the proceeds from the initial sale of the Bonds in accordance with Article IV of the Indenture. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Indenture. The Borrower’s obligation to repay the Loan shall be evidenced by the Note, the form of which is attached hereto as Exhibit A.

(b) The Borrower hereby agrees to pay the Note and repay the Loan made pursuant to this Agreement by paying or causing to be paid to the Trustee in immediately available funds for the account of the Issuer for deposit into the Bond Fund or the Redemption Fund, as applicable, two Business Days before the dates and in the amounts set forth on Schedule 3 hereto, and two Business Days before any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture.

(c) It is understood and agreed that the Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Issuer to the Trustee for the benefit of the Bondholders. The Borrower consents to such assignment. The Issuer hereby directs the Borrower and the Borrower hereby agrees to pay to the Trustee, at the address specified in or in accordance with Section 10.1 hereof, all loan repayments payable to the Issuer pursuant to the Note and this subsection.

(d) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Loan, together with any applicable redemption premium and interest thereon to the date of redemption of the Bonds, but only pursuant to the provisions of Section 2.3(b) hereof and Section 2.12(a) of the Indenture with respect to voluntary prepayment of the Loan and optional redemption of the Bonds.

(e) The Borrower shall notify the Trustee promptly of the receipt of any prepayment of the Note, whether upon acceleration, by reason of application of insurance or condemnation proceeds, optional prepayment or otherwise. If such prepayment results in revisions to Schedule 3, the Controlling Person shall provide a revised Schedule 3 to the Trustee and the Issuer in accordance with Section 2.12(e) of the Indenture.

Section 2.2 Fees.

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to Red Stone Tax Exempt Funding II LLC a construction loan origination fee equal to [\$261,000] and a permanent loan origination fee equal to [\$172,500].

(b) The Borrower shall pay (as directed in writing by the Controlling Person) two Business Days before each Interest Payment Date commencing on March 1, 2021 through Final Completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed [\$\_\_\_\_\_] per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Controlling Person may direct the Trustee in writing to disburse such amounts as part of any advance.

(c) On the Issue Date, the Borrower shall pay, or cause to be paid, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Issuer an initial financing fee in an amount equal to 0.50% of the initial principal amount of the Bonds (\$[\_\_\_\_\_] ), together with all third party and out-of-pocket expenses of the Issuer (including but not limited to the fees and expenses of Bond Counsel) in connection with the issuance of the Bonds.

(d) The Borrower shall remit to the Trustee all Issuer Fees, when due as provided in the Indenture.

(e) The Borrower shall pay all Trustee Fees.

(f) The Borrower shall pay any and all special servicing fees or costs in accordance with Section 6.34 hereof.

(g) On the date the Project Facilities achieve Stabilization, the Borrower shall pay to Red Stone Servicer, LLC a stabilization review fee equal to \$6,000 plus all reasonable out-of-pocket expenses, including travel expenses.

(h) On the effective date of any extension of the Completion Date or the Stabilization Date, the Borrower shall pay the extension fee reflected in the definition of "Completion Date" or "Stabilization Date" contained in the Indenture, as applicable.

Section 2.3 Termination; Voluntary Prepayment and Redemption.

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Bond Documents, the Controlling Person's and the Majority Owner's and each Holder's rights, interests and remedies hereunder and under the other Bond Documents shall not terminate or expire or be deemed to have been discharged or released until the earlier to occur of (i) the payment in full of the Bonds, or (ii) defeasance of all of the Bonds. No such termination, expiration or release shall affect the survival of the indemnification provisions of this Agreement, which provisions shall survive any such termination, expiration or release.

(b) The Loan may be prepaid by the Borrower, and the Bonds shall be optionally redeemed pursuant to Section 2.12(a) of the Indenture, on any Interest Payment Date on or after January 1, 2033, upon the payment of the Redemption Price and interest accrued to, but not including, the date of redemption. The Controlling Person shall calculate, or cause to be calculated, the Early Prepayment

Premium and deliver the calculation thereof, in reasonable detail to the Trustee and Issuer, not later than five (5) Business Days prior to the redemption date.

(c) Acceleration of the obligations of the Borrower in accordance with the terms of this Agreement and the other Bond Documents upon the occurrence and continuation of an Event of Default prior to January 1, 2038, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall, subject to Section 10.6 of this Agreement, include an acceleration premium, equal to the amount of interest which would have accrued on the amount of Bonds scheduled to be Outstanding from the date of acceleration to, but not including, January 1, 2038; provided, any such acceleration premium shall not permit the interest accrued to exceed the amount of interest that would have otherwise been charged or accrued at the Maximum Rate.

(d) The Borrower shall be required to prepay the Loan at the times and in the amounts necessary to provide funds for the payment of the mandatory redemption of the Bonds pursuant to Section 2.12(b) of the Indenture, including, without limitation, the mandatory redemption of not less than \$9,000,000 in principal amount of Bonds pursuant to Section 2.12(b)(iii) of the Indenture in connection with, and as a condition to, Stabilization. In addition, on each Interest Payment Date, the Borrower shall pay to the Trustee for deposit into the Redemption Fund the amount set forth for such purpose on Schedule 3 hereto, which amount shall be applied on each Principal Payment Date to the mandatory sinking fund redemption of the Bonds pursuant to Section 2.12(c) of the Indenture.

(e) Notwithstanding the foregoing, the Borrower shall have the right at any time to defease the Bonds in accordance with the provisions of Article V of the Indenture, without premium.

Section 2.4 Obligations Absolute. The obligations of the Borrower under this Agreement shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement, under all circumstances whatsoever, including without limitation the following circumstances: (i) any lack of validity or enforceability of the Bond Documents or any other agreement or document relating thereto; (ii) any amendment or waiver of or any consent to or departure from the Bond Documents or any document relating thereto; or (iii) the existence of any claim, set-off, defense or other right which the Borrower may have at any time against the Issuer or the Trustee (or any persons or entities for whom the Trustee may be acting) or any other person or entity, whether in connection with this Agreement, the transactions described herein or any unrelated transaction. The Borrower understands and agrees that no payment by it under any other agreement (whether voluntary or otherwise) shall constitute a defense to its obligations hereunder, except to the extent that the Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Bond Documents.

Section 2.5 Indemnification. THE BORROWER COVENANTS TO DEFEND, INDEMNIFY AND HOLD HARMLESS THE TRUSTEE, THE CONTROLLING PERSON, THE MAJORITY OWNER, AND EACH OF THEIR RESPECTIVE AFFILIATES AND EACH OF THEIR AND THEIR AFFILIATES' RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES AND AGENTS (EACH AN "INDEMNIFIED PARTY" AND COLLECTIVELY, THE "INDEMNIFIED PARTIES"), EXCEPT AS LIMITED BELOW, FROM AND AGAINST ANY AND ALL CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES FOR COUNSEL OF EACH OF THE INDEMNIFIED PARTIES' CHOICE) WHATSOEVER WHICH THE INDEMNIFIED PARTIES MAY INCUR (OR WHICH MAY BE CLAIMED AGAINST ANY OF THE INDEMNIFIED PARTIES BY ANY PERSON OR ENTITY WHATSOEVER) BY REASON OF OR IN CONNECTION WITH:

(a) THE BONDS, THE INDENTURE, THE LOAN AGREEMENT, THE REGULATORY AGREEMENT, OR THE TAX EXEMPTION AGREEMENT OR THE EXECUTION OR AMENDMENT HEREOF OR THEREOF OR IN CONNECTION WITH THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY, INCLUDING THE ISSUANCE, SALE OR RESALE, REMARKETING, DEFEASANCE OR REDEMPTION, IN WHOLE OR IN PART, OF THE BONDS;

(b) ANY BREACH BY THE BORROWER OF ANY REPRESENTATION, WARRANTY, COVENANT, TERM OR CONDITION IN, OR THE OCCURRENCE OF ANY DEFAULT UNDER, THIS AGREEMENT OR THE OTHER BOND DOCUMENTS, INCLUDING ALL REASONABLE FEES OR EXPENSES RESULTING FROM THE SETTLEMENT OR DEFENSE OF ANY CLAIMS OR LIABILITIES ARISING AS A RESULT OF ANY SUCH BREACH OR DEFAULT OR ANY DETERMINATION OF TAXABILITY;

(c) THE INVOLVEMENT OF ANY OF THE INDEMNIFIED PARTIES IN ANY LEGAL SUIT, INVESTIGATION, PROCEEDING, INQUIRY OR ACTION AS A CONSEQUENCE, DIRECT OR INDIRECT, OF THE CONTROLLING PERSON OR THE MAJORITY OWNER'S ACTIONS TAKEN PURSUANT TO THIS AGREEMENT OR ANY OF THE OTHER BOND DOCUMENTS OR ANY OTHER EVENT OR TRANSACTION CONTEMPLATED BY ANY OF THE FOREGOING;

(d) ANY UNTRUE STATEMENT OR ALLEGED UNTRUE STATEMENT MADE BY THE BORROWER CONTAINED OR INCORPORATED BY REFERENCE IN ANY OFFERING OR REOFFERING MATERIALS PREPARED IN RESPECT OF THE BONDS, OR ANY SUPPLEMENT OR AMENDMENT THEREOF, OR THE BORROWER'S OMISSION OR ALLEGED OMISSION TO STATE THEREIN A MATERIAL FACT NECESSARY TO MAKE SUCH STATEMENTS IN LIGHT OF THE CIRCUMSTANCES IN WHICH THEY ARE OR WERE MADE NOT MISLEADING;

(e) THE ACCEPTANCE OR ADMINISTRATION OF THE BOND DOCUMENTS OR THE SECURITY INTERESTS THEREUNDER OR THE PERFORMANCE OF DUTIES UNDER THE BOND DOCUMENTS OR ANY LOSS OR DAMAGE TO PROPERTY OR ANY INJURY TO OR DEATH OF ANY PERSON THAT MAY BE OCCASIONED BY ANY CAUSE WHATSOEVER PERTAINING TO THE PROJECT FACILITIES OR THE USE THEREOF, INCLUDING WITHOUT LIMITATION ANY LEASE THEREOF OR ASSIGNMENT OF ITS INTEREST IN THIS AGREEMENT;

(f) ANY ACT OR OMISSION OF THE BORROWER OR ANY OF ITS AGENTS, CONTRACTORS, SERVANTS, EMPLOYEES OR LICENSEES IN CONNECTION WITH THE ADVANCES OR THE PROJECT FACILITIES, THE OPERATION OF THE PROJECT FACILITIES, OR THE CONDITION, ENVIRONMENTAL OR OTHERWISE, OCCUPANCY, USE, POSSESSION, CONDUCT OR MANAGEMENT OF WORK DONE IN OR ABOUT, OR FROM THE PLANNING, DESIGN, ACQUISITION OR CONSTRUCTION OF, THE IMPROVEMENTS OR ANY PART THEREOF;

(g) ANY LIEN (OTHER THAN A PERMITTED ENCUMBRANCE) OR CHARGE UPON PAYMENTS BY THE BORROWER TO THE ISSUER AND THE TRUSTEE HEREUNDER, OR ANY TAXES (INCLUDING, WITHOUT LIMITATION, ALL AD VALOREM TAXES AND SALES TAXES), ASSESSMENTS, IMPOSITIONS AND OTHER CHARGES IMPOSED ON THE ISSUER OR THE TRUSTEE IN RESPECT OF ANY PORTION OF THE PROJECT FACILITIES;

(h) ANY VIOLATION OR ALLEGED VIOLATION OF ANY APPLICABLE LAW OR REGULATION INCLUDING, WITHOUT LIMITATION, ANY ENVIRONMENTAL LAW OR ANY INSPECTION, REVIEW OR TESTING WITH RESPECT TO, OR THE RELEASE OF ANY TOXIC SUBSTANCE FROM, THE PROJECT FACILITIES OR ANY PART THEREOF;

(i) THE ENFORCEMENT OF, OR ANY ACTION TAKEN BY THE ISSUER, THE TRUSTEE, THE CONTROLLING PERSON OR THE MAJORITY OWNER, RELATED TO REMEDIES UNDER, THIS AGREEMENT, THE INDENTURE AND THE OTHER BOND DOCUMENTS;

(j) ANY ACTION, SUIT, CLAIM, PROCEEDING, AUDIT, INQUIRY, EXAMINATION, OR INVESTIGATION OF A JUDICIAL, LEGISLATIVE, ADMINISTRATIVE OR REGULATORY NATURE CONCERNING OR RELATED TO INTEREST PAYABLE ON THE BONDS NOT BEING EXCLUDABLE FROM GROSS INCOME FOR PURPOSES OF FEDERAL INCOME TAXATION OR EXEMPT FROM STATE INCOME TAXATION;

(k) ANY ACTION, SUIT, CLAIM OR DEMAND CONTESTING OR AFFECTING THE TITLE OF THE PROJECT FACILITIES;

(l) ANY DECLARATION OF TAXABILITY OF INTEREST ON THE BONDS, OR ALLEGATIONS (OR REGULATORY INQUIRY) THAT INTEREST ON THE BONDS IS TAXABLE, FOR FEDERAL TAX PURPOSES;

(m) THE INVESTIGATION OF, PREPARATION FOR OR DEFENSE OF ANY LITIGATION, PROCEEDING OR INVESTIGATION IN CONNECTION WITH THE PROJECT FACILITIES OR THE TRANSACTIONS TO BE CONSUMMATED IN CONNECTION THEREWITH OF ANY NATURE WHATSOEVER, COMMENCED OR THREATENED AGAINST THE BORROWER, THE PROJECT FACILITIES OR ANY INDEMNIFIED PARTY; AND

(n) ANY BROKERAGE COMMISSIONS OR FINDERS' FEES CLAIMED BY ANY BROKER OR OTHER PARTY IN CONNECTION WITH THE BONDS OR THE PROJECT.

THE INDEMNIFICATION SHALL INCLUDE THE REASONABLE COSTS AND EXPENSES OF DEFENDING ITSELF OR INVESTIGATING ANY CLAIM OF LIABILITY AND OTHER REASONABLE EXPENSES AND ATTORNEYS' FEES INCURRED BY THE INDEMNIFIED PARTIES, PROVIDED THE BORROWER SHALL NOT BE REQUIRED TO INDEMNIFY AN INDEMNIFIED PARTY FOR ANY CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS OR EXPENSES TO THE EXTENT, BUT ONLY TO THE EXTENT, FINALLY DETERMINED BY A COURT OF COMPETENT JURISDICTION TO HAVE BEEN CAUSED BY THE WILLFUL MISCONDUCT OR GROSS NEGLIGENCE OF SUCH INDEMNIFIED PARTY. THE INDEMNIFICATION DESCRIBED IN THIS SECTION 2.5 SHALL RELATE TO INDEMNIFIED OBLIGATIONS ARISING FROM AN INDEMNIFIED PARTY'S OWN NEGLIGENCE. IN THE EVENT THAT ANY ACTION OR PROCEEDING IS BROUGHT AGAINST ANY INDEMNIFIED PARTY WITH RESPECT TO WHICH INDEMNITY MAY BE SOUGHT HEREUNDER, THE BORROWER, UPON WRITTEN NOTICE FROM THE INDEMNIFIED PARTY, SHALL ASSUME THE INVESTIGATION AND DEFENSE THEREOF, INCLUDING THE EMPLOYMENT OF COUNSEL SELECTED BY THE INDEMNIFIED PARTY, AND SHALL ASSUME THE PAYMENT OF ALL EXPENSES RELATED THERETO, WITH FULL POWER TO LITIGATE, COMPROMISE OR SETTLE THE SAME IN ITS SOLE DISCRETION; PROVIDED THAT THE INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO REVIEW AND APPROVE OR DISAPPROVE ANY SUCH COMPROMISE OR SETTLEMENT. EACH INDEMNIFIED PARTY SHALL HAVE THE RIGHT TO

EMPLOY SEPARATE COUNSEL IN ANY SUCH ACTION OR PROCEEDING AND PARTICIPATE IN THE INVESTIGATION AND DEFENSE THEREOF, AND THE BORROWER SHALL PAY THE REASONABLE FEES AND EXPENSES OF SUCH SEPARATE COUNSEL; PROVIDED, HOWEVER, THAT SUCH INDEMNIFIED PARTY MAY ONLY EMPLOY SEPARATE COUNSEL AT THE EXPENSE OF THE BORROWER IF IN THE JUDGMENT OF SUCH INDEMNIFIED PARTY A CONFLICT OF INTEREST EXISTS BY REASON OF COMMON REPRESENTATION OR IF ALL PARTIES COMMONLY REPRESENTED DO NOT AGREE AS TO THE ACTION (OR INACTION) OF COUNSEL.

THE OBLIGATIONS OF THE BORROWER UNDER THIS SECTION SHALL SURVIVE THE TERMINATION OF THIS AGREEMENT AND THE INDENTURE. NOTWITHSTANDING ANY OTHER PROVISION OF THIS AGREEMENT OR THE INDENTURE TO THE CONTRARY, THE BORROWER AGREES (I) NOT TO ASSERT ANY CLAIM OR INSTITUTE ANY ACTION OR SUIT AGAINST THE TRUSTEE OR ITS EMPLOYEES ARISING FROM OR IN CONNECTION WITH ANY INVESTMENT OF FUNDS MADE BY THE TRUSTEE IN GOOD FAITH AS DIRECTED BY THE BORROWER, THE CONTROLLING PERSON OR THE MAJORITY OWNER, AND (II) TO INDEMNIFY AND HOLD THE TRUSTEE AND ITS EMPLOYEES HARMLESS AGAINST ANY LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE ARISING FROM OR IN CONNECTION WITH ANY SUCH INVESTMENT. NOTHING IN THIS SECTION IS INTENDED TO LIMIT THE BORROWER'S OBLIGATIONS CONTAINED IN SECTION 2.1 AND 2.2 HEREOF. AMOUNTS PAYABLE TO THE ISSUER HEREUNDER SHALL BE DUE AND PAYABLE FIVE (5) DAYS AFTER DEMAND AND WILL ACCRUE INTEREST AT THE DEFAULT RATE, COMMENCING WITH THE EXPIRATION OF THE FIVE (5) DAY PERIOD. WHEN THE ISSUER INCURS EXPENSES OR RENDERS SERVICE IN CONNECTION WITH ANY BANKRUPTCY OR INSOLVENCY PROCEEDING, SUCH EXPENSES (INCLUDING THE FEES AND EXPENSES OF ITS COUNSEL) AND THE COMPENSATION FOR SUCH SERVICES ARE INTENDED TO CONSTITUTE EXPENSES OF ADMINISTRATION UNDER ANY BANKRUPTCY LAW OR LAW RELATING TO CREDITORS RIGHTS GENERALLY. THE OBLIGATIONS OF BORROWER TO THE INDEMNIFIED PARTIES UNDER THIS SECTION SHALL NOT BE SUBJECT TO THE RECOURSE LIMITATIONS OF SECTION 10.13 HEREOF.

Section 2.6 Indemnification; Borrower's Additional Obligations. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS LOAN AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS LOAN AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM THE ISSUER OR ANY

OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS LOAN AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THIS LOAN AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS LOAN AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS LOAN AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF THE ISSUER OR ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHOULD INCUR ANY SUCH PECUNIARY LIABILITY WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT THEREON, AND UPON TIMELY NOTICE FROM THE ISSUER THE BORROWER SHALL DEFEND THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE ISSUER AND THE BORROWER SHALL PAY THE ISSUER EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE ISSUER; PROVIDED HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

NOTWITHSTANDING ANY PROVISION OF THIS LOAN AGREEMENT TO THE CONTRARY, THE ISSUER SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE ISSUER'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE ISSUER'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

Section 2.7 Amounts Remaining on Deposit Upon Payment of the Bonds. After payment in full of the principal of, premium, if any, and interest on the Bonds (or defeasance of the Bonds) and upon payment of amounts payable to the United States pursuant to any rebate requirement and the payment of any other amounts owed hereunder or under the Indenture, all amounts on deposit with the Trustee pursuant to the Indenture, this Agreement or any other Bond Document shall be paid by the Trustee to the Borrower.

### **ARTICLE 3 SECURITY**

Section 3.1 Mortgage and Other Security Documents. To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver to the Trustee (and where required, duly record), (a) the Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) dated as of the date hereof, made by the Borrower to the Issuer and assigned to the Trustee covering the Project Facilities (the "Mortgage"); (b) the Environmental Indemnity Agreement dated as of the date hereof, by the Borrower and the Guarantor in favor of the Trustee (the "Environmental Indemnity") pursuant to which the Borrower and the Guarantor shall indemnify and hold the Trustee harmless from environmental liabilities subject to the terms thereof; (c) the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Trustee, consented to by the Manager (the "Assignment of Management Agreement and Consent"); (d) the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Trustee (the "Replacement Reserve Agreement"); (e) the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Trustee (the "Assignment of Project Documents") and consented to by the Architect and the Contractor; (f) the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Guarantor in favor of the Trustee (the "Guaranty of Recourse Obligations"); (g) the Guaranty of Completion, dated as of the date hereof made by the Guarantor in favor of the Trustee (the "Guaranty of Completion"); (h) the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Guarantor in favor of the Trustee (the "Guaranty of Debt Service"); (i) the Guaranty of Operating Deficits, dated as of the date hereof, made by the Guarantor in favor of the Trustee (the "Guaranty of Operating Deficits"), (j) the Assignment of Leases, Rents and Other Income, dated as of the date hereof, made the Borrower to the Trustee (the "Assignment of Rents"); (k) the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Trustee (the "Assignment of Capital Contributions"); and (l) a Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the General Partner, in favor of the Trustee (the "General Partner Pledge").

Section 3.2 Financing Statements. The Borrower hereby authorizes the Trustee, without the signature of the Borrower, to file such financing statements and continuation statements, and perform such other acts, under the Uniform Commercial Code of the State or other applicable Legal Requirements as are necessary or advisable to perfect and maintain perfection of the Issuer's and/or the Trustee's security interests under this Agreement, the Indenture, the Mortgage and the other Bond Documents, copies of which financing statements or continuation statements have been provided to the Trustee. The Borrower will pay upon demand the costs of and expenses incurred in filing the foregoing financing or continuation statements and the Financing Statements required under Section 7.8 of the Indenture in such public offices as the Controlling Person may designate.

### **ARTICLE 4 REPRESENTATIONS OF ISSUER**

Section 4.1 Representation by the Issuer. The Issuer represents and warrants to the Borrower, the Trustee and the Holders from time to time of the Bonds as follows:

(a) The Issuer is a public and official agency of the State of Texas and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

(b) The Issuer has all requisite power, authority and legal right to execute and deliver the Bond Documents to which it is a party and all other instruments and documents to be executed and delivered by the Issuer pursuant thereto, to perform and observe the provisions thereof and to carry out the transactions contemplated by the Bond Documents. All action on the part of the Issuer which is required for the execution, delivery, performance and observance by the Issuer of the Bond Documents has been duly authorized and effectively taken, and such execution, delivery, performance and observation by the Issuer do not contravene applicable law or any contractual restriction binding on or affecting the Issuer.

(c) The Issuer has duly approved the issuance of the Bonds and the loan of the proceeds thereof to the Borrower for the acquisition and construction of the Project Facilities; no other authorization or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required as a condition to the performance by the Issuer of its obligations under the Bond Documents.

(d) This Agreement is, and each other Bond Document to which the Issuer is a party when delivered will be, legal, valid and binding special obligations of the Issuer enforceable against the Issuer in accordance with its terms except as the enforceability thereof may be limited by bankruptcy, insolvency or similar laws affecting the enforcement of creditors' rights generally.

(e) There is no default of the Issuer in the payment of the principal of or interest on any of its indebtedness for borrowed money or under any instrument or instruments or agreements under and subject to which any indebtedness for borrowed money has been incurred which does or could affect the validity and enforceability of the Bond Documents or the ability of the Issuer to perform its obligations thereunder, and no event has occurred and is continuing under the provisions of any such instrument or agreement which constitutes or, with the lapse of time or the giving of notice, or both, would constitute such a default.

(f) There are no obligations of the Issuer other than the Bonds that have been, are being or will be (i) sold at substantially the same time, (ii) sold pursuant to the same plan of financing, and (iii) reasonably expected to be paid from substantially the same source of funds.

(g) There is no action, suit, proceeding, inquiry, or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture or this Agreement or (ii) the excludability of interest on the Bonds from gross income for federal income tax purposes.

(h) In connection with the authorization, issuance and sale of the Bonds, the Issuer has complied in all material respects with all provisions of the laws of the State, including the Act.

(i) The Issuer has not assigned or pledged and will not assign or pledge its interest in this Agreement for any purpose other than to secure the Bonds under the Indenture. The Bonds constitute the only bonds or other obligations of the Issuer in any manner payable from the revenues to be derived from this Agreement, and except for the Bonds, no bonds or other obligations have been or will be issued on the basis of this Agreement.

(j) The Issuer is not in default under any of the provisions of the laws of the State, which default would affect the issuance, validity or enforceability of the Bonds or the transactions contemplated by this Agreement or the Indenture.

(k) The Issuer covenants and agrees that it will take or cause to be taken all required actions to preserve the exclusion from gross income for federal income tax purposes of interest on the Bonds. All of the amounts received upon the sale of the Bonds shall be allocated to, and shall be used, for the purpose of financing the aggregate basis of land and building costs within the meaning of Section 42(h)(4)(B) of the Code. To the extent within the reasonable control of the Issuer, and provided that the Issuer shall be under no duty to enforce compliance, the amounts received upon the sale of the Bonds and interest and other investment earnings on those amounts shall be allocated and used for financing Project Costs of each building and related land in the Project Facilities so that the aggregate basis of each such building and related land, within the meaning of Section 42(h)(4) of the Code, shall be financed fifty percent (50%) or more from those amounts.

(l) No member of the Issuer, nor any other official or employee of the Issuer, has any interest (financial, employment or other) in the Borrower, in the Project Facilities or in the transactions contemplated hereby, by the other Bond Documents or by the Indenture.

(m) The Issuer used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 4.2 No Liability of Issuer; No Charge Against Issuer's Credit. Any obligation of the Issuer created by, arising out of, or entered into in contemplation of this Agreement, including the payment of the principal of, premium if any, and interest on the Bonds, shall not impose or constitute a debt or pecuniary liability upon the Issuer, the State or any political subdivision thereof or constitute a charge upon the general credit or taxing powers of any of the foregoing. Any such obligation shall be payable solely out of the revenues and any other moneys derived hereunder and under the Indenture, except (as provided in the Indenture and in this Agreement) to the extent it shall be paid out of moneys attributable to the proceeds of the Bonds or the income from the temporary investment thereof. No recourse shall be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement of the Issuer hereunder against any past, present or future trustee, officer, member, employee or agent of the Issuer, whether directly or indirectly, and all such liability of any such individual as such is expressly waived and released as a condition of and in consideration for the execution of this Agreement, the making of the loan of the proceeds of the Bonds to the Borrower, and the issuance of the Bonds.

## **ARTICLE 5 REPRESENTATIONS AND WARRANTIES OF THE BORROWER**

The Borrower represents and warrants to and for the benefit of the Issuer, the Trustee, the Controlling Person and the Holders from time to time of the Bonds as follows:

Section 5.1 Existence. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the Legal Requirements of the State. The Borrower has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project. The Borrower has been, is and will be engaged solely in the business of acquiring, constructing, equipping, maintaining, leasing, financing, owning, managing and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is BMDC Saddlepur Pass Apartments GP, LLC, a limited liability company, duly organized, validly existing and in good standing under the laws of the State

of Texas and is duly qualified to do business in the State. The General Partner has furnished to the Issuer, the Trustee and the Controlling Person true and complete copies of its Certificate of Organization and Operating Agreement. The General Partner has and will have no other assets other than its partnership interests in the Borrower.

Section 5.2 Power, Authorization and No Conflicts. The Borrower has all requisite power and authority and the legal right to own and operate its properties and to conduct its business and operations as they are currently being conducted and as proposed to be conducted by it in its Partnership Agreement. The execution, delivery and performance by the Borrower of this Agreement and the other Bond Documents to which the Borrower is a party (i) are within the Borrower's powers, (ii) have been duly authorized by all necessary partnership and legal action by or on behalf of the Borrower, and (iii) do not contravene the Partnership Agreement, operating agreement, articles of incorporation, bylaws, certificate or articles of organization or certificate of limited partnership of the Borrower or the General Partner, as applicable, any Legal Requirements applicable to the Borrower or the General Partner or any Material Contract or restriction binding on or affecting the Borrower, the General Partner or any of their respective assets, or result in the creation of any mortgage, pledge, lien or encumbrance upon any of its assets other than as provided by the terms thereof. This Agreement and the other Bond Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower.

Section 5.3 Governmental Authorizations and Other Approvals. The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate and construct the Project Facilities in accordance with the provisions of the Bond Documents, including, without limitation, to obtain the Tax Abatement. Except as set forth on Schedule 6 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to acquire, construct, equip, finance, own and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower are listed and described on Schedule 6 hereto and have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, if any, the steps listed on Schedule 6 are all the steps needed to obtain such Governmental Actions and the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the construction or operation of the Project Facilities. No such Governmental Action, including without limitation, the Tax Abatement, will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

Section 5.4 Validity and Binding Effect. This Agreement and the other Bond Documents to which the Borrower is a party are the legal, valid and binding obligations of the Borrower, enforceable against it in accordance with their respective terms, subject to the application by a court of general principles of equity and to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar Legal Requirements affecting creditors' rights generally.

Section 5.5 No Litigation. (a) Except as disclosed on Schedule 1 attached hereto, there is no pending and, to the best knowledge of the Borrower and the General Partner, no threatened action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator

against or involving the Borrower, the General Partner, the Guarantor or the Project Facilities, and (b) to the best knowledge of the Borrower and the General Partner, there is no pending or threatened action or proceeding, including eminent domain proceedings, affecting the Borrower, the General Partner the Guarantor or the Project Facilities before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower, the General Partner or the Guarantor, or the validity or enforceability of this Agreement, the Bonds or the Bond Documents or the construction, operation or ownership of the Project Facilities, or the excludability of interest on the Bonds from gross income for federal income tax purposes or the qualification of the Project Facilities for the Tax Abatement.

Section 5.6 No Violations. The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, (b) the terms and conditions of the Tax Abatement, or (c) the Bond Documents or any other credit agreement, indenture, mortgage, agreement or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants or other restrictions applicable to any of the Project Facilities. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been timely filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of the Project Facilities.

Section 5.7 Compliance. The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Exemption Agreement and the Regulatory Agreement, the terms and conditions of the Tax Abatement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. Except as set forth on Schedule 6, Part B, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own and operate the Project Facilities and, all such Governmental Actions were duly issued, are in full force and effect and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Issuer's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, and the requirements for the Tax Abatement.

Section 5.8 Title to Properties; Liens and Encumbrances. The Borrower has good and indefeasible title in fee simple to the Project Facilities, free and clear of all liens or encumbrances except for the Permitted Encumbrances. All such real property, fixtures and equipment necessary to the conduct of the business of the Borrower and the operation of the Project Facilities are and will be in reasonable working order and are suitable for the purposes for which they are and will be used. There exist no liens, encumbrances or other charges against the Project Facilities (including without limitation statutory and other liens of mechanics, workers, contractors, subcontractors, suppliers, taxing authorities and others), except Permitted Encumbrances.

Section 5.9 Utilities and Access. All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities,

gas, electricity and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate Governmental Authority or others or have been dedicated to public use and accepted by such Governmental Authority.

Section 5.10 Financial Information.

(a) All of the financial information furnished by the Borrower, the Guarantor, and the General Partner, or at the directions of said Persons, to the Controlling Person or the Majority Owner with respect to the Borrower, the Guarantor, and the General Partner in connection with this Agreement (i) is complete and correct in all material respects as of the date hereof; and (ii) accurately presents the financial condition of such party as of the date hereof. None of the Borrower, the Guarantor or the General Partner has any material liability or contingent liability not disclosed to the Controlling Person and the Majority Owner in writing; and

(b) Since its formation, each of the Borrower, the Guarantor, and the General Partner has conducted its operations in the ordinary course, and no material adverse change has occurred in the business, operations, assets or financial condition of the Borrower, the Guarantor, or the General Partner.

Section 5.11 ERISA. No employee pension plan maintained by the Borrower or the General Partner or any ERISA Affiliate which is subject to Part 3 of Title I of the Employee Retirement Income Security Act of 1974, as amended (“ERISA”) has an accumulated funding deficiency (as defined in Section 302(a) of ERISA), no reportable event (as defined in Section 4043 of ERISA) has occurred with respect to any employee pension plan maintained for employees of the Borrower or any ERISA Affiliate and covered by Title IV of ERISA, no liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by the Pension Benefit Guaranty Corporation (“PBGC”) or by a trustee appointed pursuant to Section 4042(b) or (c) of ERISA, and no lien has been attached and no person has threatened to attach a lien to any of the Borrower’s, the General Partner’s or any ERISA Affiliate’s property as a result of failure to comply with ERISA or as a result of the termination of any employee pension plan covered by Title IV of ERISA. Each employee pension plan (as defined in Section 3(2) of ERISA) maintained for employees of the Borrower, the General Partner or any ERISA Affiliate which is intended to be qualified under Section 401 (a) of the Code, including all amendments to such plan or to any trust agreement, group annuity or insurance contract or other governing instrument, is the subject of a favorable determination by the Internal Revenue Service with respect to its qualification under Section 401(a) of the Code. With respect to any multi-employer pension plan (as defined in Section 3(37) of ERISA) to which the Borrower, the General Partner or any ERISA Affiliate is or has been required to contribute after September 25, 1980, (i) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner or any ERISA Affiliate, (ii) no withdrawal liability has been asserted against the Borrower, the General Partner or any ERISA Affiliate by a sponsor or an agent of a sponsor of any such multi-employer plan, (iii) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA), and (iv) neither the Borrower, the General Partner nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, “ERISA Affiliate” means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower, or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower, or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

Section 5.12 Environmental Representations. Except as set forth on the Environmental Audit delivered to the Controlling Person and the Majority Owner (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation or a material adverse change in the business, operations, assets, condition (financial or otherwise) or prospects of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanctions or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

Section 5.13 Outstanding Obligations and Material Contracts. Attached hereto as Schedule 2 is (i) a complete list of all Obligations of the Borrower and the General Partner as of the date of execution and delivery hereof, together with a description of the instruments evidencing, governing or securing such Obligations (provided that no description need be provided of the Obligations hereunder) and (ii) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the Obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

Section 5.14 Solvency. Each of the Borrower, the Guarantor and the General Partner is and, after giving effect to this Agreement and all other agreements of the Borrower, the Guarantor and the General Partner being entered into on the date of execution and delivery of this Agreement, will be solvent (which for this purpose shall mean that it is able to pay its current debts as they come due).

Section 5.15 Full Disclosure. This Agreement, the exhibits and schedules hereto and the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person or the Majority Owner by or on behalf of the Borrower, the Guarantor or the General Partner in connection with the transactions contemplated hereby or by the Bond Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor, the General Partner or the Project Facilities and do not omit to state a material fact with respect to the Borrower, the Guarantor or the General Partner or the Project Facilities necessary in order to make the statements contained therein not misleading in light of the circumstances under which they were made. There is no fact known to the Borrower, the Guarantor or the General Partner which materially adversely affects or in the future may adversely affect the business, operations, properties, assets or financial condition of the Borrower, the Guarantor or the General Partner which has not been set forth in this Agreement or in the other documents, certificates, opinions, schedules and statements furnished to the Controlling Person and the Majority Owner on behalf of any such party

before the date of execution and delivery of this Agreement in connection with the transactions contemplated hereby.

Section 5.16 Bond Documents. Each of the Borrower, the Guarantor and the General Partner has provided the Controlling Person and the Majority Owner with true, correct and complete copies of: (i) all documents executed by the Borrower, the Guarantor or the General Partner in connection with the Bonds, including all amendments thereto and compliance reports filed thereunder; (ii) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (iii) all correspondence, if any, relating to the Bonds from the Trustee, the Issuer, the Securities and Exchange Commission, the Internal Revenue Service or any state or local securities regulatory body or taxing authority or any securities rating agency; and (iv) all documentation, if any, relating to the Tax Abatement, any governmental grants, subsidies or loans or any other loans, lines of credit or other subordinate financing relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Bond Documents to which the Borrower is a party remain true and correct in all material respects and no Default exists under any covenants on the Borrower's part to perform under the Bond Documents to which the Borrower is a party.

Section 5.17 Illegal Activity. No portion of any of the Project Facilities has been or will be acquired, constructed, fixtured, equipped or furnished with proceeds of any illegal activity conducted by the Borrower.

Section 5.18 Executive Order 13224. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in any of those entities is included in, owned by, controlled by, acting for or on behalf of, providing assistance, support, sponsorship, or services of any kind to, or otherwise associated with any of the persons or entities referred to or described in Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

Section 5.19 No Broker. The Borrower has used no broker in connection with the execution hereof and the transactions contemplated hereby.

Section 5.20 Construction Contract; Architect's Agreement. The Construction Contract and the Architect's Agreement are each in full force and effect, and the parties thereto are in full compliance with their respective obligations thereunder. The work to be performed by the Contractor under the Construction Contract is the work called for by the Plans and Specifications, and all Work required to complete the Improvements in accordance with the Plans and Specifications is provided for under the Construction Contract.

Section 5.21 Development Budget. The Development Budget attached hereto as Schedule 4 accurately reflects (i) all anticipated costs of implementing and completing the Work within the Plans and Specifications and (ii) anticipated uses by source allocations for the purpose of complying with Section 142(a) of the Code.

Section 5.22 Plans and Specifications. The Borrower has furnished the Controlling Person and the Majority Owner with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Controlling Person and the Majority Owner comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants and easements affecting the Project Facilities, and have been approved by the Tax Credit Investor and such Governmental Authority as is required for construction of the Project Facilities. The Trustee shall have no responsibility or obligation to

review such Plans and Specifications, or to confirm compliance with any Legal Requirements set forth in this Section 5.22.

Section 5.23 Survey. The survey for the land and the improvements comprising the Project Facilities delivered to the Controlling Person and the Majority Owner does not fail to reflect any material matter of survey affecting the Project Facilities or the title thereto. The Trustee shall have no responsibility or obligation to review such survey, or to confirm compliance with any requirements set forth in this Section 5.23.

Section 5.24 Flood Plain. No part of the Project Facilities is located in an area identified by the Federal Emergency Management Agency as an area having special flood hazard or to the extent any part of the Project Facilities is an area identified as an area having special flood hazard, flood insurance in an amount equal to 100% of the appraised insurable value of the Project Facilities has been obtained by the Borrower.

Section 5.25 Intentionally omitted.

Section 5.26 Requisition. Each Requisition submitted to the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Bond Documents that are not made as to a specific date remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Controlling Person is notified to the contrary, in writing, prior to the requested date of the advance under such Requisition, shall constitute an affirmation that the same remain true and correct on the date of such advance.

## **ARTICLE 6 GENERAL COVENANTS**

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Controlling Person shall otherwise consent in writing to perform and comply with each of the following covenants:

Section 6.1 Conduct of Business; Maintenance of Existence; Mergers. The Borrower and the General Partner will (i) engage solely in the business of acquiring, financing, constructing, equipping, maintaining, managing, leasing, owning and operating the Project Facilities, and activities incident thereto, (ii) preserve and maintain in full force and effect its existence as a limited partnership or limited liability company, as applicable, under the Legal Requirements of the state of its organization, and its rights and privileges and its qualification to do business in the State, (iii) not dissolve or otherwise dispose of all or substantially all of its assets, (iv) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, and (v) not amend any provision of its certificate of limited partnership or its Partnership Agreement or certificate of formation, as applicable, or its operating agreement respectively, relating to (1) its purpose, management or operation, (2) the amounts, timing and conditions to contribution of equity by the Tax Credit Investor, or (3) the distribution of cash flow and payment of debt without, in each case, the prior written consent of the Controlling Person and (vi) promptly and diligently enforce its rights under the Partnership Agreement, and cause the Tax Credit Investor to make its capital contributions as and when required under the Partnership Agreement.

Section 6.2 Compliance with Legal Requirements; Payment of Impositions. The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities and with the terms and conditions of the Tax Abatement. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes.

Section 6.3 Maintenance of Governmental Authorizations. The Borrower shall timely obtain any Governmental Actions required for the construction of the Project Facilities not obtained prior to the Issue Date and shall provide copies thereof to the Controlling Person and the Trustee upon receipt. The Borrower will maintain in full force and effect all of its Governmental Actions and qualifications necessary for the conduct of its business as it is presently being conducted and the ownership, construction and operation of the Project Facilities as they are presently being operated and as contemplated by the terms of the Bond Documents, including, without limitation, in compliance with the terms and conditions of the Tax Abatement. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Controlling Person.

Section 6.4 Maintenance of Insurance.

(a) At all times throughout the term hereof, the Borrower shall, at its sole cost and expense, maintain or cause to be maintained insurance against such risks and for such amounts as required by the Controlling Person for facilities of the type and size of the Project Facilities and shall pay, as the same become due and payable, all premiums with respect thereto. The initial insurance requirements shall include, but not necessarily be limited to, the requirements set forth on Schedule 13 hereto.

(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Trustee as first mortgagee and shall provide for payment to the Trustee of the net proceeds of insurance resulting from any claim for loss or damage thereunder. All policies of insurance required by Section 6.4(a) hereof shall provide for at least thirty (30) days' prior written notice of the restriction, cancellation or modification thereof to the Trustee, with a copy to the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Issuer, the Controlling Person, the Majority Owner and the Trustee as additional named insureds. The Borrower acknowledges that a security interest in the policies of property and casualty insurance required by Section 6.4(a) and the net proceeds thereof is being granted to the Trustee pursuant to the Mortgage. Upon request of the Trustee, upon the written direction of the Controlling Person, the Borrower will assign and deliver (which assignment shall be deemed to be automatic and to have occurred upon the occurrence of an Event of Default hereunder) to the Trustee, the policies of property and casualty insurance required under Section 6.4(a), so and in such manner and form that the Trustee shall at all times, upon such request and until the payment in full of the Bonds, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in, and subject to the terms of, the Mortgage. The policies required under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance, together with all required endorsements, required by Section 6.4(a) hereof shall be delivered to the Trustee, with a copy to the Controlling Person and Majority Owner on or before the Issue Date. The Borrower shall deliver to the Issuer and the Trustee before the first (1<sup>st</sup>) Business Day of each calendar year thereafter a certificate dated not earlier than the immediately preceding month reciting that there is in full force and effect insurance of the types and in the amounts required by this Section 6.4. Prior to the expiration of each such policy, the Borrower shall furnish the Trustee, with a copy to the Controlling Person and Majority Owner, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Controlling Person or Majority Owner may, from time to time, reasonably require.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Mortgage and the net proceeds of the liability insurance required by Section 6.4(a) hereof shall be applied, with the prior written consent of the Controlling Person toward extinguishment or satisfaction of the liability with respect to which such insurance proceeds may be paid.

Section 6.5 Compliance with Other Contracts and Bond Documents. The Borrower will comply with all of its covenants and agreements under the Bond Documents to which it is a party, as the same may hereafter be amended or supplemented from time to time, and each of such covenants is incorporated herein by reference as if fully set forth herein. The Borrower acknowledges that the Indenture imposes certain obligations upon the Borrower and the Borrower agrees to discharge such obligations as if they were fully set forth herein (notwithstanding that the Borrower is not a party to the Indenture). The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

Section 6.6 Maintenance of Project Facilities. The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the Accounts, in accordance with the terms of the Indenture and the Replacement Reserve Agreement), (i) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (ii) not permit, commit or suffer any waste or abandonment of the Project Facilities; (iii) not use (and use reasonable efforts to not permit tenants to use) the Project Facilities for any unlawful purpose and use reasonable efforts to not permit any nuisance to exist thereon; (iv) promptly make such repairs or replacements (structural or nonstructural, foreseen or unforeseen) as are required for the proper operation, repair and maintenance of the Project Facilities in an economical and efficient manner and consistent with customary and prudent practices, standards and procedures applicable to properties of like size and type; (v) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements, including, without limitation, the Tax Abatement; (vi) keep and maintain abutting grounds, sidewalks, roads, parking and landscape areas which may be owned by the Borrower in good and neat order and repair; (vii) not take (or fail to take) any action, which if taken (or not so taken) would increase in any way the risk of fire or other hazard occurring to or affecting the Project Facilities; and (viii) not sell, lease (other than pursuant to residential leases), cause a Sale of or otherwise dispose of any part of the Project Facilities, except as otherwise permitted hereunder and under the other Bond Documents.

Section 6.7 Inspection Rights.

(a) The Borrower will, upon reasonable prior notice, at any reasonable time and from time to time, permit the Controlling Person, the Trustee, the Issuer, and the agents or representatives of the Controlling Person, the Trustee and the Issuer, to examine and copy and make abstracts from the records and books of account of, and visit the properties of, the Borrower, and to discuss the affairs, finances and accounts of the Borrower with the General Partner and the Accountant. Upon reasonable prior notice of two (2) Business Days in the absence of an Event of Default, and subject to the rights of tenants, the Borrower will permit the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Controlling Person may direct. The Borrower shall pay or reimburse the Controlling Person on demand for fees and expenses incurred in connection with such inspections.

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person and the Borrower notifying the Controlling Person and the Borrower of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional

judgment, necessary to maintain and preserve the Project Facilities in accordance with the standards set forth in Section 6.6 hereof, and which are not addressed in the Annual Budget for the Project Facilities. After considering the Engineering Consultant's recommendation, the Controlling Person shall notify the Borrower in writing of the work which the Engineering Consultant recommends be performed in order to comply with the requirements of Section 6.6 hereof and the time period over which, in its professional judgment, such work should be commenced and completed.

(c) The Borrower shall promptly commence and diligently complete the work recommended by the Engineering Consultant within the time period set forth in the report. If the Borrower fails to complete the work within such time period, the Controlling Person, at the Controlling Person's discretion, may complete such work for and on the Borrower's behalf and may do any act or thing the Controlling Person deems necessary or appropriate to that end. The expenses incurred by the Controlling Person in completing such work shall bear interest at the Default Rate, shall be borne by the Borrower and shall be reimbursed to the Controlling Person immediately upon demand. All work performed by the Borrower shall be performed in a good and workmanlike manner and shall be completely free and clear of any mechanics or materialman's liens and encumbrances and shall be subject to the requirements of Section 6.6 hereof.

Section 6.8 Keeping of Books. The Borrower will keep proper books of record and account, in which full and correct entries shall be made of financial transactions and the assets and operations of the Borrower in accordance with GAAP, and have a complete audit of such books of record and account made by the Accountant for each Fiscal Year.

Section 6.9 Reporting Requirements. The Borrower will furnish or cause to be furnished to the Controlling Person the following in form satisfactory to the Controlling Person and in such number of copies as the Controlling Person may reasonably require:

(a) As soon as available and in any event within forty-five (45) days after the close of each fiscal quarter of each Fiscal Year of the Borrower:

(1) unaudited financial statements for the Borrower and the Project Facilities, including a balance sheet and related statement of income as of the end of such fiscal quarter and for such fiscal quarter and the current Fiscal Year to the end of such fiscal quarter, which shall be internally prepared and presented on a consistent basis;

(2) a certificate signed by an Authorized Person stating that, except as disclosed in such certificate, (i) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents (including the rules qualifying the interest payable on the Bonds for federal income tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), and (iii) no Event of Default has occurred or exists;

(b) As soon as available and in any event within one hundred twenty (120) days after the close of each Fiscal Year of the Borrower:

(1) audited financial statements for the Borrower, on a consolidated basis, including a balance sheet and related statements of income and changes in financial position as of the end of such Fiscal Year and for such Fiscal Year, which shall be prepared and reported on without qualification by the Accountant in accordance with GAAP, and shall fairly present the financial condition of the Borrower and the Project Facilities as of the end of such Fiscal Year; and

(2) a certificate signed by an Authorized Person stating that (i) during such Fiscal Year the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Bond Documents, except as disclosed in such certificate, and (ii) no Default or Event of Default has occurred or exists, except as disclosed in such certificate; and

(3) beginning with the Fiscal Year following Stabilization, an occupancy report stating as of the last day of the month prior to the date of delivery thereof, with respect to each lease of all or any part of the Project Facilities, the tenant's name, the date thereof, the premises demised, the term, the rent, the security deposits, any advance rent payments in excess of one month and any defaults by the tenant or the Borrower in respect thereof (including, without limitation, the amounts of arrearages);

(c) As soon as possible and in any event within twenty-five (25) days after the end of each calendar month, operating statements of the Project Facilities certified by an Authorized Person and containing itemized information regarding all items of expense and income as well as occupancy reports, a rent roll and, if required by the Controlling Person, other reports such as reports on concessions, security deposits and advance rents, all in such detail as may be required by the Controlling Person;

(d) Following Stabilization, monthly, an occupancy report for the Project Facilities, which may be delivered electronically, certified by an Authorized Person; provided however, that the Controlling Person may require weekly occupancy reports if the Project Facilities are deemed to be on a performance watchlist, as determined by the Controlling Person;

(e) Upon receipt thereof by the Borrower, copies of any letter or report with respect to the management, operations or properties of the Borrower submitted to the Borrower by the Accountant in connection with any annual or interim audit of the Borrower's accounts, and a copy of any written response of the Borrower to any such letter or report;

(f) As soon as possible and in any event within fifteen (15) days after receipt of notice thereof, written notice of any pending or threatened litigation, investigation or other proceeding involving the Borrower, the General Partner, the Guarantor or the Project Facilities; (i) which could have a material adverse effect on the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project Facilities; (ii) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); (iii) which challenges the Tax Abatement; or (iv) which challenges the excludability of interest on the Bonds from gross income for federal income tax purposes;

(g) As soon as possible, notice of any material adverse change in the operations or financial condition of the Borrower, the General Partner, the Guarantor or the Project Facilities;

(h) Upon delivery thereof by the Borrower, copies of any reports, certifications, financial information, compliance documents, rebate information, audits and all other items submitted by or on behalf of the Borrower to the Trustee or the Issuer;

(i) Not later than forty-five (45) days following the Completion Date (as the same may be extended as set forth in the definition of such term in the Indenture), the certificate of completion and the use of proceeds certificate set forth as Schedules 8 and 9 hereof;

(j) As and when required under the Regulatory Agreement, the compliance certificates, the annual copies of IRS Forms 8703 and other reports and notices required to be delivered under the Regulatory Agreement;

(k) Upon receipt thereof by the Borrower, notice of the cancellation or expiration (without renewal or replacement) of any insurance required to be maintained by this Agreement;

(l) Not later than forty-five (45) days following the Stabilization Date (as the same may be extended as set forth in the definition of such term in the Indenture), a stabilization certificate in the form set forth on Schedule 10 hereto;

(m) As soon as possible and in any event within fifteen (15) days after the occurrence of an Event of Default, a statement of the General Partner setting forth the details of such Event of Default and the action which the Borrower proposes to take with respect thereto;

(n) Contemporaneously with the delivery to the Trustee copies of any notices, reports or other information provided to the Trustee under the Bond Documents;

(o) Copies of IRS Forms 8609 as issued and received by the Borrower;

(p) As soon as possible notice of any violation of the terms and conditions of the Tax Abatement or any revocation thereof it receives from the applicable Governmental Authority; and

(q) Such other information respecting the operations and properties, financial or otherwise, of the Borrower as the Controlling Person may from time to time reasonably request.

#### Section 6.10 Tax-Exempt Status.

(a) The Borrower represents, warrants and covenants that it shall not take any action, or fail to take any action or permit any action to be taken, if any such action or inaction would adversely affect the excludability of the interest on the Bonds from gross income for federal income tax purposes. Without limiting the generality of the foregoing, the Borrower covenants that it will comply with the instructions and requirements of the Tax Exemption Agreement, which is incorporated herein as if set forth fully herein.

(b) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Loan Agreement.

(c) The Borrower covenants that, notwithstanding any other provision of this Loan Agreement or any other instrument, the Borrower will take no action, nor shall it direct the Trustee to take any action, to invest or use of proceeds of the Bonds, or any other moneys that may arise out of or in connection with this Loan Agreement, the Indenture or the Project that would cause the Bonds to be treated as "arbitrage bonds" within the meaning of Section 148 of the Code. In addition, the Borrower covenants and agrees to comply with the requirements of Section 148(f) of the Code as it may be applicable to the Bonds or the proceeds derived from the sale of the Bonds or any other moneys that may arise out of, or in

connection with, this Loan Agreement, the Indenture or the Project throughout the term of the Bonds. No provision of this Loan Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with Section 148 of the Code.

(d) Neither the Borrower nor any “related party” to the Borrower within the meaning of Section 1.150-1(b) of the Regulations is, or will be, a party to any agreement, formal or informal, pursuant to which it has or will purchase any of the Bonds in an amount related to the amount of the Loan made to the Borrower pursuant to this Agreement unless the Borrower or such related party provides a Favorable Opinion of Bond Counsel to the Issuer, the Trustee and the Controlling Person.

#### Section 6.11 Single Purpose Entities.

(a) The Borrower and the General Partner shall (i) not engage in any business or activity, other than the financing, acquisition, ownership, construction, equipping, management, leasing, operation and maintenance of the Project Facilities and activities incidental thereto; and (ii) not acquire, own, hold, lease, operate, manage, maintain, develop or improve any assets other than the Project Facilities and such personal property as may be necessary for the operation of the Project Facilities and shall conduct and operate its business as presently conducted and operated.

(b) The Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any Obligations, secured or unsecured, direct or contingent (including guaranteeing any Obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Bond Documents; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner); (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify or otherwise change its partnership certificate, Partnership Agreement, articles of incorporation or other organizational documents or bylaws without obtaining the prior written consent of the Controlling Person; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (A) consent to the dissolution or liquidation in whole or in part of the Borrower, or (B) permit the General Partner to dissolve, or (C) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person, such consent not to be unreasonably delayed, withheld, or conditioned.

#### Section 6.12 Negative Pledge; No Sale.

(a) The Borrower will not create, incur, assume or permit to exist any mortgage, pledge, security interest, encumbrance or other Lien upon the Project Facilities or any property, tangible or intangible, now owned or hereafter acquired (including without limitation property leased to or being acquired by the Borrower under capital leases or installment sale agreements), by the Borrower (the sale

with recourse of receivables or any “sale and lease back” of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

(b) Other than Permitted Transfers and the making of residential leases, the Borrower shall not sell, assign, transfer, convey or otherwise dispose of the Project Facilities, or any part thereof, or permit or consent to a Sale without in each instance (i) obtaining the express prior written consent of the Controlling Person, which consent may be withheld or granted (and be made subject to the payment of such fees and the satisfaction of other conditions as set forth in Section 1.12 of the Mortgage) in the Controlling Person’s sole and absolute discretion, and (ii) complying with the applicable requirements of the Regulatory Agreement.

Section 6.13 Payment of Indebtedness; Accounts Payable; Restrictions on Indebtedness.

(a) The Borrower will pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all of the Borrower’s Indebtedness under the Bond Documents and all of its other Obligations, whether now existing or hereafter arising, and comply with all covenants and agreements set forth in agreements evidencing Obligations of the Borrower.

(b) The Borrower shall pay or cause to be paid the Expenses, and Capital Expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall not make any distribution of funds to its partners unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution. In addition, Borrower shall not make any payment to the General Partner or to any members, managers, officers or directors thereof, prior to the required monthly payment of the Borrower’s Indebtedness under the Bond Documents, the funding of any required reserves under the Bond Documents and the payment of any of its other Obligations then due and payable.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Bond Documents; and (ii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit.

Section 6.14 Environmental Covenants.

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint or other document received by the Borrower, its lessees, sub-lessees or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the "Moisture Management Program") for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, "Mold"), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Project Facilities for Mold, (b) removing or cleaning up any Mold and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person, and (c) in the event that the Mold identified at the Improvements at the Project Facilities cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Project Facilities, all in accordance with the procedures set forth in the United States Environmental Protection Agency's ("EPA") guide entitled "Mold Remediation in Schools and Commercial Buildings", EPA No. 402-K-01-001, dated March 2001 and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by the Controlling Person. The Borrower shall include as part of every residential lease a Mold/Mildew Addendum in the form attached hereto as Exhibit C. The Borrower further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of the Borrower hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Project Facilities shall be promptly identified and corrected to prevent the occurrence or re-occurrence of any Mold.

(f) Upon the occurrence of an Event of Default, or if the Controlling Person has reason to believe that there has occurred and is continuing a violation of Environmental Law or that there exists a condition that could give rise to any Governmental Action, the Controlling Person may, at its discretion, commission an investigation at the Borrower's expense of (i) compliance at the Project Facilities with Environmental Laws, (ii) the presence of Hazardous Substances or Contamination at the Project Facilities, (iii) the presence at the Project Facilities of materials which are described in clause (b) of Section 5.12, (iv) the presence at the Project Facilities of Environmentally Sensitive Areas, (v) the presence at the Project Facilities of radon products, (vi) the presence at the Project Facilities of tanks of the type described in paragraph (e) of Section 5.12 or in clause (d) of Section 6.14 above, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this Section 6.14(f), the Borrower, and Borrower and its lessees, sub-lessees and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees or assigns of the Borrower in connection with an investigation pursuant to this Section 6.14(f). The Borrower will permit the Controlling Person and its agents to have access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to

this Section 6.14(f). No investigation commissioned pursuant to this Section 6.14(f) shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project Facilities and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness under the Bond Documents and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

Section 6.15 Controlling Person. The Borrower acknowledges and agrees that (i) the Majority Owner has the sole and exclusive right to arrange for servicing of the Loan and to appoint another person or entity to serve as its representative hereunder, under the other Bond Documents and under the Indenture; (ii) the Majority Owner has appointed Red Stone Servicer, LLC to serve in the capacity of Controlling Person hereunder, under the other Bond Documents, and under the Indenture; and (iii) the Majority Owner retains the sole and exclusive right to appoint, remove or replace the Controlling Person, without the consent or approval of the Borrower. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Majority Owner.

Section 6.16 Tax Returns. The General Partner will timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

Section 6.17 Leases. The Borrower hereby represents that, to the extent there are any residential leases or agreements for all or any part of the Project Facilities that are not in compliance with the Regulatory Agreement on the Issue Date of the Bonds, compliance with such requirements in the Regulatory Agreement will be achieved during the twelve-month “transition period” beginning on the Issue Date of the Bonds, as set forth in Revenue Procedure 2004-39, 2004 C.B. 49. Except for leases to residential tenants in compliance with the Regulatory Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any future leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each future lease of residential units in the Project Facilities to a residential tenant shall be, in all material respects, on a form of lease approved by the Controlling Person and shall be in compliance with the requirements of the Regulatory Agreement.

Section 6.18 Further Assurances. The Borrower will promptly and duly execute, acknowledge and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Issuer, the Trustee or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Bond Documents, to confirm the priority and/or perfection of any lien, pledge, assignment or security interest created or intended to be created by this Agreement or the other Bond Documents and to assure the Controlling Person and the Majority Owner of the subrogation and security rights in favor of the Trustee for the benefit of the Holders of the Bonds contemplated by this Agreement, by the other Bond Documents and by the Indenture.

Section 6.19 Management Agreement. The Borrower has entered into a property management agreement in a form approved by the Controlling Person with the Manager (together with any extension and replacements thereof and as the same may be amended, modified or supplemented from time to time the “Management Agreement”). Under the Management Agreement, the Manager shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of four percent (4%) of the gross income received from the Project Facilities on account of rents, service fees, late charges and penalties and other charges received under leases. Any amounts due to the Manager in excess of three percent (3%) of such gross revenue shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Bonds, all Third Party Costs and all required deposits into the Accounts. The Borrower shall not replace the Manager for the Project Facilities without the Controlling Person’s prior written approval, and the Management Agreement shall not be terminated or modified without the Controlling Person’s prior written approval, such approval not to be unreasonably delayed, withheld, or conditioned. In the event the Manager resigns or is removed, the Borrower shall promptly seek a replacement Manager and submit such Manager and its proposed form of Management Agreement to the Controlling Person for approval; if the Borrower has not done so within thirty (30) days of becoming aware of such resignation or removal, the Controlling Person may (but shall not be required to) engage a new Manager on terms satisfactory to the Controlling Person in its sole discretion and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Manager shall execute a consent to the Assignment of the Management Agreement pursuant to which the Manager shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the Controlling Person, with or without cause, on thirty (30) days’ notice following and during the existence of an Event of Default.

Section 6.20 Determination of Taxability. Neither the Borrower nor the General Partner shall admit in writing to the Issuer or the Trustee or to any Governmental Authority that interest on the Bonds has become includable in gross income for federal income tax purposes without first providing reasonable advance notice to the Controlling Person and the Majority Owner and permitting the Controlling Person or the Majority Owner, at its sole discretion and at its expense, to contest such conclusion. Promptly after the Borrower first becomes aware of any Determination of Taxability or an event that could trigger a Determination of Taxability, the Borrower shall give written notice thereof to the Issuer, the Trustee, the Controlling Person and the Majority Owner.

Section 6.21 List of Bondholders. Upon the written request of the Controlling Person, the Borrower shall exercise any right it may have under the Indenture to request a list of Bondholders and shall deliver such list to the Controlling Person. Any costs associated with obtaining the list of Bondholders at the Controlling Person’s request shall be paid by the Controlling Person.

Section 6.22 Use of Proceeds. The Borrower agrees that the proceeds of the Bonds will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the Bond proceeds will be allocated on a pro rata basis to each building in the Project Facilities and the land on which such building is located, so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code.

Section 6.23 Compliance With Anti-Terrorism Regulations. Neither the Borrower, the General Partner nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time while the Bonds are Outstanding be described in, covered by or specially designated pursuant to or be affiliated with any Person described in, covered by or specially designated pursuant to Executive Order 13224 —Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit,

or Support Terrorism, as amended, or any similar list issued by OFAC or any other department or agency of the United States of America. Notwithstanding the foregoing, the Borrower and the General Partner hereby each confirm that if it becomes aware or receives any notice of any violation of the foregoing covenant and agreement (an “OFAC Violation”), the Borrower or the General Partner, as applicable, will immediately (i) give notice to the Controlling Person of such OFAC Violation, and (ii) comply with all Legal Requirements applicable to such OFAC Violation, including, without limitation, Executive Order 13224; the International Emergency Economic Powers Act, 50 U.S.C. Sections 1701-06; the Iraqi Sanctions Act, Pub. L. 101-5 13, 104 Stat. 2047-55; the United Nations Participation Act, 22 U.S.C. Section 287c; the Antiterrorism and Effective Death Penalty Act, (enacting 8 U.S.C. Section 219, 18 U.S.C. Section 2332d, and 18 U.S.C. Section 2339b); the International Security and Development Cooperation Act, 22 U.S.C. Section 2349 aa-9; the Terrorism Sanctions Regulations, 31 C.F.R. Part 595; the Terrorism List Governments Sanctions Regulations, 31 C.F.R. Part 596; and the Foreign Terrorist Organizations Sanctions Regulations, 31 C.F.R. Part 597 (collectively, the “Anti-Terrorism Regulations”), and the Borrower and the General Partner hereby authorize and consent to the Controlling Person’s taking any and all reasonable steps the Controlling Person deems necessary, in its sole discretion, to comply with all Legal Requirements applicable to any such OFAC Violation, including the requirements of the Anti-Terrorism Regulations. Notwithstanding anything to the contrary in this Section, the Borrower shall not be deemed to be in violation of the covenants and agreements set forth in the first sentence of this Section if the Borrower timely complies with all requirements imposed by the foregoing sentence and all requirements of the Antiterrorism Regulations and all other applicable Legal Requirements relating to such OFAC Violation.

Section 6.24 Adoption of Capital and Operating Budgets.

(a) On or before December 1 of each Fiscal Year, the Borrower shall submit to the Controlling Person for approval a proposed capital and operating budget with respect to the Project Facilities to be effective for the next following Fiscal Year (the “Proposed Budget”). The Controlling Person shall have the right to approve or disapprove any Proposed Budget, which approval shall not be unreasonably withheld or delayed. Third party costs not within the Borrower’s control and costs associated with remediation of emergency conditions shall be permitted variances to the Annual Budget. If any Proposed Budget is not disapproved by the Controlling Person within thirty (30) days following submission by the Borrower, such budget shall be deemed approved. If any budget is disapproved, the Borrower shall thereafter consult with the Controlling Person in an effort to achieve a mutually acceptable Annual Budget for an additional thirty (30) days. To the extent the proposed operating budget is disapproved, the operating budget for the previous Fiscal Year shall remain in effect increased by five percent (5%) over the previous Fiscal Year (except for costs of utilities, Impositions and insurance and other third-party costs or cost associated with remediation of emergency conditions which shall be permitted variances to the Proposed Budget) until the parties resolve their differences. In addition to, and not in limitation of the foregoing, each Annual Budget may be revised from time to time with approval of Controlling Person to reflect changes to Expenses and proposed Capital Expenditures set forth in the then-current Annual Budget.

(b) Without limiting the generality that each Proposed Budget must be approved by the Controlling Person, each Proposed Budget:

(i) shall be prepared on the basis of sound accounting practices consistently applied;

(ii) shall reflect all amounts projected to be deposited in the Replacement Reserve Fund and the projected revenues and Expenses of the Project Facilities;

(iii) shall reflect all projected Capital Expenditures which are reasonably expected to be made in connection with the Project Facilities during the Fiscal Year covered by such Proposed Budget; and

(iv) shall be in such form as is reasonably acceptable to the Controlling Person and containing such other information as reasonably may be requested by the Controlling Person.

Section 6.25 Borrower's Approval of Indenture. The Borrower understands that the Issuer will, pursuant to the Indenture and as security for the payment of the principal of, premium, if any, and the interest on the Bonds, assign and pledge to the Trustee, and create a security interest in favor of the Trustee in certain of its rights, title and interest in and to this Agreement (including all payments hereunder) reserving, however, the Reserved Rights; and the Borrower hereby agrees and consents to such assignment and pledge. The Borrower acknowledges that it has received a copy of the Indenture for its examination and review. By its execution of this Agreement, the Borrower acknowledges that it has approved, has agreed to and is bound by the applicable provisions of the Indenture. The Borrower agrees that the Trustee shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses. On the date of execution and delivery hereof, (a) the persons entitled thereto shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Trustee shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

Section 6.27 Additional Conditions Precedent. The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 7 hereof.

Section 6.28 No Amendments. The Borrower shall not amend, modify or otherwise change the other Bond Documents without the prior written consent of the Issuer, the Trustee and the Controlling Person.

Section 6.29 Construction of Improvements. The Borrower shall construct the Project Facilities in a true, thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements and cartage of every description required for the due completion of construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of construction of the Project Facilities shall begin within thirty (30) days following the Issue Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure.

Section 6.30 Evidence of Payment of Costs. If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional

releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

Section 6.31 Correction of Deficiencies in Improvements. The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

Section 6.32 Sufficiency of Loan Proceeds. If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (i) the remaining proceeds of the Loan, and (ii) any other sums on deposit by the Borrower with the Trustee and the capital contributions from Borrower's partners are insufficient to complete construction of the Project Facilities, the Controlling Person may require the Borrower to deposit with the Trustee for deposit into the Project Fund, within ten (10) days after written request by the Controlling Person, the projected deficiency, and such deposit shall be first disbursed in the same manner as the Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Loan shall be made.

Section 6.33 Use of Loan Proceeds. All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from Accounts held under the Indenture to or for the account of the Borrower under this Agreement shall constitute a trust fund in the hands of the Borrower or other payee and shall be used solely by such payee for the payment of the Qualified Project Costs and for no other purpose unless another use is specifically provided for in this Agreement or consented to in writing by the Controlling Person. Nothing in this paragraph shall be deemed to impose a trust on the undisbursed portion of the Loan or any other amounts held under the Indenture or to impose any duty on the Controlling Person with respect thereto.

Section 6.34 Special Servicing Costs. In accordance with industry standards and as set forth on Exhibit D hereto, the Controlling Person, as servicer of the Loan, may charge the Borrower reasonable additional servicing fees and reasonable costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

Section 6.35 Compliance with Texas Government Code. Each of the Borrower and the Controlling Person hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 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. Each of the Borrower and the Controlling Person understands 'affiliate' to mean an entity that controls, is controlled by, or is under common control with the respective party and exists to make a profit.

Each of the Borrower and the Controlling Person 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 or the Controlling Person and each of such party'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. Each of the Borrower and the Controlling Person understands "affiliate" to mean any entity that controls, is controlled by, or is under common control with the respective party and exists to make a profit.

## **ARTICLE 7 DEFAULTS AND REMEDIES**

Section 7.1 Defaults. Each of the following shall constitute an event of default hereunder ("Event of Default"):

(a) Failure by the Borrower to pay (i) the principal of, premium, if any, and interest on the Bonds when the same shall become due and payable, and (ii) any other amount required to be paid by the Borrower under this Agreement, the Note or any of the other Bond Documents when the same shall become due and payable;

(b) Failure by the Borrower to perform or comply with any of the terms or conditions contained in Section 6.1, 6.11 or 6.12 hereof;

(c) Failure by the Borrower to perform or comply with any of the terms or conditions contained in this Agreement and any of the other Bond Documents to which the Borrower is a party, other than as described in any other subsection of this Section 7.1, or the terms and conditions of the Tax Credit Abatement, and continuation of such failure for thirty (30) days after written notice from the Trustee or the Controlling Person to the Borrower, or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Tax Credit Investor shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) Any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Bond Documents or any other document furnished to the Issuer, the Trustee the Controlling Person or the Majority Owner pursuant to the terms hereof proves to have been false or misleading in any material respect when made;

(e) Any provision of this Agreement or any of the other Bond Documents to which the Borrower, the General Partner or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner or the Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirements relating to a maximum amount of interest permitted to be contracted for, charged or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner or any Guarantor or any Governmental Authority, or the Borrower, the General Partner or any

Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Bond Documents to which the Borrower, the General Partner or any Guarantor is a party;

(f) The occurrence of an Event of Default as defined in the Indenture or the other Bond Documents or act, circumstance or event (or failure to act or non-occurrence of an act) which, with the passage of time or the giving of notice or both would constitute and Event of Default under the Indenture or the other Bond Documents;

(g) The Borrower, any Guarantor or the General Partner (i) applies for or consents to the appointment of a receiver, trustee, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor or the General Partner in any bankruptcy, reorganization or insolvency proceeding, or action of the Borrower, any Guarantor or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking in respect of the Borrower, any Guarantor or the General Partner an order for relief or an adjudication in bankruptcy, reorganization, dissolution, winding up or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator or custodian or the like of the Borrower, any Guarantor or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed and undischarged for a period of sixty (60) days;

(h) The Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement;

(i) The Project Facilities suffer a loss by fire or other casualty and such loss is not fully insured and any deficiency in the amount of insurance proceeds paid with respect to such loss is not posted with the Trustee within thirty (30) days of the determination of such deficiency;

(j) The Project Facilities and the Borrower: (i) fail to achieve Final Completion on or before the Completion Date (as the same may be extended as set forth in the definition of such term in the Indenture) or to deliver all necessary supporting documentation (including, but not limited to, the Complete Certificate set forth on Schedule 8 hereto and the Use of Proceeds Certificate set forth on Schedule 9 hereto) evidencing the achievement of Final Completion not later than forty-five (45) days following the Completion Date (as the same may be extended as set forth in the definition of such term in the Indenture), or (ii) fail to achieve Stabilization on or before the Stabilization Date (as the same may be amended as set forth in the definition of such term in the Indenture) or to deliver all necessary supporting documentation (including, but not limited to, the Stabilization Certificate set forth on Schedule 10 hereto) evidencing the achievement of Stabilization not later than forty-five (45) days following the Stabilization Date (as the same may be extended as set forth in the definition of such term in the Indenture), or (iii) to fail to obtain and maintain the Tax Abatement;

(k) Any litigation or administrative proceeding ensues, and is not dismissed within ninety (90) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract or document delivered by the Borrower to the Controlling Person or the Trustee in compliance with this Agreement, and the adverse result of such litigation or proceeding would have, in the Controlling Person's reasonable opinion, a materially adverse effect on the Borrower's, the General Partner's or any Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(l) Any one or more judgments or orders (in excess of \$50,000) are entered against the Borrower, any Guarantor or the General Partner, and (1) continue unsatisfied and unstayed for sixty (60) days or (2) a judgment lien on any property of the Borrower, any Guarantor or the General Partner is recorded in respect thereof and is not stayed pending appeal by a bond or other arrangement given or obtained by the Borrower, any Guarantor or the General Partner on terms which do not violate any of the Borrower's covenants under this Agreement;

(m) Failure by the Borrower or the Guarantor (1) to make any payment or payments in respect of any Obligation or Indebtedness (unless a bona fide dispute exists as to whether such payment is due), when such payment or payments are due and payable (after the lapse of any applicable grace period), (2) to perform any other obligation or covenant under any such Obligation or Indebtedness or (3) to pay or perform any obligation or covenant under any Material Contract, any of which (x) results in the acceleration of such Obligation or Indebtedness or enables the holder or holders of such Obligation or Indebtedness or any person acting on behalf of such holder or holders to accelerate the maturity of such obligation or (y) would have, in the Controlling Person's reasonable opinion, a materially adverse effect on either the Borrower's or the Guarantor's ability to pay its obligations and comply with the covenants under this Agreement or any of the other Bond Documents;

(n) Construction of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except for such reason as the Controlling Person shall deem reasonable;

(o) If at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an advance under this Agreement, regardless of whether the Borrower has requested an advance that has not been funded; and

(p) The Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, within five (5) days after receipt of written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled.

Section 7.2 Remedies. If an Event of Default has occurred and is continuing uncured, the Trustee, acting solely at the written direction of the Controlling Person, shall:

(a) Declare the principal of all Bonds then Outstanding, any premium and the interest accrued thereon to be due and payable; and

(b) Declare the Borrower's obligations hereunder, under the Note and under the other Bond Documents to be, whereupon the same shall become, immediately due and payable, provided, no such declaration shall be required, and acceleration shall be automatic, upon occurrence of an event set forth in Section 7.1(g) hereof; and

(c) Enter upon the Project Facilities and take possession thereof, together with the Improvements in the course of construction or completed, and all of the Borrower's materials, supplies, tools, equipment and construction facilities and appliances located thereon, and proceed either in the name of the Trustee or in the name of the Borrower as the attorney-in-fact of the Borrower (which authority is coupled with an interest and is irrevocable by the Borrower) as the Controlling Person shall elect, to complete the construction of the Improvements at the cost and expense of the Borrower; if the Controlling Person elects to complete or cause the construction of the Improvements to be so completed, it may do so according to the terms of the Plans and Specifications and as the Controlling Person shall deem expedient or necessary, and the Trustee may enforce or cancel all contracts entered into as aforesaid or make other contracts which in the Controlling Person's reasonable opinion may seem advisable, and the Borrower shall be liable, under this Agreement and under the Note or any other note given by it pursuant to the provisions hereof, to pay the Trustee or the Controlling Person upon demand any amount or amounts expended by the Trustee or the Controlling Person or its representatives for such performance, together with any costs, charges or expenses incident thereto or otherwise incurred or expended by the Trustee or the Controlling Person or their respective representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Note, and shall be considered part of the indebtedness evidenced by the Note and secured by the Mortgage; and

(d) In the event the Contractor shall have defaulted as aforesaid, and the Contractor has no surety, the Controlling Person shall proceed to negotiate or invite bidding to procure, within an additional fifteen (15) days, a successor Contractor to complete the Improvements under a performance bond and labor and material payment bond approved by the Controlling Person in the full amount of the new contract price; if the Contractor has a surety, but the surety refuses or fails to commence completion of the Improvements within fifteen (15) days after notice from the Borrower to do so, the Controlling Person shall proceed, within ten (10) days, to negotiate or invite bidding as herein provided or to take action against the entity; and

(e) (1) Enter upon or take possession of the Project Facilities and call upon or employ suppliers, agents, managers, maintenance personnel, security guards, architects, engineers and inspectors to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury; (2) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Trustee) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Trustee has or obtains an interest for application to or as a reserve for payment of any or all of the following with respect to the protection, management, operation or maintenance of the Project Facilities or the protection of the Trustee's interest therein, and in such connection deliver or disburse the same to such entities in such amounts and with such preferences and priorities as the Controlling Person in its sole discretion shall determine, either with or without vouchers or orders executed by the Borrower: (A) all sums due from the Borrower to the Trustee; (B) premiums and costs of title and any other insurance; (C) leasing fees and brokerage or sales commissions; (D) fees, costs and expenses of the Trustee and the Controlling Person and Majority Owner and their respective counsel in connection with the enforcement and performance of this Agreement, the other Bond Documents and the other documents contemplated hereby; (E) any taxes (including federal, state and local taxes) or other governmental charges; (F) any sums required to indemnify and hold the Trustee harmless from any act or omission of the Trustee (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, or the other Bond Documents; (G) architectural and engineering costs or any sums due to contractors, subcontractors, mechanics or materialmen for work or services actually furnished on or for the Project Facilities; (H) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (I) other costs and expenses which are required to complete, manage or operate the Project Facilities or to protect the Project Facilities from injury or maintain the Trustee's security position before the rights of all others; (3) place additional encumbrances upon the Project Facilities; and (4) employ leasing and

sales agents and negotiate and execute leases, sales contracts and financing undertakings in connection with all or any part of the Project Facilities; and

(f) Subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Trustee; and

(g) Exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Bond Documents or at law or in equity.

Section 7.3 No Waivers; Consents. No waiver of, or consent with respect to, any provision of this Agreement shall in any event be effective unless the same shall be in writing and signed by the Trustee at the written direction of the Controlling Person (or by the Issuer if the same relates to Reserved Rights), and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which it was given.

Section 7.4 No Waiver; Remedies Cumulative. No failure on the part of the Issuer, the Trustee, the Controlling Person or any Bondholder to exercise, and no delay in exercising, any right hereunder shall operate as a waiver thereof; and no single or partial exercise of any right hereunder shall preclude any other or further exercise thereof or the exercise of any other right. The remedies herein provided are cumulative and not exclusive of any remedies available under any other document or at law or in equity.

Section 7.5 Set-Off. Upon the occurrence and during the continuation of an Event of Default hereunder, the Trustee is hereby authorized at any time and from time to time without notice to the Borrower or the General Partner (any such notice being expressly waived by the Borrower and the General Partner) and, to the fullest extent permitted by applicable Legal Requirements, to set off and to apply any and all balances, credits, deposits (general or special, time or demand, provisional or final), accounts or moneys at any time held (including any amounts in the Accounts except for the Rebate Fund and the Tax and Insurance Escrow Fund) and other indebtedness at any time owing by the Issuer to or for the account of the Borrower against any and all of the obligations of the Borrower now or hereafter existing under this Agreement, the Bond Documents or any other agreement or instrument delivered by the Borrower to the Issuer in connection therewith, whether or not the Issuer shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Trustee under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Trustee may have.

Section 7.6 Issuer and Borrower to Give Notice of Default. The Issuer and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Trustee, the Controlling Person, the Majority Owner and the Tax Credit Investor and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Issuer shall not be liable for failing to give such notice.

Section 7.7 Cure by Tax Credit Investor. Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any timely cure of any default made or tendered by the Tax Credit Investor shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower and the Tax Credit Investor shall be granted the same cure period, if any, granted to the Borrower; provided, however, that the Tax Credit Investor shall not have any obligation or duty to take any action to cure any default or to cause any default to be cured.

Section 7.8 Default Rate; Acceleration Premium. In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder and under the Note following an Event of Default

on or before January 1, 2038, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement and the Note shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

Section 7.9 Reserved Rights; Regulatory Agreement Defaults.

(a) Notwithstanding anything to the contrary contained herein, the Issuer may enforce its Reserved Rights under the Bond Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below.

(b) If there shall have occurred and be then continuing an Event of Default under and as defined in the Regulatory Agreement which would, in the reasonable judgment of the Issuer, the Controlling Person or the Trustee, jeopardize the excludability of interest on the Bonds from gross income for federal tax purposes (a “Regulatory Agreement Default”) and such Regulatory Agreement Default remains uncured or unwaived for a period of sixty (60) days after the Borrower, the Controlling Person and the Majority Owner receive written notice from the Trustee or the Issuer stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Bond Documents, the Issuer and the Trustee may, without the consent of the Controlling Person or the Majority Owner, exercise the remedy of pursuing specific performance of the Bond Documents on account of such default, unless:

(i) The Issuer and the Trustee, prior to the end of such sixty (60) day period, are provided with a Favorable Opinion of Bond Counsel (which opinion may be requested and obtained by the Controlling Person or the Majority Owner and obtained at the expense of the Borrower);

(ii) The Controlling Person, the Majority Owner or the Borrower institutes action to cure such Regulatory Agreement Default within such sixty (60) day period and diligently pursues such action thereafter until such Regulatory Agreement Default is cured; or

(iii) If such Regulatory Agreement Default is not reasonably curable by the Controlling Person or the Majority Owner without the Trustee’s first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Majority Owner (subject to extension during any stay on account of the bankruptcy of the Borrower) (x) instructs the Trustee, subject to the terms of the Indenture, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Bond Documents; (y) thereafter instructs the Trustee, pursuant to the terms of the Indenture, to pursue diligently such proceedings until such possession or control is obtained; and (z) diligently pursues action to cure such default after the Trustee or other designee of the Controlling Person or the Majority Owner obtains possession or control of the Project Facilities, until such default is cured; provided, however, that any extension, of the period within which a Regulatory Agreement Default must be cured shall only be effective if and to the extent that, in the opinion of Bond Counsel provided to the Borrower, the Trustee, the Controlling Person and the Majority Owner, such extension will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes; and provided further, that the Trustee, upon five (5) Business Days’ prior written notice to the Controlling Person and the Majority Owner following any such Regulatory Agreement

Default, may reduce the 60-day period provided above to such shorter period of time as is specified in such notice (but in no event less than fifteen (15) Business Days), but only if the Borrower, the Trustee, the Controlling Person and the Majority Owner shall have been provided with an opinion of Bond Counsel to the effect that such reduction of such period is necessary to preserve the excludability of interest on the Bonds from gross income for federal income tax purposes.

(c) In the event of a default in respect of Reserved Rights or a Regulatory Agreement Default which remains uncured after written notice thereof to the Borrower, the Controlling Person and the Majority Owner, nothing in this Section 7.9 shall restrict or in any way limit the right of the Issuer or the Trustee to take any action for specific performance available under the Regulatory Agreement or at law or in equity in order to enforce the terms of the Regulatory Agreement or to enforce Reserved Rights hereunder, so long as neither the Issuer nor the Trustee takes any action (i) to declare the outstanding balance of the Bonds or the Loan to be due on account of such default, (ii) to have a receiver appointed in respect of the Project Facilities, (iii) to foreclose any liens upon or security interests or to enforce any other similar remedy against any of the property described in the Mortgage, or (iv) to enforce any other similar remedy which would cause such liens or security interests to be discharged or materially impaired thereby.

## **ARTICLE 8 DEPOSITS TO FUNDS**

Section 8.1 Deposits to and Disbursements from the Replacement Reserve Fund. Pursuant to the Replacement Reserve Agreement, the Borrower shall pay or cause to be paid to the Trustee, for deposit into the Replacement Reserve Fund established by the Indenture, the amounts described in the Replacement Reserve Agreement. The sums contained in the Replacement Reserve Fund from time to time, shall be maintained, disbursed, and applied as provided in the Replacement Reserve Agreement and pursuant to Section 4.5(d) of the Indenture.

Section 8.2 Deposits to Tax and Insurance Escrow Fund. On the Completion Date, and on the first (1<sup>st</sup>) Business Day of each month thereafter, the Borrower shall pay, or cause to be paid, to the Trustee, to be deposited in the Tax and Insurance Escrow Fund, an amount which, when added to an amount equal to the sum of:

(a) the product of the Impositions component of the Monthly Tax and Insurance Amount for the Project Facilities and the number of months from and including the Issue Date, until and including the month in which occurs the date that the Impositions on the Project Facilities are due and payable before penalty; and

(b) the product of the insurance component of the Monthly Tax and Insurance Amount and the number of months from and including the Issue Date, until and including the month in which occurs the date that the annual insurance premiums for the insurance on the Project Facilities required hereunder are due and payable, will be sufficient to pay in full the Impositions and insurance premiums for the Project Facilities when the same become due and payable before penalty.

Section 8.3 [Reserved].

Section 8.4 Deposits to Redemption Fund. Two Business Days before the first Business Day of each month commencing on January 1, 2025, and thereafter two Business Days before the first (1<sup>st</sup>) Business Day of each month until the date on which the Bonds are no longer Outstanding or have been defeased, the Borrower shall pay to the Trustee the monthly amount shown on Schedule 3 attached hereto for deposit into the Redemption Fund pursuant to Section 4.5(a) of the Indenture. Following any partial

redemption of Bonds (other than pursuant to Section 2.12(c) of the Indenture), the Controlling Person shall adjust the monthly amount due pursuant to this provision to account for any partial redemption of the Bonds in the manner set forth in Section 2.12(e) of the Indenture and shall provide the Borrower, the Issuer and the Trustee with the revised Schedule 3. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all amounts required to redeem the Bonds pursuant to Section 2.12(b)(vi) of the Indenture on or before the Interest Payment Date specified in the notice of the Controlling Person as provided in Section 2.12(b)(vi) of the Indenture. The Borrower shall also pay to the Trustee for deposit in the Redemption Fund all other amounts required to redeem Bonds pursuant to Section 2.12 of the Indenture, as provided therein.

Section 8.5 Deposits to Operating Reserve Fund. On or before December 31, 2029, the Borrower shall pay or cause to be paid to the Trustee, to be deposited in the Operating Reserve Fund, the sum of [\$635,800]. Following any disbursement, payment or transfer of moneys from the Operating Reserve Fund, the Borrower shall replenish the Operating Reserve Fund monthly, from and to the extent of revenue from the operation of the Project Facilities available after payment of Expenses, Capital Expenditures and amounts then due and owing under the Bond Documents, and prior to the payment of any distributions to the Borrower's partners, until such time as the balance on deposit in the Operating Reserve Fund equals [\$635,800]. Amounts on deposit in the Operating Reserve Fund shall be applied as set forth in Section 4.5(e) of the Indenture.

Section 8.6 Reserved.

Section 8.7 Investment. Funds in the Accounts shall be invested in Permitted Investments upon the written direction of the Borrower with the written consent of the Controlling Person, as set forth in Section 4.7 of the Indenture. Earnings on the Accounts hereunder shall be held or disbursed as set forth in Article IV of the Indenture. The Trustee will deposit any cash held from time to time in the Accounts in one or more bank accounts with an institution or institutions of the Trustee's choosing. The Trustee shall have the right to invest or withdraw any deposited funds or to direct the liquidation of any investments held in order to pay the amounts required under this Agreement and the other Bond Documents. The Trustee shall not be liable for any loss sustained as a result of any liquidation of any collateral prior to its maturity. Any income or gain realized on such investments shall be credited to and become part of the respective Account and reinvested and applied as provided in the Indenture. Provided that no Default or Event of Default exists, the Borrower from time to time may request the Controlling Person to consent to the disbursement to or upon the order of the Borrower of the investment income previously credited to the Accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

Section 8.8 Security Interest in Accounts. The Borrower hereby assigns and pledges to the Issuer, and grants the Issuer a security interest in, as additional collateral security for the Borrower's obligations to the Issuer hereunder (and the Borrower acknowledges and agrees that the Issuer shall have a continuing security interest in) all of the Borrower's right, title and interest, if any, in all Accounts, all cash, cash equivalents, instruments, investments and other securities at any time held in the Accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such Accounts, if any. The Issuer hereby directs the Trustee to hold all moneys in the Accounts from time to time as assignee of the Issuer.

Section 8.9 Reports. The Trustee shall provide to the Borrower and the Issuer detailed monthly reports on or before the fifth (5<sup>th</sup>) day of the month following the month to which such report relates showing receipts, disbursements, balances and investments of each Account. Within ten (10) days of a written request of the Borrower to such effect, the Trustee shall deliver to the Borrower an accounting of receipts, disbursements and balances in one or more of the Accounts as necessary and appropriate to assist the

Borrower in complying with its covenants to calculate and pay any rebate amount or yield reduction payments due and owing to the United States of America with respect to the Bonds.

Section 8.10 No Liability of Trustee. In performing any of its duties hereunder, the Trustee shall not incur any liability to anyone for any damages, losses or expenses, except for its gross negligence, bad faith or willful misconduct; and the Trustee shall not incur any liability with respect to any action taken or omitted in good faith in the performance of its duties and responsibilities under this Agreement.

## **ARTICLE 9 CONSTRUCTION AND FUNDING OF ADVANCES**

Section 9.1 Construction of Project Facilities; Final Completion. The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days after the Issue Date, and shall achieve Final Completion of such Work substantially in accordance with the Plans and Specifications on or before the Completion Date (subject to extension as set forth in the definition of such term in the Indenture).

### Section 9.2 Making The Advances.

(a) At such time as the Borrower desires to obtain an Advance from the Project Fund, an Authorized Person shall complete, execute and deliver a Requisition to the Controlling Person for its approval; no Requisition shall be delivered to the Trustee until it has been approved by the Controlling Person, and each Advance by the Trustee of the amounts in the Project Fund shall be subject to the prior approval of the Requisition by the Controlling Person. The Controlling Person shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each Requisition shall be submitted to the Controlling Person at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial Advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Trustee to deposit the proceeds of each Requisition into such account.

Section 9.3 Advances to Contractors; to Others. At its option during the existence of any Event of Default, the Controlling Person may direct the Trustee to make any or all Advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due.

Section 9.4 Requisition. Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person prior to payment and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in (i) not less than ninety-five percent (95%) of all disbursements having been used to pay or reimburse the Borrower for Qualified Project Costs and (ii) one hundred percent (100%) of all disbursements have been used to pay or reimburse the Borrower for Project Costs.

Section 9.5 Project Costs. The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Trustee from the Project Fund are to be used. Subject to Section 9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person have any obligation to approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery and equipment completed, approved and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required) less (c) the total amount of any Advances previously made by the Trustee from the Project Fund for such costs.

Section 9.6 Retainage. The Controlling Person shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds from the Project Fund shall be approved unless all Work done at the date the Requisition for such Advance is submitted is done in a good and workmanlike manner and without defects, as confirmed by the report of the Engineering Consultant.

Section 9.7 Contingency Reserve. The amount allocated to “contingency” in the Development Budget is not intended to be disbursed without, and will only be disbursed upon, the prior approval of the Controlling Person. The disbursement of a portion of the contingency reserve shall in no way prejudice the Controlling Person from directing the Trustee to withhold disbursement of any further portion of the contingency reserve.

Section 9.8 Stored Materials. The Controlling Person shall approve Requisitions for funds for materials, furnishings, fixtures, machinery or equipment not yet incorporated into the Improvements, provided that any such disbursement shall be subject to and shall be contingent upon the Controlling Person’s receiving satisfactory evidence that:

- (a) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of thirty (30) days; and
- (b) such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall reasonably approve, and are protected against theft and damage.

Section 9.9 Cost Overruns and Savings.

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$200,000 or more, the Borrower shall immediately notify the Controlling Person in writing and promptly submit to the Controlling Person for its approval a revised Development Budget. If the Controlling Person otherwise becomes aware of any such change in costs of the Work, the Controlling Person shall have the right to prepare and to authorize disbursements on the basis of a revised Development Budget.

(b) If the revised Development Budget indicates an increase in costs of the Work for the Project Facilities (in excess of the aggregate contingency amount and savings), no further Requisitions for the Work at the Project Facilities need be approved by the Controlling Person unless and until the Borrower has deposited with the Trustee any required funds necessary to cause the amount remaining on deposit in the Project Fund and any Required Equity Funds yet to be deposited with the Trustee to be sufficient to complete fully the construction of the Improvements in accordance with the Plans and Specifications to the extent applicable, and to pay all other projected costs in connection with the Work.

(c) If the revised schedule indicates a decrease in costs of the Work for the Project Facilities, no savings may be reallocated by the Borrower unless and until the Borrower has furnished the Controlling Person and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower to other line items and may be used for the Costs of the Project with the written consent of the Controlling Person, which will not be unreasonably withheld, conditioned or delayed.

(d) The Issuer does not make any warranty, either express or implied, that the moneys paid into the Project Fund and available for payment of the Project Costs will be sufficient to pay all of the Project Costs. The Borrower agrees that if after exhaustion of the moneys in the Project Fund, the Borrower should pay any portion of the Project Costs as required herein, the Borrower shall not be entitled to any reimbursement therefor from the Issuer, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Note.

Section 9.10 Right to Retain the Engineering Consultant.

(a) The Trustee shall have the right to retain, at the direction of the Controlling Person and at the Borrower's cost and expense, the Engineering Consultant to perform various services on behalf of the Controlling Person, including, without limitation, to make periodic inspections for the purpose of assuring that construction of the Improvements to date is in accordance with the Plans and Specifications, to advise the Controlling Person of the anticipated cost of and time for completion of construction of the Improvements and to review all construction contracts and subcontracts.

(b) The fees of the Engineering Consultant during the performance of the construction shall be paid by the Borrower in accordance with Section 2.2(b) hereof.

(c) Neither the Controlling Person nor the Engineering Consultant shall have any liability to the Borrower on account of (i) the services performed by the Engineering Consultant, (ii) any neglect or failure on the part of the Engineering Consultant to properly perform its services, or (iii) any approval by the Engineering Consultant of construction of the Improvements. Neither the Controlling Person nor the Engineering Consultant assumes any obligation to the Borrower, the General Partner or any other Person concerning the quality of the Work performed or the absence of defects from the Improvements.

Section 9.11 Inspections. The Borrower agrees to provide and cause to be provided to the Controlling Person and its authorized agents, at all times, facilities commonly made available by responsible general contractors for the inspection of the Improvements, and to afford full and free access to the Controlling Person and its authorized agents to all plans, drawings and records with respect to the construction of the Improvements. The Borrower further agrees to promptly send to the Controlling Person a copy of all construction inspection reports made by the Borrower's Architect or engineer.

Section 9.12 Initial Advance. The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the following conditions precedent:

(a) The Borrower shall have delivered the items listed on Schedule 7 attached hereto;

(b) The Borrower shall have delivered evidence as to the obtaining of all approvals, permits and licenses which are then required, if any, or necessary for the commencement of the construction of the Improvements at the Project Facilities, together with copies of all such approvals, permits and licenses or evidence that no such permits or licenses are required;

(c) The Borrower shall have delivered copies of the Borrower's contracts with the Architect and the Contractor, duly executed by the parties thereto, and to the extent applicable, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be, supplying labor or materials for the construction of the Project Facilities;

(d) The Borrower shall have delivered to the Controlling Person two (2) complete sets of the Plans and Specifications, together with evidence of their approval by all Governmental Authorities having jurisdiction;

(e) [intentionally omitted];

(f) The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications identified on Schedule 5, (ii) the Construction Contract satisfactorily provides for the construction of the Project Facilities, and (iii) in the opinion of the Engineering Consultant construction of the Project Facilities can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose on the Development Budget;

(g) The Borrower shall have delivered to the Controlling Person evidence as to:

(i) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(ii) the availability of water supply and storm and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(iii) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(iv) the obtaining of all Governmental Actions which are required, necessary or desirable for the commencement of construction of the Improvements and the access thereto, together with copies of all such Governmental Actions as listed on Schedule 6;

(h) The first installment of the Borrower's Required Equity Funds (\$955,253.00) shall have been delivered to the Trustee and the other deposits required under Section 4.1(c) of the Indenture shall have been made; and

(i) The Controlling Person, the Borrower and the Trustee shall have executed a closing statement for the Bonds in form and substance satisfactory to the Controlling Person and, if any portion of the initial Advance shall be for hard costs of construction, a completed Requisition executed by the Borrower and the Controlling Person as described in Section 9.13(d)(i) hereof and the Engineering Consultant approval described in Section 9.13(d)(iii) hereof.

Section 9.13 Subsequent Advances. The right of the Borrower to draw any subsequent Advances of funds from the Project Fund shall be subject to the satisfaction of the following conditions:

(a) The Borrower shall have delivered the items listed on Part B of Schedule 7 attached hereto.

(b) If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage;

(c) There shall not be a continuing an Event of Default;

(d) The Controlling Person and the Trustee shall have received:

(i) a completed Requisition in the form set forth on Exhibit B hereto, accompanied by the certificates, applications, invoices and other materials required thereby;

(ii) a “date down” endorsement to the Title Policy indicating no change in the state of title not approved by the Controlling Person; and

(iii) approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the Advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Bond proceeds and other available funds and funds projected to be deposited in the Project Fund established under the Indenture is adequate to complete construction of the Improvements in accordance with the Plans and Specifications.

(e) Notwithstanding anything to the contrary set forth in this Agreement, no sums shall be disbursed until the Borrower has delivered a waiver or full release of liens from all contractors, subcontractors, materialmen or others who may be entitled to a lien, as permitted by law for the work for which payment is requested.

(f) The Controlling Person may withhold or refuse to approve any Requisition hereunder if any mechanic’s lien is filed or notice of intention to record or file a mechanic’s lien has been filed or given.

(g) In addition to the conditions set forth in this Section 9.13, the Controlling Person’s obligation to approve any Requisition for Retainage shall be subject to receipt by the Controlling Person of the Engineering Consultant’s certification of completion as to the Work performed under any contract or subcontract for which the Retainage will be disbursed.

(h) Within thirty (30) days after completion of construction of the Foundation of the Improvements, the Borrower shall deliver a survey certified by a registered engineer or surveyor showing that the foundations are located at the location shown on the Plans and Specifications.

(i) All installments of Required Equity Funds then due and payable shall have been deposited with the Trustee;

(j) If at any time during the construction of the Project Facilities, the Controlling Person shall in its sole discretion determine that the remaining undisbursed portion of the Project Fund, any other sums previously deposited by Borrower with the Trustee, and any Required Equity Funds yet to be deposited with the Trustee (other than Required Equity Funds which have not been deposited due to a default by the Borrower under the applicable provisions of the Partnership Agreement), is or will be insufficient to complete fully the construction of the Improvements in accordance with the Scope of Work,

and to pay all other projected costs in connection with the Work, the Borrower will, within seven (7) days after written notice of such determination from the Controlling Person deposit with the Trustee (for deposit into the Equity Account of the Project Fund) such sums of money in cash as the Controlling Person may reasonably require, in an amount sufficient to remedy the condition described in such notice, and sufficient to pay any liens for labor and materials alleged to be due and payable at the time in connection with the Improvements (to the extent not already bonded over or reserved for), and, at the Controlling Person's option, the Controlling Person shall not be obligated to authorize any further Advances of the amounts held in the Project Fund by Trustee until the provisions of this Section 9.13(i) have been fully complied with.

(k) No Material Change Order shall have been made without the written approval of the Controlling Person.

(l) Within five (5) days after receiving notice from the Controlling Person (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Controlling Person (or the Engineering Consultant) may identify as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

Section 9.14 Effect of Approval. Approval of any Requisition by the Controlling Person shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the work, the quantity of the work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith; and (ii) any errors, omissions, inconsistencies or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the work shall be solely for the Controlling Person's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person and the Majority Owner.

## **ARTICLE 10 MISCELLANEOUS**

Section 10.1 Notices. All notices and other communications provided for hereunder shall be in writing and sent by electronic mail and by reputable overnight mail service or private delivery service addressed as follows:

To the Borrower:

Saddlespur Pass Apartments, LP  
c/o Kittle Property Group, Inc.  
310 East 96th Street, Suite 400  
Indianapolis, Indiana 46240  
Attention: Jeffrey L. Kittle  
Telephone: (317)663-6800  
Facsimile: jkittle@hermankittle.com

With a copy to: Kittle Property Group, Inc.  
310 East 96<sup>th</sup> Street, Suite 400  
Indianapolis, Indiana 46240  
Telephone: 317-663-6814  
Attention: David D. Thompson, Esq.  
Email: dthompson@hermankittle.com

If to the Issuer: Texas Department of Housing and Community Affairs  
PO Box 13941  
Austin, Texas 78711  
Attention: Director of Multifamily Bonds  
Telephone: (512) 475-3344  
Email: teresa.morales@tdhca.state.tx.us

If to the Trustee: BOKF, NA  
777 Main Street, Suite 3500  
Fort Worth, TX 76102  
Attention: Corporate Trust Department  
Telephone: 817-348-5703  
Email: courtney.miller@bokf.com

If to the Controlling Person: Red Stone Servicer, LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis  
Email: kmastorakis@redstoneco.com

With a copy to: Greenberg Traurig, LLP  
1717 Arch Street  
Suite 400  
Philadelphia, PA 19103  
Attention: Dianne Coady Fisher, Esquire  
Email: fisherd@gtlaw.com

If to the Majority Owner: At the address set forth on the Register  
maintained by the Trustee

If to Tax Credit Investor: Wincopin Circle LLLP  
c/o Enterprise Community Asset Management, Inc.  
70 Corporate Center  
11000 Broken Land Parkway, Suite 700  
Columbia, MD 21044

With a copy to: Gallagher Evelius & Jones LLP  
218 North Charles Street, Suite 400  
Baltimore, MD 21201  
Telephone: (410) 727-7702  
Attention: Kenneth S. Gross  
Email: kgross@gejlaw.com

The above parties may change the address to which notices to it are to be sent by written notice given to the other persons listed in this Section. All notices shall, when sent as aforesaid, be effective when received.

Section 10.2 Successors and Assigns; Third Party Beneficiaries. This Agreement shall inure to the benefit of and shall be binding upon the parties hereto and their respective successors and assigns, including, without limitation, the Trustee. The Controlling Person and the Majority Owner are express third party beneficiaries of this Agreement and the rights of the Trustee (as assignee of the Issuer) hereunder, with full rights of enforcement thereof. The Borrower may not assign its interests in or its rights, duties or obligations under this Agreement without the prior written consent of the Controlling Person. The Borrower and the Issuer intend that no Person other than the parties hereto, the Trustee, the Majority Owner, the Controlling Person, and their respective successors and assigns as permitted hereunder, shall have any claim or interest under this Agreement or right of action hereon or hereunder.

Section 10.3 Survival of Covenants. All covenants made by the Borrower herein and in any document delivered pursuant hereto shall survive the issuance, sale and delivery of the Bonds, the delivery of this Agreement and the payment of any amounts under the Bond Documents.

Section 10.4 Counterparts; Electronic Signature. The execution hereof by each party hereto shall constitute a contract between them for the uses and purposes herein set forth, and this Agreement may be executed in any number of counterparts, with each executed counterpart constituting an original and all counterparts together constituting one agreement. To the fullest extent permitted by applicable law, facsimile or electronically transmitted signatures shall be treated as original signatures for all purposes hereunder.

Section 10.5 Costs, Expenses and Taxes. The Borrower agrees to pay on the Issue Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Issuer, the Trustee, the Controlling Person and the Majority Owner in connection with the preparation, execution, delivery and administration of this Agreement, the other Bond Documents and any other documents that may be delivered by Borrower or on behalf of Borrower in connection with this Agreement or the other Bond Documents or any amendments or supplements thereto, including, without limitation, the fees and expenses of the Engineering Consultant, the cost of an annual appraisal (but only upon the occurrence and during the continuation of an Event of Default) of the Project Facilities by an appraiser selected by the Controlling Person, and the reasonable fees and expenses of counsel for the Majority Owner and the Controlling Person with respect thereto and with respect to advising the Majority Owner and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Bond Documents and such other documents, and all costs and expenses, if any, (including, without limitation, reasonable counsel fees and expenses of the Controlling Person and the Majority Owner) in connection with the enforcement of this Agreement, the other Bond Documents and such other documents.

Section 10.6 Severability; Interest Limitation. If any provision hereof is found by a court of competent jurisdiction to be prohibited or unenforceable in any jurisdiction, it shall be ineffective as to such jurisdiction only to the extent of such prohibition or unenforceability, and such prohibition or unenforceability shall not invalidate the balance of such provision as to such jurisdiction to the extent it is not prohibited or unenforceable, nor invalidate such provision in any other jurisdiction, nor invalidate the other provisions hereof, all of which shall be liberally construed in favor of the Issuer in order to effect the provisions of this Agreement. Notwithstanding anything to the contrary herein contained, the total liability of the Borrower for payment of interest pursuant hereto shall not exceed the maximum amount, if any, of such interest permitted by applicable Legal Requirements to be contracted for, charged or received, and if any payments by the Borrower to the Trustee include interest in excess of such a maximum amount, the Trustee shall apply such excess to the reduction of the unpaid principal amount due pursuant hereto, or if none is due, such excess shall be refunded to the Borrower; provided that, to the extent permitted by

applicable Legal Requirements, in the event the interest is not collected, is applied to principal or is refunded pursuant to this sentence and interest thereafter payable pursuant hereto shall be less than such maximum amount, then such interest thereafter so payable shall be increased up to such maximum amount to the extent necessary to recover the amount of interest, if any, theretofore uncollected, applied to principal or refunded pursuant to this sentence. Any such application or refund shall not cure or waive any Event of Default. In determining whether or not any interest payable under this Agreement exceeds the highest rate permitted by applicable Legal Requirements, any non-principal payment (except payments specifically stated in this Agreement to be "interest") shall be deemed, to the extent permitted by applicable Legal Requirements, to be an expense, fee, premium or penalty rather than interest.

Section 10.7 Conflicts. Insofar as possible the provisions of this Agreement shall be deemed complementary to the terms of the other Bond Documents, but in the event of conflict the terms hereof shall control to the extent such are enforceable under applicable Legal Requirements.

Section 10.8 Complete Agreement. Taken together with the other Bond Documents and the other instruments and documents delivered in compliance herewith, this Agreement is a complete memorandum of the agreement of the Borrower, the General Partner, the Guarantor, the Controlling Person, the Trustee, the Issuer and the Holders from time to time of the Bonds, with respect to the subject matter hereof.

Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial. The parties hereby irrevocably (i) agree that any suit, action or other legal proceeding arising out of or relating to this Agreement or the other Bond Documents may be brought in any federal court located in the State and consents to the jurisdiction of such court in any such suit, action or proceeding; (ii) agree that any suit, action or other legal proceeding relating to the Bond Documents shall be brought solely in a federal or state court located in the State and (iii) waive any objection which it may have to the laying of venue of any such suit, action or proceeding in any such court and any claim that any such suit, action or proceeding has been brought in an inconvenient forum. The parties hereby irrevocably consent to the service of any and all process in any such suit, action or proceeding by mailing of copies of such process to such party at its address provided under or pursuant to Section 10.1 hereof. The parties agree that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by applicable legal requirements. All mailings under this Section shall be by certified or registered mail, return receipt requested. Nothing in this Section shall affect the right of the Controlling Person and the Majority Owner to serve legal process in any other manner permitted by applicable Legal Requirements. **THE PARTIES HERETO HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY ACTION ARISING UNDER THIS AGREEMENT, ANY OF THE OTHER BOND DOCUMENTS OR OTHERWISE IN CONNECTION HEREWITH.**

Section 10.10 Governing Law. This Agreement shall be governed by, and construed in accordance with, the Legal Requirements of the State without reference to its principles of conflicts of law.

Section 10.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose.

Section 10.12 Sale of Bonds and Secondary Market Transaction.

(a) At the Controlling Person or Majority Owner's request (to the extent not already required to be provided by the Borrower under this Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the Controlling Person or Majority Owner customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Majority Owner in connection with one or more sales or assignments of all or a portion of the Bonds or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Bonds (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Issuer shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs including, without limitation, any costs associated with receiving a rating on the Bonds, shall be paid by the Controlling Person or Majority Owner, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower and the Issuer shall, so long as the Loan is still outstanding:

(i) (1) provide financial and other information with respect to the Bonds, and with respect to the Project Facilities, the Borrower, the General Partner, the Manager, or the contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Majority Owner, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports and other due diligence investigations of the Project Facilities, as may be reasonably requested from time to time by the Controlling Person or Majority Owner or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the Controlling Person or Majority Owner pursuant to this paragraph (i) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Majority Owner and the Rating Agencies;

(ii) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the Project Facilities, the Borrower and the Bond Documents reasonably acceptable to the Controlling Person or Majority Owner, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a "bring down" of the representations and warranties contained in the Bond Documents as of the date thereof and a representation that no Default or Event of Default has occurred and is continuing; and

(iii) execute such amendments to the Bond Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Bond Documents and is not otherwise adverse to such party in its reasonable discretion.

(b) The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the

Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 10.12(c) hereof, with the Controlling Person and Majority Owner in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all current information pertaining to the Borrower and the Project Facilities necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

(c) In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, the Project Facilities or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Majority Owner pertaining to the Borrower, the Project Facilities or the third party). The Borrower shall, if requested by the Controlling Person or the Majority Owner, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the Project Facilities or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties. Furthermore, the Borrower hereby indemnifies the Majority Owner, the Controlling Person, the Trustee, the Issuer and their respective affiliates, officers, directors, partners, members, agents, attorneys, and controlling persons and the underwriter group for any securities (collectively, the "Securities Group") and their respective affiliates, officers, directors, partners, members, agents, attorneys and controlling persons for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Majority Owner, the Trustee, the Issuer, its members, and the Securities Group for any liabilities to which the Majority Owner, the Controlling Person, the Issuer, the Trustee or the Securities Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Controlling Person, the Majority Owner, the Trustee, the Securities Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Majority Owner, the Trustee or the Securities Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the

commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

#### Section 10.13 Nonrecourse; Recourse Exceptions.

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Bond Documents, the Issuer agrees that, in connection with the exercise of any rights or remedies available to the Issuer under this Agreement or any of the other Bond Documents (other than the Environmental Indemnity and the other guaranty agreements of the Guarantors), the Issuer shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Bond Documents and to the collateral and other security held by the Trustee and all assets of the Borrower.

(b) Notwithstanding the preceding subsection, the Borrower and the Guarantor shall have full recourse and personal liability for, and be subject to, judgments and deficiency decrees arising from and to the extent of any loss or damage suffered or incurred by the Issuer, the Trustee, the Majority Owner, the Controlling Person or the Bondholders as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Trustee upon written demand during the existence of an Event of Default all Rents to which the Trustee is entitled under Article 2 of the Mortgage and the amount of all security deposits collected by Borrower from tenants then in residence. However, Borrower will not be personally liable for any failure described in this Section 10.13(b)(i) if Borrower is unable to pay to the Trustee all Rents and security deposits as required by the Mortgage because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(ii) the Borrower fails to apply all insurance proceeds or casualty or condemnation proceeds as required by the Bond Documents. However, Borrower will not

be personally liable for any failure described in this Section 10.13(b)(ii) if Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Bond Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project Facilities or its operation in accordance with the provisions of Sections 6.8 or 6.9 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers:

(A) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project Facilities and Borrower has not complied with the provisions of this Agreement.

(B) a transfer of property by devise, descent or operation of law occurs upon the death of a natural person in violation of the requirements set forth in the Bond Documents.

(C) the Borrower grants an easement that does not meet the requirements set forth in the Bond Documents.

(D) Borrower executes a Lease that does not meet the requirements set forth in the Bond Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantor;

(viii) the Borrower's misappropriation of funds or other Collateral;

(ix) any litigation or other legal proceeding related to the Obligations filed by any of Borrower, Guarantor or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, obstructs, hinders, enjoins or otherwise interferes with or frustrates the efforts of Trustee to exercise any rights and remedies available to Trustee as provided herein or in the other Bond Documents; or

(x) the Borrower fails to pay the fees and expenses pursuant to Section 2.2. hereof or the compensation of the Trustee pursuant to Section 7.2 of the Indenture.

(c) The Borrower and the Guarantor shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b) or 6.13(c) hereof;

(ii) the Borrower's taking any action which adversely affects the excludability of interest on the Bonds from gross income for federal income tax purposes, or the Borrower's omitting or failing to take any action required to maintain the excludability of interest on the Bonds from gross income for federal income tax purposes;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi)(B) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Issuer, Trustee, Controlling Person or the Bondholders;

(vi) the Borrower or the General Partner voluntarily files for bankruptcy protection under the Bankruptcy Code;

(vii) the Borrower or the General Partner voluntarily becomes subject to any reorganization, receivership, insolvency proceeding, or other similar proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(viii) the Project Facilities or any part of the Project Facilities becomes an asset in a voluntary bankruptcy or becomes subject to any voluntary reorganization, receivership, insolvency proceeding, or other similar voluntary proceeding pursuant to any other federal or state law affecting debtor and creditor rights;

(ix) an order of relief is entered against the Borrower or the General Partner pursuant to the Bankruptcy Code or other federal or state law affecting debtor and creditor rights in any involuntary bankruptcy proceeding initiated or joined in by a Related Party; or

(x) an involuntary bankruptcy or other involuntary insolvency proceeding is commenced against the Borrower or the General Partner (by a party other than the Trustee or the owner of any Bonds) but only if the Borrower or the General Partner, as applicable, has failed to use commercially reasonable efforts to dismiss such proceeding or has consented to such proceeding. "Commercially reasonable efforts" will not require any direct or indirect interest holders in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner.

(d) The Borrower and the Guarantor shall have full recourse and personal liability for actual damages as a result of all of the following:

(i) the performance of and compliance with all of Borrower's obligations under Sections 5.12 and 6.14 of this Agreement (relating to environmental matters) or the Borrower's failure to comply with the provisions of the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement;

(iii) any costs and expenses incurred by the Issuer, Trustee, the Controlling Person and the Majority Owner in connection with the collection of any amount for which Borrower is personally liable under this Section 10.13, including attorneys' fees and costs and the costs of conducting any independent audit of Borrower's books and records to determine the amount for which Borrower has personal liability; and

(iv) Borrower's indemnity obligations pursuant to Section 2.5, Section 2.6 and Section 10.13 hereof.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify or amend any obligation owed under any guaranty, master lease or indemnification agreement, including the Environmental Indemnity and the other guaranty agreements of the Guarantors, furnished in connection with financing of the acquisition, construction and equipping of the Project Facilities, recourse under which is not, by its terms, expressly limited in accordance with this Section 10.13.

(f) Notwithstanding anything to the contrary in this Agreement, the Note or any of the Bond Documents, the Issuer and the Trustee shall not be deemed to have waived any right which Issuer or Trustee may have under Section 506(a), 506(b), 1111(b) or any other provisions of the Bankruptcy Code to file a claim for the full amount of the Borrower's and Guarantor's Indebtedness under the Bond Documents or to require that all collateral shall continue to secure all of the Indebtedness under the Bond Documents.

**Section 10.14 Publicity.** The Borrower hereby authorizes the Controlling Person or the Majority Owner and their respective affiliates, without further notice or consent, to use the Borrower's and its affiliates' name(s), logo(s) and photographs related to the Project Facilities in its advertising, marketing and communications materials on a national and/or international basis. Such materials may include web pages, print ads, direct mail and various types of brochures or marketing sheets, and various media formats other than those listed (including without limitation video or audio presentations through any media form). In these materials, the Controlling Person or the Majority Owner also may discuss at a high level the types of services and solutions the Controlling Person or the Majority Owner has provided the Borrower. This authorization shall remain in effect unless the Borrower notifies the Controlling Person and the Majority Owner in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Majority Owner shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and Controlling Person and Majority Owner, as applicable.

**Section 10.15 Determinations by the Majority Owner and Controlling Person.** Subject to specific provisions in this Agreement to the contrary, in any instance under this Agreement where the consent or approval of the Controlling Person or the Majority Owner may be given or is required, or where any determination, judgment or decision is to be rendered by the Controlling Person or the Majority Owner under this Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Controlling Person or the Majority Owner (or its designated representative) at its sole and absolute discretion.

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

IN WITNESS WHEREOF, the Issuer, the Controlling Person and the Borrower have caused this Agreement to be duly executed and delivered on the day and year first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

**RED STONE SERVICER, LLC,**  
a Delaware limited liability company

By: \_\_\_\_\_  
Name:  
Title:

**EXHIBIT A**  
**FORM OF PROMISSORY NOTE**

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

FOR VALUE RECEIVED, SADDLESPUR PASS APARTMENTS, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the “Borrower”), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the “Issuer”) the principal sum of THIRTY-FOUR MILLION and no/100 Dollars (\$34,000,000), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and premium, if any, on the Bonds. All such payments of principal, interest and premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of BOKF, NA in Fort Worth, Texas, or its successor as trustee under the Indenture.

The principal amount and interest shall be payable two Business Days before the dates and in the amounts set forth on Schedule 3 to the Agreement (as hereinafter defined) and two Business Days before any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the “Note” referred to in the Loan Agreement, dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the “Agreement”) among the Borrower, Red Stone Servicing, LLC, as initial Controlling Person and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to BOKF, NA, as trustee (the “Trustee”) under the Indenture of Trust, dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the “Indenture”), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$34,000,000 in aggregate principal amount of the Issuer’s Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (the “Bonds”), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

On and subject to the terms and exceptions set forth in Section 10.13 of the Loan Agreement, the obligations under this Note are non-recourse to the Borrower and its partners.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note, as set forth in the Agreement. Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

**ENDORSEMENT**

Pay to the order of BOKF, NA, without recourse, as Trustee under the Indenture referred to in the within mentioned Agreement, as security for such Bonds issued under such Indenture. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Note.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS

By: \_\_\_\_\_  
Name:  
Title:

Dated: \_\_\_\_\_, 2021

**EXHIBIT B  
FORM OF WRITTEN REQUISITION  
OF THE BORROWER**

BORROWER:

PROJECT :

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$ \_\_\_\_\_

TO: BOKF, NA, as trustee  
777 Main Street, Suite 3500  
Fort Worth, TX 76102  
Attention: Corporate Trust Department

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

<u>Amount</u>	<u>Source</u>	<u>Payable to:</u>
	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

**Requisition - Contents and Attachments**

- Borrower's Representations and Warranties
- Contractor's Application and Certification for Payment (AIA Form G-702)
- Requisitions and Invoices Supporting Application
- Contractor's Requisition Certificate
- Architect's Requisition Certificate
- Borrower's Request for Payment
- Lien Waivers

## Representations and Warranties

1. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (i) the Controlling Person under the terms of the Loan Agreement dated as of January 1, 2021 (the "Agreement"), (ii) any Governmental Authority having jurisdiction over the Project Facilities or (iii) any other parties from whom such approval is required.
2. Construction of the Improvements has been performed substantially in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
3. As of the date hereof, the Borrower has executed change orders (increasing/decreasing) the cost of construction of the Improvements by \$\_\_\_\_\_ in the aggregate, has notified the Engineering Consultant of such changes and, to the extent necessary, has received any and all necessary approvals from the Controlling Person.
4. Funding of this Requisition shall be in accordance with the terms and provisions of the (i) Agreement, and (ii) the Indenture of Trust dated as of January 1, 2021, with respect to the Bonds.
5. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Trustee under previously approved requisitions have been paid to the Contractor and, to the Borrower's best knowledge, all subcontractors, vendors and suppliers; all other funds requisitioned by the Borrower and disbursed by the Trustee under previously approved requisitions have been expended for the purpose for which they were requisitioned.
6. All of the information submitted to the Controlling Person and the Trustee in connection with this Requisition is true and accurate in all material respects as of the date of submission.
7. The representations and warranties set forth in the Bond Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.
8. The Borrower represents and warrants that (i) there has occurred no Event of Default or, to Borrower's knowledge, any event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Bond Documents, (ii) except as previously disclosed by the Borrower to the Controlling Person, the Borrower has not received written notice from or been informed in writing by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (iii) with the exception of any Permitted Encumbrances and those being contested by the Borrower in accordance with the terms of the Bond Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (iv) the Bond Documents are in full force and effect.
9. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person.
10. The Borrower represents and warrants that, following payment of the amounts requested under this Requisition, not less than 95% of amounts paid from proceeds of the Bonds have been applied to the payment of Qualified Project Costs.

11. Attached hereto are copies of lien waivers from all such subcontractors and materialmen requisitioning payment under this Requisition, the originals of which have been delivered to the Title Insurance Company.
12. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

Approved:

RED STONE SERVICER, LLC, as Controlling Person

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Dated: \_\_\_\_\_

**Contractor's Application for Payment**

**Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO:           BOKF, NA ("Trustee")  
              Red Stone Servicer, LLC ("Controlling Person")

FROM:       Kittle Property Group, Inc. ("Contractor")

RE:           Construction of The Montage Apartments (the "Project Facilities") by Saddlepur Pass Apartments, LP ("Borrower").

We are the general contractor for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements and knowing that the Trustee and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1.     In reference to our contract dated \_\_\_\_\_, with Borrower for construction of the Improvements, and the Plans and Specifications therefor, no amendments, modifications or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
  
2.     Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - a.     Retainage not exceeding \_\_% of the value of labor incorporated into the Project Facilities and covered by applications submitted by us on account of the construction of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, is \$ \_\_\_\_\_); and
  
  - b.     [specify other claims, if any]
  
3.     The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:
  
4.     We have paid in full all our obligations to subcontractors, workmen, suppliers and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.

5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_ plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_ day of \_\_\_\_\_, 20\_\_.

KITTLE PROPERTY GROUP, INC.

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

Name:

Title:

**Architect's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO:           BOKF, NA ("Trustee")  
              Red Stone Servicer, LLC ("Controlling Person")

FROM:       \_\_\_\_\_ ("Architect")

RE:           Construction of The Montage Apartments (the "Project Facilities") by Saddlepur Pass Apartments, LP ("Borrower")

We are the architect for the Project Facilities and, to induce the Controlling Person to approve disbursements of Bond proceeds and other amounts by the Trustee to assist in funding construction of the Improvements, and knowing that the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1.     We inspected the Project Facilities on \_\_\_\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_ to be as follows:
  
2.     We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as follows:
  
3.     All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed or stored on site. All of the Work to date is hereby approved except as follows:
  
4.     We have examined the requisition being submitted herewith to you by Borrower, which requisition includes an Application for Payment from Kittle Property Group, Inc. ("Contractor") respecting construction of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_% of the value of labor and materials incorporated into the Improvements.
  
5.     We have been advised that as of this date there remains unexpended funds of \$ \_\_\_\_\_ which are available to fund construction costs, from which funds to pay the aforementioned Application for Payment will be deducted. In our opinion, such unexpended funds, after deduction of funds sufficient to cover both the current Application for Payment and the applicable retainage heretofore withheld and to become due on account of previous Applications, will be sufficient to pay for all construction costs reasonably required to complete the Work, provided that the amount advanced under the current application is, in fact, applied against obligations incurred for labor and materials heretofore furnished on account of construction of the Improvements.

6. All permits, licenses, approvals and the like required to complete construction of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:
7. Access to and egress from the Project Facilities and all improvements to be constructed or constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage and sanitary sewerage facilities and telephone, gas and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
8. To the best of our knowledge, there are no petitions, actions or proceedings pending or threatened to revoke, rescind, alter or declare invalid any laws, ordinances, regulations, permits, licenses or approvals for or relating to the Project Facilities.
9. No amendments, modifications or changes have been made to our contract dated \_\_\_\_\_ with the Borrower except such as have had your prior written approval.
10. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[ARCHITECT]

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

Name:

Title:

**Borrower's Request for Payment**

[attach spreadsheets in form provided by Red Stone]

**Lien Waivers**

**EXHIBIT C  
MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_\_\_ (the "Lease") by and between Saddlespur Pass Apartments, LP ("Lessor") and \_\_\_\_\_ ("Resident") for unit number \_\_\_\_\_ (the "Unit") in \_\_\_\_\_.

Resident acknowledges that it is necessary for Resident to provide appropriate climate control, keep the Unit clean, and take other measures to retard and prevent mold and mildew from accumulating in the Unit. Resident agrees to clean and dust the Unit on a regular basis and to remove visible moisture accumulation on windows, walls and other surfaces as soon as reasonably possible. Resident agrees not to block or cover any of the heating, ventilation or air- conditioning ducts in the Unit. Resident also agrees to immediately report to the management office: (i) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage or other common area; (ii) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (iii) any failure or malfunction in the heating, ventilation or air conditioning system in the Unit; and (iv) any inoperable doors or windows. Resident further agrees that Resident shall be responsible for damage to the Unit and Resident's property as well as personal injury to Resident and Occupants resulting from Resident's failure to comply with the terms of this Addendum.

A default under the terms of this Addendum shall be deemed a material default under the terms of the Lease, and Lessor shall be entitled to exercise all rights and remedies at law or in equity. Except as specifically stated herein, all other terms and conditions of the Lease shall remain unchanged. In the event of any conflict between the terms of this Addendum and the terms of the Lease, the terms of this Addendum shall control. Any term that is capitalized but not defined in this Addendum that is capitalized and defined in the Lease shall have the same meaning for purposes of this Addendum as it has for purposes of the Lease.

Resident or Residents:  
(all Residents must sign here)

Lessor:

SADDLESPUR PASS APARTMENTS, LP

\_\_\_\_\_  
Resident's Signature

By: \_\_\_\_\_  
Authorized Representative:

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

**EXHIBIT D  
SCHEDULE OF SERVICING FEES**

	Transaction Type	
<b><u>DISBURSEMENTS</u></b>		
	Disbursements	\$0
	NSF Fees	\$150
	Two-Party Checks	\$150
<b><u>EASEMENTS, CONDEMNATION &amp; CASUALTY</u></b>		
	Collateral Substitution	\$2,500 + Legal
	Condemnation	\$4,000 + Legal
	Easement	\$3,000 + Legal
<b><u>LEASES &amp; SNDA's</u></b>		
	Leasing Consents	\$2,500 + Legal if necessary
	Leasing Consents- Ex Post Facto	\$2,500 + Legal if necessary
	Leasing Consents w/ Negotiated SNDA	\$2,500 + Legal if necessary
	Negotiated SNDA/Estoppel (w/o Lease Consent)	\$750 + Legal
	RS Standard SNDA- No Changes to Form	\$750 + Legal
<b><u>MODIFICATIONS</u></b>		
	Assignments	\$5,000 Non-Refundable Review Fee + 1% Transfer Fee at closing or as stipulated in Loan Documents + Legal
	Stabilization or other timing Extensions	\$3,000 + Legal
	Forbearance	Negotiated
	Modifications and Amendments to Existing Loan Documents	\$3,000 + Legal
<b><u>OTHER</u></b>		
	Defeasance	Negotiated
	Other Credit Action	Negotiated
	Property Management Change	\$1,000
	Annual Fee	\$1,000
	Secondary/Subordinate Debt	\$5,000 + Legal
	Special Asset Management	\$1,500 per site visit + Travel
<b><u>PAYOFFS &amp; RELEASES</u></b>		
	Letter of Credit Actions	Negotiated
	Partial Property/Collateral Release	\$3,000 + Legal
	Payoff Preparation	\$750 + Legal
<b><u>TRANSFERS</u></b>		
	Assumption / Transfer of Beneficial Interest (Change in control)	\$5,000 Non-Refundable Review Fee + 1% Transfer Fee at closing or as stipulated in Loan Documents
	Transfer of Beneficial Interest/ Partnership Change	\$5,000 + Legal

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

**SCHEDULE 2**  
**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

**SCHEDULE 3**  
**SCHEDULE OF DEBT SERVICE PAYMENTS**

**SCHEDULE 4**

**SCHEDULE 5  
PLANS AND SPECIFICATIONS**

**SCHEDULE 6**  
**PERMITS AND APPROVALS**

**SCHEDULE 7**  
**CONDITIONS TO ADVANCES**

A. CONDITIONS TO INITIAL ADVANCE. The right of Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Construction Documents. Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Contract, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.

2. Subcontracts; Other Contracts. The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all contractors, subcontractors, engineers, consultants and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all development, management, brokerage, sales or leasing agreements for the Project Facilities.

3. Validity of Liens. The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Assignment of Leases, and the General Partner Pledge shall be effective to create in the Trustee a legal, valid and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries necessary to create, maintain and perfect such liens and security interests shall have been duly effected.

4. Deliveries. The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.

(a) Plans and Specifications. Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the Construction Contract satisfactorily provides for the construction of the Improvements.

(b) Title Policy. The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

(c) Other Insurance. Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the construction of the Improvements.

(d) Evidence of Sufficiency of Funds. Evidence that the proceeds of the Bonds, together with Required Equity Funds delivered to the Trustee on the Issue Date or to be delivered after the Issue Date pursuant to the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to construct the Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

5. Evidence of Access, Availability of Utilities, Project Approvals. Evidence as to:

- (a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;
- (b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;
- (c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and
- (d) the obtaining of all Project Approvals which are required, necessary or desirable for the commencement of construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

6. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the Controlling Person, which report or reports shall indicate a condition of the Land and any existing improvements thereon in compliance with all Requirements and in all respects satisfactory to the Controlling Person in its sole discretion and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

7. Soils Report. A soils report for the Project Facilities prepared by a soils engineer approved by the Controlling Person, which report shall indicate that based upon actual surface and subsurface examination of the Project Facilities, the soils conditions are fully satisfactory for the proposed construction and operation of the Improvements and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely. A termite or other insect infestation report prepared by a firm approved by the Controlling Person, which report shall indicate that based upon actual inspection of the Project Facilities either (i) that no termite or other insect infestation at the Project Facilities, or (ii) that termite or insect infestation is present and recommended steps for extermination and remediation of the conditions at the Project Facilities, and upon which report or reports the Controlling Person, the Trustee and the initial Majority Owner shall be expressly entitled to rely.

8. Survey and Taxes. A Survey of the Land (and any existing improvements thereon) and Surveyor's Certificate, and evidence of payment of all real estate taxes and municipal charges on the Land (and any existing improvements thereon) which were due and payable prior to the Issue Date.

9. Deposit of Funds. The initial installment of Required Equity Funds shall have been delivered to the Trustee and deposited in the Project Fund.

10. Requisition. A Requisition complying with the provisions of this Agreement and the Indenture.

11. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.

12. Engineering Consultant Report. The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the Plans and Specifications, (ii) the Plans and Specifications have been received and approved by each Governmental Authority to which the Plans and Specifications are required under applicable Legal Requirements to be submitted, (iii) the Construction Contract satisfactorily provides for the construction of the Improvements, and (iv) in the opinion of the Engineering Consultant, construction of the Improvements

can be completed on or before the Completion Date for an amount not greater than the amount allocated for such purpose in the Development Budget.

13. Searches. The Controlling Person shall have received searches from a recognized search firm (which shall be updated from time to time at Borrower's expense upon request by the Controlling Person) that searches of the public record disclosed (a) no conditional sales contracts, security agreements, chattel mortgages, leases of personalty, financing statements or title retention agreements which affect the collateral, (b) no bankruptcy filings on the part of any of the Borrower, the General Partner and the Guarantor (collectively, the "Obligors"), and (c) no litigation with respect to the Project Facilities or any of the Obligors that would materially adversely affect the obligations of the Obligors hereunder.

14. Mechanics' Liens. In the event that for any reason the initial advance is not funded on the Issue Date, the Controlling Person may withhold or refuse to approve the initial advance if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.

15. Notices. All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of construction of the Improvements shall have been filed.

16. Appraisal. The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person, showing that the original face amount of the Bonds does not exceed 89.5% of the value of the Project Facilities, assuming completion in accordance with the Plans and Specifications and including the value of the low income housing tax credits and favorable financing.

17. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial advance, and on the date of the initial advance there shall exist no Event of Default.

18. Representations and Warranties. The representations and warranties made by the Obligors in the Bond Documents, the General Partner Pledge, or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all material respects when made and shall be true and correct in all material respects on the date of the initial advance.

19. Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Bond Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.

20. [intentionally omitted].

B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.

2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.

3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Bond Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all material respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Bond Documents).
4. No Damage. The Improvements shall not have been injured or damaged by fire, explosion, accident, flood or other casualty.
5. Receipt by Controlling Person. The Controlling Person shall have received:
  - (a) Requisition. A Requisition in meeting the requirements of this Agreement and the Indenture;
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a “Down Date Endorsement”) shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any Bond proceeds disbursed from the Capitalized Interest Account of the Project Fund;
6. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in substantial accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;
7. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen or suppliers satisfactory to the Controlling Person.
8. Mechanics’ Liens. The Controlling Person may withhold or refuse to fund any advance hereunder if any mechanic’s lien has been filed or recorded and not bonded over or otherwise collateralized to the satisfaction of the Controlling Person, or if notice of intention to record or file any such lien has been received.
9. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Trustee.
10. Release of Retainage. In addition to the conditions set forth in this Section, the Controlling Person’s obligation to authorize any advance of Retainage shall be subject to receipt by the Controlling Person of evidence of Final Completion.

**SCHEDULE 8**  
**FORM OF COMPLETION CERTIFICATE**

\_\_\_\_\_, 20\_\_

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, Texas 78701  
Attention: Director of Multifamily Bonds

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

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

Re: The Montage Apartments (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to BOKF, NA, as trustee (the “Trustee”), and Red Stone Servicer, LLC as Controlling Person, acting on behalf of the Majority Owner of the Bonds issued in connection with the Project Facilities (the “Controlling Person”) that “Final Completion” of the Project Facilities (as defined in the Indenture of Trust dated as of January 1, 2021 (the “Indenture”) by and between the Trustee and Texas Department of Housing and Community Affairs (the “Issuer”)) has been attained as of the date hereof and all conditions relating thereto as set forth in the Loan Agreement dated as of January 1, 2021 between the undersigned and the Issuer (the “Loan Agreement”) have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture or the Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect’s certificate as required by clause (iv) of the definition of “Final Completion” contained in the Indenture.
2. Attached hereto are true, complete and correct copies of all use and occupancy permits issued in connection with the Project Facilities (the “Permits”) as referenced in clause (ii) of the definition of “Final Completion” contained in the Indenture. The Permits are all of the permits, licenses or approvals required for the occupancy of the Project Facilities as a multifamily residential facility. No appeal, action or proceeding challenging any of the Permits has been filed; there is no pending claim, litigation or governmental proceeding challenging the Permits.
3. Attached hereto is a complete schedule of all Punchlist Items referenced in clause (ii) of the definition of “Final Completion” contained in the Indenture. This schedule of Punchlist Items meets

the requirements and limitations set forth in the definition of "Final Completion" contained in the Indenture for Punchlist Items. The undersigned will promptly complete all Punchlist Items.

4. Attached are lien waivers required by clause (vii) of the definition of "Final Completion" contained in the Indenture.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Trustee, subject only to Permitted Encumbrances, as required by clause (ix) of the definition of "Final Completion" contained in the Indenture.

6. Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Trustee and the Controlling Person and meeting the requirements clause (ix) of the definition of "Final Completion" contained in the Indenture.

7. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Loan Agreement.

8. Attached hereto is evidence of payment of all Impositions which are due and payable.

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

Accepted and agreed to by:

RED STONE SERVICER, LLC, as Controlling  
Person

By: \_\_\_\_\_  
Name:  
Title:

## **Schedule of Attachments to Completion Certificate**

Architect's Completion Certificate

Occupancy Permits

Schedule of Punchlist Items

Lien Waivers

Endorsement to Title Policy

As Built Survey

Insurance Certificates

Evidence of Payment of Impositions

**SCHEDULE 9**  
**FORM OF USE OF PROCEEDS CERTIFICATE**

\_\_\_\_\_, 20\_\_\_\_

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, Texas 78701  
Attention: Director of Multifamily Bonds

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

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

Re: The Montage Apartments (the “Project Facilities”)

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to BOKF, NA, as trustee (the “Trustee”), and Red Stone Servicer, LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the “Controlling Person”) that (i) no less than 95% of the Net Proceeds of the Bonds has been spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code. Attached hereto is a schedule of expenditures showing all costs of the Project Facilities, the amounts expended for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Bonds expended in compliance with the requirements of the Internal Revenue Code; and (ii) the undersigned has expended, within two (2) years of the later of the date the Project Facilities were acquired or the date of issuance of the Bonds, from proceeds of the Bonds or other sources, an amount equal to at least 15% of the “portion of the cost of acquiring such building (and equipment) financed with the net proceeds of the Bonds” for “rehabilitation expenses” within the meaning of Section 147(b) of the Code. Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Indenture of Trust dated as of January 1, 2021 between the Trustee and the Texas Department of Housing and Community Affairs.

WITNESS WHEREOF, the undersigned has duly executed this Use of Proceeds Compliance Certificate as of the day and year first above written.

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

**Schedule of Attachments to Use of Proceeds Compliance Certificate**

Evidence of Use of Proceeds

**SCHEDULE 10**  
**FORM OF STABILIZATION CERTIFICATE**

\_\_\_\_\_, 20\_\_

Texas Department of Housing and Community Affairs  
221 E. 11th Street  
Austin, Texas 78701  
Attention: Director of Multifamily Bonds

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

Red Stone Servicer, LLC, as Controlling Person  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Kiki Mastorakis

Re: The Montage Apartments (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to BOKF, NA, as trustee (the "Trustee") and Red Stone Servicer, LLC, as Controlling Person, acting on behalf of the Majority Owner of the bonds issued in connection with the Project Facilities (the "Controlling Person") that the date of Final Completion was \_\_\_\_\_, 20\_\_ and:

The undersigned hereby represents and warrants that:

1. The Improvements have been \_\_\_% occupied by tenants meeting the requirements of the Bond Documents in each of the prior three (3) consecutive months.
2. The ratio of Stabilized NOI in each of the prior three (3) consecutive months to maximum principal, interest, Issuer fees and Trustee fees payable in any month [other than the month in which the Maturity Date occurs] on the amount of Bonds Outstanding is \_\_\_ to 1.0.
3. No Event of Default or no event which, with the passage of time or the giving of notice or both, would constitute an Event of Default, has occurred and is continuing under the Bond Documents, the General Partner Pledge, or the Guarantor Documents.
4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Regulatory Agreement.
5. There shall have been redeemed not less than \$9,000,000 in principal amount of Bonds together with such greater amount, if any, as shall be required to be redeemed pursuant to Section 2.12(b)(iii)(2) of the Indenture.

6. Stabilization [has/has not] occurred.
7. Attached hereto is \_\_\_\_\_ showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Indenture of Trust dated as of January 1, 2021 between the Trustee and Texas Department of Housing and Community Affairs.

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

Accepted and agreed to by:

RED STONE SERVICER, LLC, as Controlling  
Person

By: \_\_\_\_\_  
Name:  
Title:

## Stabilization Spreadsheet

**SCHEDULE 11**  
**ANNUAL EXPENSES**

**SCHEDULE 12**  
**RENT ROLL**

**SCHEDULE 13**  
**INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

The named insured in each policy must be the Borrower.

All policies must be written on a per occurrence basis except for boiler and machinery which may be written on a per-accident basis. Each policy must have a cancellation provision requiring the carrier to notify the Trustee and the Controlling Person at least 30 days in advance of any policy reduction or cancellation for any reason.

Use of an Acord form 28, 27 or other form are acceptable as temporary evidence of coverage provided the form states "This is evidence that insurance as identified below has been issued, is in force, and conveys all the rights and privileges afforded under the policy" and uses a cancellation clause section "Should the policy be terminated, the company will give the additional interest identified below 30 days written notice, and will send notification of any changes to the policy that would affect that interest, in accordance with the policy provisions or as required by law" Use of an Acord form stating "...matter of information only..." and "...the issuing insurer will endeavor to mail notice..." are unacceptable.

Blanket Insurance policies are acceptable but must comply with certain requirements. Please see the Blanket Insurance section for details on page S13-15.

Terrorism coverage is required for property and general liability and excess/umbrella coverage unless the Controlling Person grants prior written waiver and must meet the same requirements under the property, general liability and excess/umbrella coverage requirements provided in the sections following.

Each Policy must be for a term of not less than one year. All existing or new policies must be paid in full and cannot be financed.

### Carrier Rating Requirement

Each insurance carrier providing property damage and/or liability insurance, whether admitted or non- admitted, must fall into one of the acceptable Financial Size Categories and meet the applicable minimum Financial Strength Rating for A.M. Best and, if the aggregate carrier exposure is greater than \$25 million, the minimum rating from one of the following: Fitch, Inc. Standard & Poor’s Rating Services, or Moody’s Investors Service. Details are in the chart below:

Aggregate Carrier Exposure	Minimum A.M. Best Financial Strength Rating	AND	Minimum A.M. Best Financial Size Category	OR	Minimum Rating from Fitch Inc., Standard & Poor’s Rating Services, or Moody’s
Less than \$5 million	A-	AND	VII	OR	A- by Fitch Inc. OR A- by Standard & Poor’s Ratings Services OR A3 by Moody’s Investors Service Inc.
Greater than \$5 million & Less than \$25 million	A-	AND	VIII	OR	A- by Fitch Inc. OR A- by Standard & Poor’s Ratings Services OR A3 by Moody’s Investors Service Inc
Greater than \$25 million	A-	AND	IX	OR	A- by Fitch Inc. OR A- by Standard & Poor’s Ratings Services OR A3 by Moody’s Investors Service Inc Poor’s Ratings Services

Standard insurance carrier rating requirements and minimum financial size categories are based on the aggregate carrier exposure, which is defined in the chart below.

**Aggregate Carrier Exposure (for each individual carrier)**

Insurance Type		
Property damage insurance	Specific Insurance or policy for one property	Required building coverage limits + required Business Income/Rental Value Insurance
	Blanket Insurance or master program from one carrier	Blanket Insurance or master program limit
	An individual policy, Blanket Insurance or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates
Liability Insurance	Specific Insurance or policy for one Property	Total aggregate limits (general liability + excess/umbrella)
	Liability insurance for multiple properties, or master program from one carrier	Total aggregate limits (general liability + excess/umbrella)
	An individual policy, liability insurance policy for multiple properties or master program with more than one carrier participating with layered limits	Total limit provided by the carrier in all layers in which the carrier participates

***Property Damage (“All Risk”) Insurance***

<b>What’s Required?</b>	“All Risk” or Cause of Loss-Special Form which includes an agreed value clause or no-coinsurance provision. Inflation guard endorsement (where available)	
<b>When Does it Apply?</b>	All property types	
<b><u>Maximum Deductible</u></b>	<b>Replacement Cost</b>	<b>Maximum Deductible*</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
<b><u>Maximum Deductible for Blanket Insurance</u></b>	One percent of the aggregate Replacement Cost of the covered properties, to a maximum deductible of \$250,000	
<b>Amount of Coverage</b>	<p>100% Replacement cost coverage. Replacement cost must be certified annually. The most common resources to determine the estimated replacement cost of the property may include one of the following resources:</p> <p><b>Insurance Company</b>-the replacement cost estimate provided by the insurance company that has underwritten or will underwrite the property damage insurance.</p> <p><b>Appraiser</b>-a qualified commercial real estate appraiser experienced in the market</p> <p><b>Contractor</b>-reputable commercial contractor with experience constructing and/or reconstructing properties in the area similar for the property</p> <p><b>Third Party Vendor</b>-a third party vendor that specializes in replacement cost calculations or publishes data used for this purpose</p>	
* A higher deductible may be available if certain qualifications are met. Please contact the insurance department for list of criteria.		

***Boiler and Machinery Insurance***

<b>What's Required?</b>	Boiler and Machinery Insurance	
<b>When Does it Apply?</b>	Properties with a central HVAC system where steam boilers and/or other pressurized systems are in operation and are regulated by the State where the property is located. The insurance must cover loss or damage from explosion of steam boilers, pressure vessels and/or other steam equipment now or installed at a later date.	
<b>Amount of Coverage</b>	Replacement cost of the building housing the central HVAC system, including the replacement cost of the central HVAC system. If coverage is provided by a different carrier than the property damage policy a joint loss agreement is required by both policies.	
<b>Maximum Deductible</b>	<b>Replacement Cost of the Property</b>	<b>Maximum per occurrence deductible</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million	\$50,000
	Greater than \$5 million but less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

***Business Income/Rent Loss Coverage***

<b>What's Required?</b>	Business Income/Rental Value Insurance, if the business income/rental value insurance is not included in the primary or other property damage policy (for example, it may not be included in the coverage provided by a flood, earthquake, or windpool insurance policy), a separate policy must be obtained to include business income/rental value for such covered losses.	
<b>When Does it Apply?</b>	All property types	
<b>Amount of Coverage</b>	<b>UPB (unpaid principal balance) and number of stories</b>	<b>Minimum number of months of effective gross income</b>
	Mortgages with UPB of \$50 mil or less	12
	Mortgages with a UPB of \$50 million or greater	18
<b>Extended Period of Indemnity required</b>	<b>UPB and number of stories</b>	<b>Minimum extended period of indemnity</b>
	Mortgages with UPB of \$50 mil or less	None Required
	Mortgages with a UPB of \$50 million or greater	90 days
<b>Maximum Deductible</b>	7 days	

***Earthquake Insurance***

<b>What's Required?</b>	<b>Earthquake Insurance</b>
<b>When Does it Apply?</b>	A property located in a seismic zone 3 or 4 with a PML of 20% or greater
<b>Amount of Coverage</b>	See section regarding Earthquake Insurance page 20
<b>Maximum Deductible</b>	See section regarding Earthquake Insurance page 20

***Flood Insurance***

<b>What's Required?</b>	Flood Insurance	
<b>When Does it Apply?</b>	Flood insurance is required for Property improvements located in an area identified as a Special Flood Hazard Area (SFHA)	
<b>Amount of Coverage</b>	100% of the full replacement cost. If 100% of the full replacement cost exceeds NFIP coverage limit, additional flood insurance from another insurer is required. Business Income/Rental Value Insurance is also required.	
<b>Deductible for NFIP coverage</b>	Must comply with NFIP deductible for the type of improvement insured.	
<b>Maximum Deductible for private flood insurance</b>	<b>Property replacement cost</b>	<b>Maximum deductible</b>
	Less than \$10 million	\$50,000
	Equal to or greater than \$10 million	\$75,000
<b>Maximum Deductible for flood insurance under Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$5 million Greater than \$5 million but less than \$7.5 million Greater than \$7.5 million	\$50,000  \$75,000  One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

*Ordinance and Law Coverage*

<b>What's Required?</b>	Ordinance and Law Coverage
<b>When Does it Apply?</b>	All property types that represent nonconforming uses under current building, zoning, or land use laws or ordinances.
<b>Amount of Coverage</b>	<ol style="list-style-type: none"><li>1. Loss of Undamaged Portion of the Building-full replacement cost less the damage threshold of the local building ordinance. If threshold is not available, 100% of the full replacement cost of the property.</li><li>2. Demolition Cost-estimated full demolition expense of the single largest building, or 10% of full replacement cost</li><li>3. Increased Cost of Construction-no less than 10% of full replacement cost</li></ol>
<b>Loss of Income</b>	Business Interruption/Rent Loss must be endorsed to cover income/rent loss arising out of the increased time necessary to repair or rebuild

### *Windstorm Coverage*

<b>What's Required?</b>	If the "All Risk" property damage insurance excludes wind-related events, a separate windstorm insurance policy must be obtained meeting the same requirements as the Property Damage ("All Risk") Insurance. If coverage is provided by a state windpool policy, see State Windpool Policy Requirements on page 19.	
<b>When Does it Apply?</b>	Required for all properties	
<b>Amount of Coverage</b>	100% of replacement cost, either not contain a coinsurance clause or contain a coinsurance clause that is offset or suspended by an Agreed Amount endorsement. If an Agreed Amount endorsement is used the Agreed Amount must be equal to replacement cost	
<b>Maximum Deductible</b>	<p style="text-align: center;"><b>Property replacement cost</b></p> <p style="text-align: center;">Less than \$10 million</p> <p style="text-align: center;">Equal to or greater than \$10 million</p>	<p style="text-align: center;"><b>Maximum Deductible</b></p> <p style="text-align: center;">\$50,000</p> <p style="text-align: center;">\$75,000</p> <p style="text-align: center;">When expressed as a percentage, the max deductible per occurrence is 5% of the Total Insurable Value of the property</p>
<b>Maximum Deductible for Blanket Insurance</b>	<p style="text-align: center;">One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000</p> <p style="text-align: center;">When expressed as a percentage, the max deductible per occurrence is 5% of the Total Insurable Value of the property</p>	

### *Commercial Liability Insurance*

<b>What's Required?</b>	Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate <u>in addition to</u> excess/umbrella coverage as indicated below. General aggregate limit must apply per location.		
<b>When Does it Apply?</b>	All property types. If a property contains any special hazard that is excluded from the CGL or other liability policy, such as garage operation or swimming pool, supplemental coverage for the hazard must be obtained		
<b>Maximum Deductible</b>	<p>\$35,000 for policies with individual or combined mortgage balances less than \$25 million</p> <p>\$50,000 for policies with individual or combined mortgage balances over \$25 million</p> <p>\$250,000 for blanket policies</p> <p>\$10,000 for umbrella liability/excess liability policies</p>		
<b>Amount of Coverage in the annual aggregate for <u>one</u> property</b>	<p><b>Number of stories</b></p> <p><b>Minimum per occurrence and annual aggregate</b></p> <p>1 to 3 stories \$1 million</p> <p>4 to 10 stories \$3 million</p> <p>11 to 20 stories \$5 million</p> <p>21 stories and up \$10 million</p>		
<p><b>Amount of Coverage in the annual aggregate for <u>more than one</u> property</b></p> <p><b>* Based on the property with the greatest number of stories</b></p>	<b>Number of Properties</b>	<b>Number of Stories</b>	<b>Minimum umbrella or excess liability limits</b>
	1	1 to 3	\$1 million
		4 to 10	\$3 million
		11 to 20	\$5 million
		>20	\$10 million

	2 to 3	1 to 3 4 to 10 11 to 20 >20	\$3 million \$5 million \$10 million \$15 million
	4 to 10	1 to 3 4 to 10 11 to 20 >20	\$5 million \$10 million \$15 million \$20 million
	<b>11 to 20</b>	<b>1 to 3</b> <b>4 to 10</b> <b>11 to 20</b> <b>&gt;20</b>	\$10 million \$15 million \$20 million \$25 million
	<b>&gt;20</b>	<b>1 to 3</b> <b>4 to 10</b> <b>11 to 20</b> <b>&gt;20</b>	\$15 million \$20 million \$25 million \$50 million

***Liability Insurance Requirements for Seniors Housing Properties***

<b>What's Required?</b>	<p>Minimum coverage of \$1 million per occurrence and \$2 million in the annual aggregate <u>in addition to</u> excess/umbrella coverage as indicated below. General aggregate limit must apply per location.</p> <p>Policy may be written on a “claims made” or “an occurrence-based” policy. If coverage is changed from a “claims made” policy to an “occurrence-based” policy you must notify our office in writing for prior approval.</p>	
<b>Assisted Living Residences, Properties with Assisted Living Care, and</b>	<b>Number of licensed beds</b>	<b>Minimum per claim/occurrence</b>
<b>Properties that provide Skilled Nursing, Alzheimer's Disease or Dementia Care</b>	<p>Less than or equal to 100 beds</p> <p>Greater than 100 but less than or equal to 500</p> <p>Greater than 500 but less than or equal to 1,000</p> <p>Greater than 1,000</p>	<p>\$1 million</p> <p>\$5 million</p> <p>\$10 million</p> <p>\$25 million</p>
<b>Maximum Deductible</b>	<p>\$100,000 for policies insuring 500 or fewer licensed beds</p> <p>\$250,000 for policies insuring more than 500 licensed beds</p>	
<b>Additional Insured</b>	<p>Freddie Mac is not be to named as an additional insured on professional liability insurance policies</p>	

***Vehicle Liability Insurance***

<b>When Does it Apply?</b>	If the Borrower and/or Property owns, leases, hires, rents, borrows, uses or has another use on its behalf a vehicle in conjunction with the operation of the property.
<b>Amount of Coverage</b>	\$1 million per accident

***Cooperative Fidelity Bond/Crime Insurance***

<b>What's Required</b>	Maintain fidelity bond/crime insurance coverage for the Co-op's employees, officers and board members
<b>When Does it Apply?</b>	Cooperative Corporations
<b>Amount of Coverage</b>	Two times the monthly gross association fee plus reserves or Six times the monthly gross association fee
<b>Maximum Deductible</b>	\$25,000

***Cooperative Directors and Officers Liability Insurance***

<b>What's Required</b>	Maintain directors' and officers' liability insurance
<b>When Does it Apply?</b>	Cooperative Corporations
<b>Amount of Coverage</b>	\$1 million per occurrence
<b>Maximum Deductible</b>	\$25,000

***Builder's Risk Insurance***

<b>What's Required?</b>	Builder's Risk Insurance	
<b>When Does it Apply?</b>	Required for any additions, alternations, rehabilitations, new construction or repairs to the property during any construction. Amount equal to 100% of contracts and materials. Requirement may be met with either an extension of the standard property damage insurance policy or a separate Builder's Risk policy.	
<b>Amount of coverage</b>	Coverage must be at least 100% of the sum of the contract or contracts and all materials to complete the work. Policy must cover fire and other perils within the scope of a policy known as a "Causes of Loss-Special Form" or "All Risk" policy.	
<b>Maximum Deductible</b>	<p align="center"><b>Replacement Cost of the property</b> Less than \$10 million</p> <p align="center">Equal to or greater than \$10 million</p>	<p align="center"><b>Maximum per occurrence deductible</b> \$50,000</p> <p align="center">\$75,000</p>
<b>Maximum Deductible for Blanket Insurance</b>	<p align="center"><b>Aggregate Replacement Cost of the covered properties</b> Equal to or less than \$ 5 million</p> <p align="center">Greater than \$5 million but less than \$7.5 million</p> <p align="center">Greater than \$7.5 million</p>	<p align="center"><b>Maximum per occurrence deductible</b> \$50,000</p> <p align="center">\$75,000</p> <p align="center">One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000</p>

***Localized Perils Insurance***

<b>What's Required?</b>	Sinkhole, mine subsidence, volcanic eruption or avalanche insurance	
<b>When Does it Apply?</b>	For a property located in an area prone to localized perils, such as sinkhole, mine subsidence, volcanic eruption and avalanche. Sinkholes are particularly common in Florida, Mine subsidence may occur in any location where there is, or has been, subterranean mining, but is particularly common in Pennsylvania, Ohio, Illinois and Colorado	
<b>Amount of Coverage</b>	100% Replacement Cost of the buildings affected by the localized peril	
<b>Maximum Deductible</b>	<b>Replacement Cost of the property</b>	<b>Maximum per occurrence deductible</b>
	Less than \$10 million	\$50,000
	Equal to or Greater than \$10 million	\$75,000
<b>Maximum Deductible for Blanket Insurance</b>	<b>Aggregate Replacement Cost of the covered properties</b>	<b>Maximum per occurrence deductible</b>
	Equal to or less than \$ 5 million	\$50,000
	Greater than \$5 million but equal to or less than \$7.5 million	\$75,000
	Greater than \$7.5 million	One percent of the aggregate Replacement Cost of the covered properties to a maximum deductible of \$250,000

***Sewer and Drain Insurance***

<b>What's Required?</b>	Sewer and drain backup insurance
<b>When Does it Apply?</b>	If the property is prone to periodic sewer or drain back-ups caused by ground water, public or private water systems or public sewers external to the property
<b>Amount of Coverage and Deductible</b>	Must be consistent with coverage obtained by other lenders in the area

## ***Blanket Insurance Guidelines***

We must determine that the blanket limits provide adequate coverage. The property must be identifiable in the policy and/or associated schedule including the values specific to the location. In addition we need the values for all locations on the policy or at a minimum the values by zip code so that we can evaluate the concentration of risk.

All blanket limits must equal at least the greater of 1) the largest Total Insurable Value within the Borrower's portfolio covered by the blanket limit or 2) 10% of the aggregate Total Insurance Value of the Borrower's portfolio of properties covered by the blanket limit.

**Windstorm** blanket limit must equal at least the greater of 1) The largest Total Insurable Value within the Borrower's portfolio covered by the blanket limit or 2) For properties located in Tier 1 Windstorm Risk counties, 40% of the aggregate Total Insurable Value within the state covered by the blanket limit. For All properties located outside Tier 1 counties 10% of the aggregate Total Insurable Value of the Borrower's portfolio of properties covered by the blanket limit.

**Flood** blanket limit must equal at least the greater of 1) the sum of the max flood insurance coverage available from NFIP for each building located in SFHA "A" or "V" or 2) the largest Total Insurable Value within the Borrower's portfolio that requires flood insurance or 3) 40% of the largest aggregate Total Insurable Value within any MSA that contains properties for which flood insurance is required.

## State Windpool Policy Requirements

### *Windstorm insurance through a State Windpool*

The following requirements in 1, 2 or 3 below must be met if windstorm coverage can only be obtained from a State Windpool:

1. If the policy issued by the State Windpool does not contain a coinsurance clause, the policy must be written in an amount no less than 100% of the estimated replacement cost of the insurable improvements without any deductible for depreciation.
2. If the policy issued by the State Windpool contains a coinsurance clause that is offset or suspended by an agreed amount provision:
  - The policy must be written in an amount no less than 100% of the estimated replacement cost of the insurable improvements without any deduction for depreciation and
  - The agreed amount must equal the estimated replacement cost
3. If the policy issued by the State Windpool contains a coinsurance clause that is not offset or suspended by an agreed amount endorsement provision, then all of the following are required:
  - The policy must be written in an amount no less than 100% of the estimated replacement cost of the insurable improvements without any deduction for depreciation.
  - The replacement cost estimate must meet the requirements for the guide
  - The servicer must document in the mortgage file that there is a replacement cost estimate dated within 12 months of the requires for coinsurance
  - The policy must contain a coinsurance clause less than or equal to 90% (such as 70% or 80%)

In addition, the guarantor must sign an additional guaranty of any losses incurred by Freddie Mac associated with the borrower's failure to maintain the required windstorm coverage.

If business income/rental value insurance is not included in the State Windpool insurance policy, a separate business income/rental value insurance policy for windstorm coverage must be obtained.

### *Earthquake Insurance*

If the property is located in a Seismic Risk Zone 3 or 4 and the PML is greater than 20% but less than or equal to 40% earthquake insurance is required. For a property in which earthquake insurance is required, the coverage must be the greater of \$1 million or 150% of the difference between the projected loss for the property using the actual PML and the projected loss with a 20% PML. A reserve account may be required for certain deductibles based on the borrower equity and the maximum deductible.

Required to obtain separate business income/rental value insurance and ordinance and law coverage if earthquake insurance does not provide that coverage for earthquake damage.

For example:

Replacement cost for the property=\$30 million  
Actual PML=30%

Minimum required earthquake insurance=\$4.5 million

Replacement Cost X Actual PML	\$30 million X 30%	=	\$9 million
Replacement Cost X 20%	\$30 million X 20%	=	\$6 million
			\$3 million
Difference X 150%	\$3 million X 150%	=	\$4.5 million

### **Maximum Deductibles**

<b>Borrower Equity</b>	<b>Maximum Deductible</b> (a reserve account may be required for certain deductibles)	<b>Reserve Account</b>
Equal to or less than 30%	5% of coverage	Not required
Equal to or less than 30%	10% of coverage	Required for 5% of the coverage amount
Equal to or less than 30%	15% of coverage	Required for 10% of the coverage amount
Greater than 30%	15% of coverage	Not required

REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,

BOKF, NA,  
a national banking association,  
as Trustee,

BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION,  
a Texas nonprofit public facility corporation,  
as Fee Owner

and

SADDLESPUR PASS APARTMENTS, LP,  
a Texas limited partnership,  
as Borrower

Dated as of January 1, 2021

Relating to

\$34,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments)  
Series 2021

TABLE OF CONTENTS

	Page
Section 1.	<u>Definitions and Interpretation</u> ..... 2
Section 1A.	<u>Acquisition, Construction and Equipping of the Development</u> ..... 5
Section 2.	<u>Tax-Exempt Status of the Bonds</u> ..... 6
Section 3.	<u>Modification of Tax and State Restrictive Covenants</u> ..... 8
Section 4.	<u>Housing Development During the State Restrictive Period</u> ..... 9
Section 4.A.	<u>Repairs and Maintenance Required by State Law</u> ..... 11
Section 4.B.	<u>Development Amenities</u> ..... 11
Section 5.	<u>[Reserved]</u> ..... 11
Section 6.	<u>Persons With Special Needs</u> ..... 11
Section 7.	<u>Consideration</u> ..... 11
Section 8.	<u>Reliance</u> ..... 11
Section 9.	<u>Development in Bexar County</u> ..... 12
Section 10.	<u>Sale or Transfer of the Development or Change in General Partner</u> ..... 12
Section 11.	<u>Term</u> ..... 13
Section 12.	<u>Covenants to Run With the Land</u> ..... 14
Section 13.	<u>Burden and Benefit</u> ..... 14
Section 14.	<u>Uniformity; Common Plan</u> ..... 14
Section 15.	<u>Default; Enforcement by the Trustee and Issuer</u> ..... 14
Section 16.	<u>Enforcement of Certain Provisions by Tenants and other Private Parties</u> ..... 15
Section 17.	<u>The Trustee</u> ..... 16
Section 18.	<u>Recording and Filing</u> ..... 16
Section 19.	<u>Reimbursement of Expenses</u> ..... 16
Section 20.	<u>Governing Law</u> ..... 17
Section 21.	<u>Amendments</u> ..... 17
Section 22.	<u>Notices</u> ..... 17
Section 23.	<u>Severability</u> ..... 17
Section 24.	<u>Multiple Counterparts</u> ..... 17
Section 25.	<u>Authorization to Act for Issuer</u> ..... 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	Form of Multi Family Mortgage Revenue Bond Qualified Project Period Certificate... D-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 January 1, 2021 is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer” or “Department”), a public and official agency of the State of Texas (the “State”), **BOKF, NA**, a national banking association organized and existing under the laws of the United States of America, as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), **BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION**, a Texas nonprofit public facility corporation (together with its permitted successors and assigns, the “Fee Owner”) and **SADDLESPUR PASS APARTMENTS, 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 financing a multifamily residential rental housing development located on the real property described in Exhibit A hereto (as defined herein, the “Development Site”) and described in Exhibit B-1 hereto (as defined herein, 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 Fee Owner owns fee simple title to the real property described in Exhibit A hereto and the Borrower owns a leasehold estate pursuant to the Ground Lease (as hereinafter defined), and the Fee Owner has agreed to enter into this Regulatory Agreement as the Fee Owner and will receive significant benefits under the Ground Lease; and

WHEREAS, the Issuer has determined to assist in the financing of the Development by issuing its Multifamily Housing Revenue Bonds (The Montage Apartments) Series 2021 in the aggregate principal amount of \$34,000,000 (the “Bonds”), and loaning the proceeds of such 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 excludable from gross income for federal income tax purposes under the Code (as defined herein), 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, the Fee Owner 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, equipped, 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, the Fee Owner 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, in the Loan Agreement or in the Tax Exemption Agreement, unless the context in which they are used clearly requires otherwise:

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

“**Agreement**” or “**Regulatory Agreement**” means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

“**Annual Income**” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by Section 142(d) of the Code.

“**Available Unit**” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after such date, and (b) a residential unit that is not available for occupancy due to renovations is not an “Available Unit” and does not become an “Available Unit” until it has been leased for the first time after the renovations are completed.

“**Bond Counsel**” means 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 who is appointed by the Issuer, and initially means Bracewell LLP.

“**Closing Date**” has the meaning given to the term “Issue Date” in the Indenture.

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

“**Compliance Monitoring Rules**” means the rules published by the Issuer in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

“**Development**” means the Development Facilities and the Development Site.

“**Development Amenities**” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

“**Development Facilities**” means the multifamily housing structure and related buildings and other improvements 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 such action or omission does not adversely affect the excludability of interest payable on the Bonds from gross income for federal income tax purposes under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

**“Fee Owner”** means the Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, and its permitted successors and assigns.

**“Ground Lease”** means the Ground Lease between the Fee Owner, as landlord, and the Borrower, as tenant, dated as of [January 1], 2021.

**“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 the Indenture of Trust of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

**“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 Mortgage Note.

**“Loan Agreement”** means the Loan Agreement of even date herewith among the Issuer, Red Stone Servicer, LLC, as initial Controlling Person, and the Borrower, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

**“Loan Documents”** means the Mortgage, the Mortgage Note, the Loan Agreement, this Regulatory Agreement, the Tax Exemption Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Loan.

**“Low-Income Tenant”** means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under Sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of Section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

**“Low-Income Unit”** means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

“**Mortgage**” means the Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) from the Borrower, as the grantor, in favor of Issuer, as the beneficiary, and assigned to the Trustee, as the same may be supplemented, amended or modified.

“**Multifamily Tax Subsidy Program Income Limit**” (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

“**Persons with Special Needs**” means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

“**Qualified Project Period**” means, with respect to the Development, the period beginning on the first day on which 10 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 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 established by the Indenture.

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

“**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 relating to the Loan.

“**State Reserve Period**” means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Development; (b) the date on which the 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 30 years after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

**“Tax Exemption Agreement”** means the Tax Exemption Certificate and Agreement 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) [Reserved].

(c) The Borrower will submit to the Issuer and the Trustee certificates evidencing construction completion, use of proceeds and stabilization in the forms set forth in Schedules 8, 9

and 10 to, and within the time required by, the Loan Agreement. The Borrower will also submit a request for final construction inspection to the Issuer 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.

(d) 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.

(e) The Borrower is a qualified “housing sponsor” as defined in the Act.

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 represents, covenants and agrees:

(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;

(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 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)), 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 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), 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 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 (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Issuer's website; provided that, if any Units in the Development are ever made available to tenants who are not Low-Income Tenants, then the Borrower will obtain, complete and maintain annual Tenant Income Certifications in accordance with Section 142(d)(3)(A) of the Code. 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 any certification is accurate by taking steps required under Section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the 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 notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect and photocopy the books and records of the 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 D certifying, within 90 days thereof, the dates on which (i) 10% of the Units are occupied, and (ii) 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 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 Fee Owner, the Trustee and the Issuer hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Issuer, the Trustee, the Borrower and the Fee Owner, impose requirements upon the ownership or operation of the Development more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof to be effective for the duration of such more restrictive requirements. 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, the Borrower and the Fee Owner, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee, the Borrower and the Fee Owner and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with compliance with the requirements of this Section will be paid by the 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 in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Borrower from time to time that (i) such lease is subordinate to the Mortgage and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility

requirements of this Regulatory Agreement and the Loan Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the 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 notice to permit any duly authorized representative of the Issuer 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, 2023;

(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 that are of similar value to the service it is intending to replace as agreed to in writing by the Issuer. 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 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) to pay to the Issuer the Issuer Compliance Fee (as defined in the Indenture).

Section 4.A. Repairs and Maintenance Required by State Law. The Borrower will maintain the Replacement Reserve required by and created pursuant to the Indenture and the Replacement Reserve Agreement or a similar account for the longer of: (a) the period of time required pursuant to the Replacement Reserve 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 Development, 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, and in consideration of the Borrower entering into the Ground Lease, the Borrower and the Fee Owner have entered into this Regulatory Agreement and have 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, the Fee Owner 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 of interest on the Bonds from gross income for federal income tax purposes under existing law. In performing their duties and obligations hereunder, the Borrower, the Fee Owner, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Issuer and the Trustee may rely upon (i) statements and certifications by the Borrower and the Fee Owner; (ii) audits of the books and records of the Borrower and the Fee Owner pertaining to the Development; and (iii) with respect to the Trustee, any other information provided to the Trustee, pursuant to this Regulatory Agreement. In addition, the Issuer, the Borrower, the Fee Owner and the Trustee may consult with counsel, and the opinion of such counsel

will be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Borrower, the Fee Owner or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Borrower or the Fee Owner exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Borrower or the Fee Owner and may rely on any written report, notice or certificate or other information delivered to the Trustee, as required by this Regulatory Agreement, by any Person retained to review the Borrower's or Fee Owner's compliance with this Regulatory Agreement or by the Borrower, the Fee Owner or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Bexar County. The Borrower hereby represents that the Development is located entirely within Bexar County, Texas.

Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) The Borrower and the Fee Owner covenant and agree not to sell, transfer or otherwise dispose of the Development, prior to the expiration of the Qualified Project Period (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the Issuer, (ii) complying with any applicable provisions of this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and other Loan Documents and (iii) obtaining the prior written consent of the Issuer. Such consent of the Issuer will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Issuer: (A) there is delivered to the Trustee and the Issuer a written opinion of independent legal counsel reasonably satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the proposed purchaser or transferee has duly assumed all of the rights and obligations of the Borrower or the Fee Owner, as applicable, under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Loan Documents and that each of the documents executed by such proposed purchaser or transferee in connection therewith has been duly authorized, executed and delivered by such proposed purchaser or transferee and is a valid and enforceable obligation of the proposed purchaser or 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 a transfer fee equal to \$1,000, (D) the proposed purchaser or transferee executes any document requested by the Issuer with respect to assuming the obligations of the Borrower or the Fee Owner under this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement and the other Loan Documents, (E) the Issuer has performed a previous participation review on the proposed purchaser or transferee 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 transferee 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 transferee relating to the Development, including but not limited to this Regulatory Agreement, the Loan Agreement, the Tax Exemption Agreement, the Mortgage and other Loan Documents, (F) the Borrower or proposed purchaser or transferee have paid any and all fees or expenses of Bond Counsel incurred in association with its review and drafting of documents relating to the transfer and (G) the proposed purchaser or transferee has met the requirements in Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406 of the Texas Administrative Code. 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. Each

of the Borrower and the Fee Owner hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Borrower or the Fee Owner, as applicable, of its obligations under this Regulatory Agreement. The Borrower and the Fee Owner hereby expressly stipulate and agree that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Borrower or the Fee Owner of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Borrower or the Fee Owner so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Loan Agreement, this Regulatory Agreement or any other Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of the Borrower and the Fee Owner as set forth in the Loan Agreement, this Regulatory 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 or the Fee Owner 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 or the Fee Owner, as applicable, 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, in accordance with Title 10, Part 1, Chapter 10, Subchapter E, Section 10.406 of the Texas Administrative Code. A change in the Borrower's general partner includes any transfer of any 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, the Borrower and the Fee Owner upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of this Regulatory Agreement will be paid by the Borrower and its successors in interest.

Section 12. Covenants to Run With the Land. The Borrower and the Fee Owner hereby subject the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee, the Borrower and the Fee Owner hereby declare that the covenants, reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Borrower's and the Fee Owner's successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The Issuer, the Trustee, the Borrower and the Fee Owner 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, the Borrower and the Fee Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Bonds were issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Trustee and Issuer. If the Borrower or the Fee Owner defaults in the performance or observance of any covenant, agreement or obligation of the Borrower or the Fee Owner, as applicable, set forth in this Regulatory Agreement, and if such default remains uncured by the Borrower or the Fee Owner for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Borrower, the Tax Credit Investor and the Fee Owner 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 or the Fee Owner 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 Tax Credit Investor or Special 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.

Upon the occurrence of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Borrower or the Fee Owner, as applicable, 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 or the Fee Owner, as applicable, 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 or the Fee Owner hereunder.

The Borrower and the Fee Owner hereby agree that specific enforcement of the Borrower's and the Fee Owner's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Borrower and the Fee Owner herein, and the Borrower and the Fee Owner therefore agree to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Borrower or the Fee Owner hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Borrower or the Fee Owner contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Trustee, the Borrower and the Fee Owner (provided that the failure to notify will not adversely affect the Issuer's or the Trustee's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Indenture, by the owners of the Bonds.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

- (a) Upon the occurrence 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, in the Indenture, in the Loan Agreement and in the Tax Exemption Agreement. Subject to the right of the Trustee to be indemnified as provided in the Indenture and the 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 the duties, powers, rights and obligations of the Trustee in acting hereunder will be subject to the provisions of the Indenture and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of the Indenture and the Tax Exemption Agreement are intended to survive the retirement of the Bonds, discharge of the Loan, termination of the Loan Agreement and defeasance or termination of the Indenture and the Tax Exemption Agreement.

Subject to the Trustee's rights under the Indenture, the Trustee will, at the written direction of the Issuer, take reasonable actions to enforce compliance by the Borrower and the Fee Owner with the terms of this Regulatory Agreement. The Trustee may rely on certificates, reports or other information delivered to the Trustee, in accordance with this Regulatory Agreement, 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 pursuant to this Regulatory Agreement.

The Trustee may resign or be removed only as provided in Sections 7.4 or 7.5, 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 Loan 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 Agreement through the date upon which all of the Bonds are to be paid in full. After the date upon which all of 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 Bexar 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 Bexar County, Texas, and only upon receipt by the Issuer (with a copy to the Trustee) of a Favorable Opinion of Bond Counsel and an opinion of Bond Counsel that such action is not contrary to the provisions of the Act.

Section 22. Notices. Any notice required to be given hereunder to the Issuer, the Trustee, the Borrower, the Tax Credit Investor and the Fee Owner will be given in the manner and to the address (or facsimile numbers) set forth in the Indenture.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Borrower to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Loan Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the Loan Agreement. In addition, the Issuer hereby authorizes the 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.

IN WITNESS WHEREOF, the Issuer, the Trustee, the Fee Owner 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 Issuer

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS      §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, 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)

**BOKF, NA, as Trustee**

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared \_\_\_\_\_, a \_\_\_\_\_ of BOKF, NA, a national banking association, who acknowledged that [s]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)

**BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION**, a Texas nonprofit public facility corporation, as Fee Owner

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared Tammye Trevino, Secretary of Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, 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)



EXHIBIT A  
PROPERTY DESCRIPTION

[TO COME FROM BORROWER].

EXHIBIT B-1

DESCRIPTION OF DEVELOPMENT

Borrower: Saddlespur Pass Apartments, LP, a Texas limited partnership

Development: The Development is a 216-unit affordable, multifamily housing development to be known as The Montage Apartments, to be located at 7554 FM 78, San Antonio, Bexar County, Texas 78244. It consists of five (5) residential apartment buildings with approximately 222,972 net rentable square feet. The unit mix will consist of:

60	one-bedroom/one-bath units
96	two-bedroom/two-bath units
60	three-bedroom/two-bath units
<hr/>	
216	Total Units

- Unit sizes will range from approximately 770 square feet to approximately 1,283 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 twenty-two (22) 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)-(-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)-(-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 or Determination Notice, as applicable.

(-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 Development Owner. 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 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 Development Owner. 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 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; ping pong table; or similar equipment 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 contains the 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, covered pavilion, or pergola with 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 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)-(-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 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 Issuer's rules in subsequent years provide different services than those listed below, the Borrower may be allowed to select services listed therein that are of similar value to the service it is intending to replace, upon written consent from the Issuer. 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 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 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 Borrower 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 Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

EXHIBIT D



TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS

www.tdhca.state.tx.us

Greg Abbott  
GOVERNOR

**BOARD MEMBERS**  
Leo Vasquez, *Chair*  
Leslie Bingham, *Vice Chair*  
Paul A. Braden, Member  
Ajay Thomas, Member  
Sharon Thomason, 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 Delivery Date	
Date First Unit Occupied	
10% Occupancy Date	
50% Occupancy Date	
50% Occupancy Date + 15 years	

Signature \_\_\_\_\_ Date \_\_\_\_\_

Printed Name \_\_\_\_\_ Title \_\_\_\_\_



**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

January 1, 2021

among

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

and

**BOKF, NA,**  
as Trustee

and

**SADDLESPUR PASS APARTMENTS, LP,**  
as Borrower

regarding

**\$34,000,000**

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021**

## TABLE OF CONTENTS

		<b>Page</b>
1.	Definitions.....	1
2.	Authorized Representatives .....	8
3.	Reasonable Expectations .....	8
4.	Reliance on Borrower’s Representations and Covenants .....	8
5.	Completeness of Borrower Information .....	9
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 .....	11
10.	Issue Price .....	14
11.	Yield on the Bonds.....	14
12.	Yield on the Loan.....	14
13.	Investment of Proceeds Pending Expenditure; No Arbitrage .....	16
14.	Covenants of Trustee Relating to Investment of Proceeds .....	17
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.....	25
21.	Form of Lease .....	25
22.	Change in Use.....	25
23.	Cashflow Sufficiency.....	26
24.	Post-Issuance Compliance Procedures .....	26
25.	Record Retention .....	26
26.	Examination by IRS.....	26
27.	Term.....	27
28.	Amendments .....	27
29.	Remedies.....	27
30.	Miscellaneous .....	28
Exhibit A	Issue Price Certificate .....	A-1
Exhibit B	Certificate of Financial Advisor.....	B-1
Exhibit D	Schedule of Loan Costs .....	C-1

## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of January 1, 2021, but effective as of the Issue Date (as defined herein) is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer”), a public and official agency of the State (as defined herein), **BOKF, NA**, a national banking association organized and existing under the laws of the United States of America, as Trustee under the hereinafter defined Indenture (together with any successor Trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), and **SADDLEPUR PASS APARTMENTS, 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 34,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (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 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,

to the extent that such terms are defined in the Indenture, the Loan Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations that are not defined herein will for all purposes hereof have the same meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

**“Bond Counsel”** means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially shall mean Bracewell LLP.

**“Bond Fund”** means the “Bond Fund” established pursuant to the Indenture.

**“Bond Year”** means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Issuer and the Trustee. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final Maturity Date of the Bonds or the date that is five years after the Issue Date of the Bonds, a bond year will end on each anniversary of the Issue Date of the Bonds and on the final Maturity Date of the Bonds.

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

**“Computation Date”** means each Installment Computation Date and the Final Computation Date.

**“Costs of Issuance”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

**“Costs of Issuance Fund”** means the “Costs of Issuance Fund” established pursuant to the Indenture, with the Bond Proceeds Account and an Equity Account therein.

**“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.

**“Indenture”** means the Indenture by and between the Issuer and the Trustee, dated as of January 1, 2021.

**“Initial Controlling Person”** means Red Stone Servicer, LLC.

**“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 January 1, 2021.

**“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 June 25, 2020.

**“Operating Reserve Fund”** means the “Operating Reserve Fund” established pursuant to the Indenture.

**“Original Issue Discount”** means the excess of the Stated Redemption Price at Maturity over the Issue Price.

**“Original Issue Premium”** means the excess of the Issue Price over the Stated Redemption Price at Maturity.

**“Permitted Investments”** has the meaning set forth in the Indenture.

**“Placed in Service”** has the meaning set forth in section 1.150-2(c) of the Regulations and means, 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 216-unit multifamily housing development to be located on the southwest corner of FM 78 and Walzem Road, San Antonio, Bexar County, Texas 78244.

**“Project Costs”** has the meaning set forth in the Indenture.

**“Project Fund”** means the “Project Fund” established pursuant to the Indenture, with the Bond Proceeds Account, the Equity Account, the Capitalized Interest Account, and the Insurance and Condemnation Proceeds Account therein.

**“Purchaser”** means [RSZ TAC LLC], or its designee, together with such purchaser’s successors and assigns.

**“Qualified Administrative Costs”** are those costs of issuing, carrying or repaying the Bonds, and any underwriter’s discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Loan.

**“Qualified Project Costs”** means Project Costs that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Bonds during, and fees for a “qualified guarantee” (within the meaning of section 1.148-4 of the Regulations) attributable to the period of, the construction of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all Project Costs.

(b) If any portion of the Project is being constructed 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 Indenture.

**“Redemption Fund”** means the “Redemption Fund” established pursuant to the Indenture.

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

**“Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, among the Issuer, the Trustee, and the Borrower, dated as of January 1, 2021.

**“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.

**“Replacement Reserve Fund”** means the “Replacement Reserve Fund” established pursuant to the Indenture.

**“Sale Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other disposition) of any obligation, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also

include amounts derived from the sale of a right that is associated with any obligation and that is described in section 1.148-4(b)(4) of the Regulations.

“**State**” means the State of Texas.

“**Stated Redemption Price at Maturity**” means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

“**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.

“**Surplus Fund**” means the “Surplus Fund” established pursuant to the Indenture.

“**Tax and Insurance Escrow Fund**” means the “Tax and Insurance Escrow Fund” established pursuant to the Indenture.

“**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 and in accordance with Revenue Procedure 2020-21 and 2020-49, the Issuer hosted a telephonic hearing that provided a reasonable opportunity for interested individuals to express their views on the Bonds and the location and nature of the Project on December 8, 2020. 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 access information 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 \$34,000,000, 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 Capitalized Interest Account of the Bond Fund 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.]

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. The Sale Proceeds of the Bonds, for purposes of the limit on Costs of Issuance payable from Proceeds of the Bonds set forth in section 147(g) of the Code, is not less than \$[\_\_\_\_\_]. **[If paid from Proceeds:** 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]. **[If not paid from Proceeds:** No Costs of Issuance are expected to be paid out of the Net Proceeds of the Bonds. Thus, Costs of Issuance financed out of Net Proceeds of the Bonds are not expected to exceed in the aggregate two percent of the Sale Proceeds of the Bonds (i.e., \$[\_\_\_\_\_]). In no event will Costs of Issuance paid from Proceeds of the Bonds exceed two percent of the Sale Proceeds of the Bonds, and any 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., \$[8,700,000]).

(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 may redetermine the allocation of the Proceeds of the Bonds within the time frame set forth in the immediately preceding sentence, provided that the Borrower will notify the Issuer and Bond Counsel of any such reallocation and provide such parties with documentation of such reallocation.] 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 the rule set forth in the second sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the price paid by the single buyer. Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$14,000,000. The Issue Price of the Bonds represents the Stated Redemption Price at Maturity of the Bonds.

11. Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Yield on the Bonds is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds, of all unconditionally payable payments of principal and interest on the Bonds, produces an amount equal to the present value, using the same discount rate, of the Issue Price of the Bonds plus any Pre-Issuance Accrued Interest as of the Issue Date of the Bonds.

(b) The Yield with respect to that portion of the Bonds, if any, subject to optional redemption is computed by treating such portion of the Bonds as retired at the Stated Redemption Price at Maturity because (i) the Issuer has no present intention to redeem prior to maturity the portion of the Bonds that is subject to optional redemption; (ii) the Bonds is not subject to optional redemption at any time for a price less than the retirement price at final maturity plus accrued interest; (iii) the Issuer has no present intention of exercising its right to optionally redeem the Bonds within five years of the Issue Date of the Bonds; (iv) no portion of the Bonds subject to optional redemption is issued at an Issue Price that exceeds the Stated Redemption Price at Maturity of such portion of the Bonds by more than one-fourth of one percent multiplied by the product of the Stated Redemption Price at Maturity of such portion of the Bonds and the number of complete years to the first optional redemption date for such portion of the Bonds; and (v) no portion of the Bonds subject to optional redemption bears interest at a rate that increases during the term of the Bonds.

(c) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit B, the Yield on the Bonds, calculated in the manner set forth above, is [Bond Yield] percent.

(d) 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. \$34,000,000.

(b) The Loan is a purpose investment that the Issuer intends to treat as a “program investment” within the meaning of section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under section 501(c)(3) of the Code, persons who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Issuer has not waived the right to treat the Loan as a program investment.

(c) The receipts from the Borrower with respect to the Loan include interest and principal payments with respect to the Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have been taken into account, as provided by 1.148-5(e) of the Regulations, for purposes of computing the yield on the Loan. Because the Issuer intends to treat the Loan as a “program

investment” within the meaning of section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Loan, which amounts are set forth in Exhibit 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, is [Loan Yield], which 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 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]. Proceeds of the Bonds may be deposited in a guaranteed investment contract (the “GIC”). If Proceeds of the Bonds are co-mingled as an investment in the 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 Indenture in accordance with the respective terms of the Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Indenture and this Agreement and all moneys on deposit to the credit of any fund or account.

Should the Issuer or the Borrower deliver notice (in the manner required under the Indenture or the Loan Agreement, as applicable) to the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so deliver) or should the Trustee receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Bonds would cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code, then the Trustee will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Bonds from becoming 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.

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 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 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 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, pursuant to written direction from the Borrower, each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Trustee will withdraw such funds from the Rebate Fund and pay such funds to the United States of America. The Trustee may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any

consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein, the Trustee will have no duty or responsibility with respect to the Rebate Fund or the Borrower's duties and responsibilities with respect thereto except to follow the Borrower's specific written instructions related thereto.

(ii) Moneys and securities held by the Trustee in the Rebate Fund will not be deemed funds of the Bonds and are not pledged or otherwise subject to any security interest in favor of the owners of the Bonds to secure the Bonds or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Trustee, at the written direction of the Borrower, in Permitted Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes. In the absence of written direction from the Borrower, the Trustee will not be responsible or liable for keeping the moneys held as part of the Rebate Fund fully invested.

(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 100 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; provided that nothing herein will be construed as the Trustee being responsible for creating, preparing or reviewing any of the computations contemplated under this Agreement.

(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 – Bond Proceeds Account and Capitalized Interest Account. All of the Proceeds of the Bonds in the Bond Proceeds Account and the Capitalized Interest Account of the Project Fund are expected to be invested and disbursed as described in the

Indenture to pay Project Costs. The Borrower (i) reasonably expects to allocate at least 85 percent of the Net Proceeds of the Bonds to expenditures on capital projects of the Project prior to the date that is three years after the Issue Date of the Bonds, (ii) has incurred, or reasonably expects to incur within six months after the Issue Date of the Bonds, a binding obligation to a third party that is not subject to any contingencies within the control of the Borrower pursuant to which the Borrower is obligated to expend at least five percent of the Net Proceeds of the Bonds on capital projects of the Project, and (iii) reasonably expects that the acquisition, construction, and equipping of the Project will proceed with due diligence to completion and the Net Proceeds of the Bonds are reasonably expected to be expended on the Project with reasonable dispatch; therefore, all of such amounts may be invested without regard to Yield restriction. Any amounts not so expended prior to the applicable dates set forth in the preceding sentence will thereafter be invested at a Yield that is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Account of the Project Fund will be used for the purpose of paying Costs of Issuance of the Bonds. After the payment of all Costs of Issuance, amounts remaining (i) in the Bond Proceeds Account of the Costs of Issuance Fund will be transferred to the Bond Proceeds Account of the Project Fund and (ii) in the Equity Account of the Costs of Issuance Fund will be returned to the Equity Account of the Costs of Issuance Fund. There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Bonds.

(c) Bond Fund. Amounts on deposit in the Bond Fund will be used for the purposes set forth in Section 4.2 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.

(d) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Indenture; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Bonds.

(e) Surplus Fund. Amounts on deposit in the Surplus Fund will be used for the purposes set forth in Section 4.4 of the Indenture. The Surplus Fund will be used to effect a redemption of the Bonds in accordance with Section 3.4(b)(i) of the Indenture. Any amounts in the Surplus Fund will be used within 13 months of receipt of amounts in such fund.

(f) Redemption Fund. Amounts on deposit in the Redemption Fund will be used for the purposes set forth in Section 4.5(a) of the Indenture. The Redemption Fund will be used to effect a redemption of the Bonds in accordance with Section 3.4 of the Indenture. Any amounts in the Redemption Fund will be used within 13 months of receipt of amounts in such account.

(g) Other Funds and Accounts. Amounts on deposit in the Equity Account of the Project Fund, the Insurance and Condemnation Proceeds Account of the Project Fund, the Replacement Reserve Fund, and the Tax and Insurance Escrow Fund and the Operating Reserve Fund funded by the Borrower and used for the purposes and in the order set forth in Section 4.3 and Section 4.5 of the Indenture, as applicable. There is no assurance that amounts on deposit in such funds will be available to pay debt service on the Bonds.

17. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than as described in paragraph 16 above, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds.

(b) No Pledged Funds. Other than as described in paragraph 16 above, there is no amount that is directly or indirectly pledged to pay principal or interest on the Bonds, or to a guarantor of the Bonds, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the Bonds if the Issuer encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Bonds.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Bonds because the Issuer reasonably expects that the term of the Bonds will not be longer than is reasonably necessary for the governmental purpose of the Bonds. Furthermore, even if the Bonds were outstanding longer than necessary for the purpose of the Bonds, no Replacement Proceeds will arise because the Issuer reasonably expects that no amounts will become available during the period that the Bonds remain outstanding longer than necessary based on the reasonable expectations of the Issuer as to the amounts and timing of future revenues. The Bonds would be issued to achieve the governmental purpose of the Bonds independent of any arbitrage benefit as evidenced by the expectation that the Bonds reasonably would have been issued if the interest on the Bonds were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under section 42 of the Code would be available in connection therewith).

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 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.

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 agree that the remedies available under Article VI of the Indenture and Article 7 of the Loan Agreement apply upon the occurrence of an Event of Default (as defined under the Indenture or the Loan Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

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 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 Issue Date.

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

By: \_\_\_\_\_  
Name: Monica Galuski  
Title: Director of Bond Finance/Chief Investment  
Officer

**SADDLESPUR PASS APARTMENTS, LP, a  
Texas limited partnership**

By: BMDC Saddlespur Pass Apartments GP,  
LLC,  
a Texas limited liability company,  
its General Partner

By: \_\_\_\_\_  
Name:  
Title:

**BOKF, NA, as Trustee**

By: \_\_\_\_\_  
Name:  
Title:

## EXHIBIT A

### ISSUE PRICE CERTIFICATE

I, the undersigned officer of [RSZ TAC LLC] (the “Purchaser”), make this certificate in connection with the \$34,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (the “Bonds”). Each capitalized term used but not defined herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit A is attached (the “Tax Exemption Agreement”).

1. I hereby certify as follows as of the Issue Date of the Bonds:
  - (a) I am the duly chosen, qualified and acting officers of the Purchaser for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Purchaser. I am the officer of Purchaser charged, along with other officers of the Purchaser, with responsibility for the Bonds.
  - (b) The Purchaser is not acting as an Underwriter with respect to the Bonds.
  - (c) The Purchaser has purchased the Bonds from the Issuer for an aggregate purchase price of \$14,000,000, which price includes no amount of Pre-Issuance Accrued Interest.
  - (d) The Purchaser is not a Related Party to Saddlespur Pass Apartments, LP.

2. For purposes of paragraph 1 of this Issue Price Certificate, the following definitions apply:

- (a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.
- (b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).
- (c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person

described in clause (i) of this definition to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents the Purchaser's interpretation of any laws, including specifically sections 103 and 148 of the Code and the Regulations thereunder. The undersigned understand that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]

The foregoing Issue Price Certificate has been duly executed as of the Closing Date.

[RSZ TAC LLC]

By: \_\_\_\_\_  
Name: \_\_\_\_\_  
Title: \_\_\_\_\_

## 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 \$34,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (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 Purchaser in the Issue Price Certificate attached as Exhibit A to the Tax Exemption Agreement, is not more than \$[34,000,000].

3. The Financial Advisor has computed the Yield on the Bonds, based on such Issue Price, to be [Bond Yield] percent.

4. The Financial Advisor has calculated the Yield on the Loan to be [Loan Yield] percent. Accordingly, the Yield on the Loan does not exceed the Yield on the Bonds by more than 1.5 percentage points.

5. For purposes of determining the Yields in paragraphs 3 and 4 above, the Financial Advisor has performed certain calculations relating to the Bonds and the 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.

6. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Bonds, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

7. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Bonds, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the conditions imposed by the Code on the exclusion of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Financial Advisor has been duly executed as of the Issue 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*

**EXHIBIT D**  
**SCHEDULE OF LOAN COSTS**

**Paid Prior to Closing**

Application Fee	\$4,320
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**Paid at Closing**

Issuer Closing Fee	\$
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Issuer Administration Fee (first two years, prorated)	\$
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Issuer Compliance Fee (first year)	\$5,400
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**Annual Fees**

Issuer Administrative Fee (beginning [January 1, 2023])	0.10% per annum of the aggregate principal amount of the Bonds outstanding
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Issuer Compliance Fee (beginning [January 1, 2024])	\$5,400
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**BOND PURCHASE AGREEMENT**

by and among

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

**SADDLESPUR PASS APARTMENTS, LP**

and

**RSZ TAC LLC**

Dated January \_\_, 2021

Relating to:

\$ \_\_\_\_\_

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021

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## **BOND PURCHASE AGREEMENT**

**RSZ TAC LLC** (together with its successors, assigns or designees hereunder, the “Purchaser”), hereby offers to enter into the following agreement with **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State (together with its successors and assigns, the “Issuer”) and **SADDLESPUR PASS APARTMENTS, LP**, a limited partnership duly organized and validly existing under the laws of the State (together with its permitted successors and assigns, the “Borrower”), for the sale by the Issuer and the purchase by the Purchaser or its designee of the Bonds described below, which are being issued by the Issuer for the benefit of the Borrower. Upon the acceptance of this offer by the Issuer and the Borrower and their execution and delivery of this Agreement, this Agreement will be binding upon each of the Issuer, the Borrower and the Purchaser. This offer is made subject to the acceptance of the parties hereto, evidenced by their respective execution and delivery of this Agreement to the Purchaser, at or prior to 1 p.m., eastern time, on January \_\_, 2021 and will expire if not so accepted at or prior to such time (or such later time as the Purchaser may agree in writing).

Section 1. Definitions. The capitalized terms used in this Agreement have the meanings assigned to them in the Glossary of Terms attached as Exhibit A hereto.

Section 2. Purchase and Sale.

2.1 Subject to the terms and conditions set forth in this Agreement, and in reliance on the representations, warranties and covenants contained herein, the Purchaser hereby agrees to purchase from the Issuer or cause its designee to purchase from the Issuer, and the Issuer hereby agrees to sell to the Purchaser or the Purchaser’s designee when, as and if issued, all (but not less than all) of the Bonds identified in Item 1 in Exhibit B attached hereto in exchange for delivery by the Purchaser of the Purchase Price for the Bonds set forth as Item 2 in Exhibit B attached hereto.

2.2 The Bonds will (i) be issued pursuant to the Resolution and the Indenture, and (ii) have the payment related terms (that is, the dated date, maturity date, interest rate, interest payment dates and redemption provisions) set forth in Item 3 in Exhibit B attached hereto and in the Indenture.

Section 3. Closing. The Closing will take place at the time and on the date set forth in Item 5 in Exhibit B or at such other time or on such other date as may be mutually agreed upon by the Issuer, the Borrower and the Purchaser. At the Closing, the Issuer will direct the Trustee to deliver the Bonds to or upon the order of the Purchaser, in definitive form, duly executed by the Issuer and authenticated by the Trustee. Subject to the terms and conditions hereof, the Issuer will deliver or cause to be delivered at the offices of Bracewell LLP in Austin, Texas, the other documents and instruments to be delivered pursuant to this Agreement (the “Closing Documents”) and the Purchaser will accept delivery of the Bonds and the Closing Documents and simultaneously will deliver the Purchase Price for the Bonds, by wire transfer, to the Trustee, in immediately available federal funds, for the account of the Issuer or as the Issuer directs. The Bonds will be made available to the Purchaser one (1) Business Day before the Closing at the closing location for purposes of inspection. The Bonds will be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Indenture.

Section 4. Representations and Warranties of Issuer.

4.1 The Issuer hereby makes the following representations and warranties to the Purchaser, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Issuer is a public and official agency of the State and is authorized to execute and deliver this Agreement and the other Issuer Documents and to issue, sell and deliver the Bonds pursuant to the laws of the State, including particularly the Act.

(b) The Issuer has, and as of the Closing Date will have, all necessary power and authority to (i) execute and deliver this Agreement and the other Issuer Documents, (ii) issue the Bonds in the manner contemplated by the Resolution, this Agreement and the Indenture, and (iii) otherwise consummate the transactions contemplated by the Resolution, this Agreement and the other Issuer Documents.

(c) At the time of its adoption, the Issuer had all necessary power and authority to adopt the Resolution.

(d) The Issuer has duly adopted the Resolution at a meeting or meetings duly called and held in accordance with applicable law and procedures of the Issuer, and since that time the Resolution has not been rescinded, amended or modified.

(e) By official action of the Issuer prior to or concurrently with the acceptance hereof, the Issuer has duly authorized the (i) execution and delivery of this Agreement, the Bonds and the other Issuer Documents, (ii) performance by the Issuer of the obligations contained in this Agreement, in the Bonds and in the other Issuer Documents, and (iii) consummation by the Issuer of all of the transactions contemplated hereby and by the other Issuer Documents.

(f) Assuming the valid authorization, execution and delivery of this Agreement and the other Issuer Documents by the other parties hereto and thereto and the authentication of the Bonds by the Trustee, this Agreement is, and the Bonds and the other Issuer Documents will be, the legal, valid and binding obligations of the Issuer, enforceable in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(g) All consents, approvals, orders or authorizations of, notices to, or filings, registrations or declarations with any court or governmental authority, board, agency, commission or body having jurisdiction which are required by or on behalf of the Issuer for the execution and delivery by the Issuer of this Agreement, the other Issuer Documents or the Bonds, or the consummation by the Issuer of the transactions contemplated hereby or thereby, have been obtained or will be obtained prior to Closing, except for the filing of the IRS Form 8038 and any other post-closing filings (which will be timely filed after Closing).

(h) The execution and delivery by the Issuer of this Agreement, the Bonds and the other Issuer Documents, and the consummation by the Issuer of the transactions contemplated hereby and thereby are not prohibited by, do not violate any provision of, and will not result in the breach of or default under (i) the Act or the Constitution of the State, (ii) any applicable law, rule, regulation, judgment, decree, order or other requirement applicable to the Issuer, or (iii) any contract, indenture, agreement, mortgage, lease, note, commitment or other obligation or instrument to which the Issuer is a party or by which the Issuer is bound.

(i) There is no legal action, suit, proceeding, investigation or inquiry at law or in equity, before or by any court, agency, arbitrator, public board or body or other entity or person, pending or, to the best knowledge of the Issuer, threatened against or affecting the Issuer or its officials, in their respective capacities as such, (i) which would restrain or enjoin the issuance or delivery of the Bonds

or the collection of revenues pledged under the Indenture, (ii) which would in any way contest or affect the organization or existence of the Issuer or the entitlement of any officers of the Issuer to their respective offices, or (iii) which may reasonably be expected to contest or have a material and adverse effect upon (A) the due performance by the Issuer of this Agreement or the other Issuer Documents or the transactions contemplated hereby or thereby, (B) the validity or enforceability of the Bonds, the Resolution, this Agreement, the other Issuer Documents or any other agreement or instrument relating to the issuance of the Bonds to which the Issuer is a party and that is used or contemplated for use in the consummation of the transactions contemplated hereby and thereby, or (C) the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes. The Issuer is not subject to any judgment, decree or order entered in any lawsuit or proceeding brought against it that would have such an effect.

(j) When delivered to the Purchaser after receipt of payment therefor in accordance with the provisions of this Agreement, the Bonds will be duly authorized, executed, issued, and delivered and will constitute the Issuer's legal, valid and binding special, limited obligations, enforceable in accordance with their terms (except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity), and will be entitled to the benefit and security of the Indenture.

(k) Other than the Issuer Documents, the Issuer has not entered into any contract or arrangement that might give rise to any lien or encumbrance on the revenues or other assets, properties, funds or interests pledged pursuant to the Indenture.

(l) The Issuer has not taken or omitted to take on or prior to the date hereof any action, that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for federal income tax purposes.

(m) The Issuer has not been notified of any listing or proposed listing by the Internal Revenue Service to the effect that the Issuer is an issuer whose arbitrage certifications may not be relied upon.

(n) On the Closing Date, each of the representations and warranties of the Issuer contained herein and in the other Issuer Documents shall be true, correct and complete.

4.2 Any certificate signed by any official of the Issuer and delivered to the Purchaser in connection with the delivery of the Bonds will be deemed to be a representation and warranty by the Issuer to the Purchaser as to the statements made therein.

## Section 5. Representations and Warranties of Borrower.

5.1 The Borrower makes the following representations and warranties to the Issuer and the Purchaser as of the date hereof, all of which will continue in effect subsequent to the purchase of the Bonds:

(a) The Borrower is, and at all times will be, a limited partnership duly organized, validly existing and in good standing under the laws of the State. The General Partner is, and at all times will be, a limited liability company duly organized, validly existing and in good standing under the laws of the State. The Sole Member is the sole member of the General Partner and is, and at all times will be, a nonprofit public facility corporation duly organized, validly existing and in good standing under the laws of the State.

(b) The Borrower has, and on the Closing Date will have, full legal right, power and authority to (i) execute and deliver this Agreement and the other Borrower Documents, and (ii) consummate the transactions contemplated by this Agreement and the other Borrower Documents. The General Partner has, and on the Closing Date will have, full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Borrower. The Sole Member has, and on the Closing Date will have full legal right, power and authority to execute and deliver this Agreement, the other Borrower Documents and the General Partner Pledge on behalf of the General Partner.

(c) The Borrower has duly authorized the execution and delivery of this Agreement and the performance by the Borrower of the obligations contained herein, and prior to the Closing Date the Borrower will have duly authorized the (i) execution and delivery of the Borrower Documents, (ii) performance by the Borrower of the obligations contained herein and in the other Borrower Documents, and (iii) consummation by the Borrower of all transactions contemplated hereby and by the other Borrower Documents.

(d) All consents, approvals, authorizations or orders of, notices to, or filings, registrations or declarations with, any court or governmental authority, board, agency, commission or body having jurisdiction which are required on behalf of the Borrower or for the execution and delivery by the Borrower of this Agreement and the other Borrower Documents or the consummation by the Borrower of the transactions contemplated hereby or thereby, including, without limitation, a predetermination letter from the appraisal district regarding an exemption from one hundred percent (100%) of the applicable ad valorem real estate taxation with respect to the portion of the Project that is comprised of real property, have been obtained or will be obtained prior to the Closing Date.

(e) The Borrower has not taken or omitted to take on or prior to the date hereof any action that would adversely affect the exclusion of the interest on the Bonds from the gross income of the holders thereof for purposes of federal income taxation or the exemption of the portion of the Project comprised of real property from one hundred percent (100%) of the applicable ad valorem real estate taxation under the laws of the State.

(f) All information concerning the Project, the Borrower, the General Partner, the Sole Member and the Guarantor submitted to the Purchaser by the Borrower, the General Partner, the Sole Member or the Guarantor, is true and correct in all material respects as of the date hereof and does not omit to state a material fact necessary to make the statements therein not misleading in light of the circumstances in which they were made.

(g) There is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to the best knowledge of the Borrower, threatened against or affecting the Borrower, the General Partner, the Sole Member or, to the best of the Borrower's knowledge, the Guarantor or, to the knowledge of the Borrower, any basis therefor (i) in any way affecting the organization and existence of the Borrower, the General Partner, the Sole Member or the Guarantor, (ii) contesting or materially affecting the validity or enforceability of this Agreement, the other Borrower Documents or the Guarantor Documents, (iii) contesting the powers of the Borrower or its authority with respect to the Borrower Documents, (iv) contesting the authority of the General Partner to act on behalf of the Borrower or of the Sole Member to act on behalf of the General Partner, (v) wherein an unfavorable decision, ruling or finding would have a material adverse effect on (A) the operations of the Borrower, the General Partner, the Sole Member or the Guarantor, (B) the due performance by the Borrower of the Borrower Documents to which it is a party or by the Guarantor of the Guarantor Documents to which each such Guarantor is a party, (C) the validity or enforceability of any of the Borrower Documents or the Guarantor Documents or the transactions

contemplated hereby or by any other Borrower Document or Guarantor Document, (vi) in any way contesting the exclusion from the gross income of the holders thereof for purposes of federal income taxation of the interest on the Bonds, or (vii) in any way contesting the exemption of the portion of the Project comprised of real property from one hundred percent (100%) of the applicable ad valorem real estate tax exemption.

(h) This Agreement is, and, when executed and delivered by the Borrower and the other parties hereto, and the other Borrower Documents will be, the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, except to the extent that enforcement thereof may be limited by bankruptcy, insolvency or other similar laws affecting creditors' rights generally, or by the exercise of judicial discretion in accordance with general principles of equity.

(i) The execution and delivery by the Borrower of this Agreement and the other Borrower Documents and the consummation by the Borrower of the transactions contemplated thereby and hereby are not prohibited by, do not violate any provision of, and will not result in a breach of or default under (i) organizational documents of the Borrower; (ii) to the Borrower's knowledge, any applicable law, rule, regulation, order, writ, injunction, judgment or decree of any court or governmental body or other requirement to which the Borrower is subject; or (iii) any contract, indenture, agreement, mortgage, lease, commitment or other obligation or instrument to which the Borrower is a party or by which the Borrower or its properties is bound.

(j) To the best knowledge of the Borrower, after due and diligent inquiry, as of the date hereof, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which violation or breach of or default would have a material adverse effect upon the transactions contemplated by this Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Borrower Documents, and compliance with the provisions on the Borrower's part contained therein, do not and will not conflict with or constitute on the part of the Borrower a violation or breach of or default under any constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound which breach or default would have a material adverse effect upon the transactions contemplated by this Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents provided, however, that the Borrower makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended, or as to the Indenture's compliance with any provisions that do not comply with applicable law.

(k) The Borrower is not in default under any undertakings with respect to continuing disclosure requirements designed to comply with the Rule 15c2-12 in connection with any issue of municipal securities.

5.2 Each of the representations and warranties set forth in this Section 5 will survive the Closing.

5.3 Any certificate signed by the Borrower or the General Partner or the Sole Member and delivered to the Purchaser shall be deemed a representation and warranty by the Borrower to the Purchaser as to the statements made therein.

Section 6. Covenants.

6.1 The Issuer hereby makes the following covenants with the Purchaser:

(a) Prior to the Closing, the Issuer will not create, assume or guarantee any indebtedness payable from, or pledge or otherwise encumber, the revenues, assets, properties, funds or interests which will be pledged pursuant to the Indenture and the other Issuer Documents.

(b) After all conditions have been met with respect to the issuance of the Bonds (including, without limitation, the payment of the Purchase Price), the Issuer will cause the Bonds to be delivered in accordance with this Agreement, and upon receipt of evidence that the Trustee has received the Purchase Price set forth in Section 2.1 hereof, to the address and at the time specified by the Purchaser in conjunction with the Closing.

(c) The Issuer will not knowingly take or omit to take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be included in the gross income of the holders thereof for federal income tax purposes.

(d) 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 Resolution, this Agreement, the other Issuer Documents and the Bonds.

6.2 The Borrower hereby makes the following covenants with the Issuer and the Purchaser:

(a) The Borrower will not take or omit to take any action which will in any way cause the proceeds of the Bonds to be applied in a manner other than as provided in the Indenture or which would cause the interest on the Bonds to be includable in the gross income of the holders thereof for federal income tax purposes.

(b) Prior to the Closing, the Borrower will obtain all governmental consents, approvals, orders or authorizations of any governmental authority or agency, if any, that would constitute a condition precedent to the performance by it of its obligations under this Agreement and the other Borrower Documents.

(c) The Borrower will not voluntarily undertake any course of action inconsistent with the satisfaction by the Borrower of the requirements applicable to it, as set forth in this Agreement and the other Borrower Documents.

Section 7. Conditions of Closing.

7.1 The Purchaser has entered into this Agreement in reliance upon representations, covenants and agreements of the Issuer and the Borrower contained herein, in reliance upon the representations, covenants and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Borrower of their obligations hereunder and thereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Purchaser's obligations under this Agreement to purchase, to accept delivery of and to pay for the Bonds will be subject to the performance by the Issuer and the Borrower of their obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations, covenants and agreements of the Issuer and of the Borrower contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and will also be subject to the following additional conditions:

(a) There shall not have occurred any material error, misstatement or omission in the representations and warranties made by the Issuer or the Borrower in this Agreement, which representations and warranties will be deemed to have been made again at and as of the time of the Closing and will then be true in all material respects.

(b) Each of the Issuer and the Borrower shall have performed and complied with all agreements and conditions required by this Agreement to be performed or complied with by the Issuer and/or the Borrower at or prior to Closing.

(c) This Agreement, the other Issuer Documents, the Ground Lease, the other Borrower Documents, the Guarantor Documents and the Developer Fee Pledge shall have been executed and delivered by each of the parties thereto, shall be in full force and effect on and as of the Closing Date, shall be in form and substance satisfactory to the Purchaser, and no event of default shall exist under any such documents.

(d) There shall have been delivered to the Originator evidence satisfactory to the Originator that the portion of the Project comprised of real property is exempt from one hundred percent (100%) of the applicable ad valorem real estate taxation under the laws of the State and any agreement or arrangements for the payment of any amount in lieu of taxation shall be in form and substance acceptable to the Originator and shall be in full force and effect.

7.2 On the Closing Date, (a) the Originator shall have received, in immediately available funds, an amount equal to the fees set forth in Section 10 below, and the amount required to pay the costs and expenses of the Purchaser incurred as of the date of the execution and delivery hereof, (b) the Trustee shall have received the deposits required to be made in the Accounts pursuant to the Indenture, and (c) the Purchaser (or its designee as permitted hereunder) shall have delivered to the Issuer and the Trustee an executed investor letter, as required by, and substantially in the form attached as an exhibit to the Indenture.

7.3 In addition to the conditions set forth above, the obligations of the Purchaser to consummate at the Closing the transactions contemplated hereby are subject to receipt by the Originator of the following items:

(a) A certificate of the Borrower, dated the Closing Date and reasonably satisfactory to the Purchaser, signed by an authorized representative of the General Partner, that: (1) each of the attached organizational documents, certificate of good standing, and partner consents (if any), is true, correct and complete and has not been amended, modified or rescinded; (2) each of the Borrower's representations and warranties contained herein and in the other Borrower Documents is true and correct in all material respects on and as of the Closing Date; (3) the Borrower has performed and complied in all material respects with all agreements and conditions required of the Borrower by this

Agreement and the other Issuer Documents to be performed and complied with by it at or prior to the Closing; and (4) such other matters reasonably requested by the Purchaser;

(b) A certificate of the General Partner, dated the Closing Date and in form and substance reasonably satisfactory to the Purchaser, signed by an authorized representative of the Sole Member, that: (1) the General Partner is a limited liability company duly organized, validly existing and is in good standing under the laws of the State, with full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents on behalf of the Borrower as its general partner; (2) the General Partner has, by all necessary legal action, duly authorized the execution and delivery, on its own behalf and on behalf of the Borrower, as its general partner, of this Agreement and the Borrower Documents; (3) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the General Partner for the execution and delivery, on its own behalf, and on behalf of the Borrower, as its general partner, of this Agreement and the other Borrower Documents and the performance by the General Partner thereunder; (4) the execution and delivery by the General Partner, on its own behalf and/or on behalf of the Borrower, as its general partner, of this Agreement, the other Borrower Documents and the performance by the General Partner thereunder do not violate the organizational documents of the General Partner, any applicable law, rule or regulation, or any court order by which the General Partner is bound, and such actions do not constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the General Partner is a party or by which it or its properties is bound; (5) there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to its knowledge, threatened against the General Partner nor, to the best knowledge of the General Partner, any basis therefor (i) in any way contesting the existence of the General Partner, (ii) in any way contesting the authority of the General Partner to act on behalf of the Borrower or the authority of the Sole Member to act on behalf of the General Partner, or (iii) which would have a material adverse effect on the financial condition or operations of the General Partner or the consummation of the transactions on the part of the General Partner or the Borrower contemplated hereby or by any other Borrower Document; and (6) such other matters reasonably requested by the Purchaser;

(c) A certificate of the Sole Member, in its capacity as the Sole Member of the General Partner and as the Ground Lessor, dated the Closing Date and in form and substance reasonably satisfactory to the Purchaser, signed by an authorized representative of the Sole Member, that: (1) the Sole Member is (A) a nonprofit public facility corporation duly organized, validly existing and in good standing under the laws of the State, (B) [reserved], and (C) duly qualified to conduct business in the State, with full legal right, power and authority to execute and deliver this Agreement and the other Borrower Documents and the General Partner Pledge, all as the Sole Member of the General Partner; (2) the Sole Member has, by all necessary legal action, duly authorized the execution and delivery, on behalf of the General Partner, of this Agreement, the other Borrower Documents and the General Partner Pledge; (3) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the Sole Member for the execution and delivery by the Sole Member, on behalf of the General Partner, of this Agreement, the other Borrower Documents or the General Partner Pledge and the performance by the Sole Member thereunder; (4) the execution and delivery by the Sole Member, on behalf of the General Partner, of this Agreement, the other Borrower Documents and the General Partner Pledge, and the performance by the Sole Member thereunder do not violate the organizational documents of the Sole Member, any applicable law, rule or regulation, or any court order by which the Sole Member is bound, and such actions do not constitute a default under any indenture, mortgage, lease, note or other obligation or instrument to which the Sole Member is a party or by which it or its properties is bound; (5) there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to its knowledge, threatened against the Sole Member nor, to the knowledge of the Sole Member, any basis therefor (i) in any way contesting the existence of the Sole Member, (ii) in any way contesting the

authority of the officers of the Sole Member to act on behalf of the Sole Member, or (iii) which would have a material adverse effect on the financial condition or operations of the Sole Member or the consummation of the transactions on the part of the Sole Member, the General Partner or the Borrower contemplated hereby, by any Borrower Document or by the General Partner Pledge; and (6) such other matters reasonably requested by the Purchaser;

(d) A certificate of the Developer, dated the Closing Date and in form and substance reasonably satisfactory to the Purchaser, signed by an authorized representative of the Developer, that: (1) the Developer is a \_\_\_\_\_ duly organized, validly existing and is in good standing under the laws of the state of its organization, with full legal right, power and authority to execute and deliver the Developer Fee Pledge on its own behalf; (2) the Developer has, by all necessary legal action, duly authorized the execution and delivery, on its own behalf, of the Developer Fee Pledge; (3) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of the Developer for the execution and delivery by the Developer, on its own behalf, of the Developer Fee Pledge, and the performance by the Developer thereunder; (4) the execution and delivery by the Developer, on its own behalf, of the Developer Fee Pledge and the performance by the Developer thereunder do not violate the organizational documents of the Developer, any applicable law, rule or regulation, or any court order by which the Developer is bound, and such actions do not constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which the Developer is a party or by which it or its properties is bound; (5) there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to its knowledge, threatened against the Developer nor, to the knowledge of the Developer, any basis therefor (i) in any way contesting the existence of the Developer, (ii) in any way contesting the authority of the Developer to act on behalf of the Borrower, or (iii) which would have a material adverse effect on the financial condition or operations of the Developer or the consummation of the transactions on the part of the Developer or the Borrower contemplated hereby or by the Developer Fee Pledge; and (6) such other matters reasonably requested by the Purchaser;

(e) Certificates of each Guarantor who is not a natural person, dated the Closing Date and in form and substance reasonably satisfactory to the Purchaser, signed by such Guarantor or an authorized officer of such Guarantor, that: (1) such Guarantor is duly organized, validly existing and in good standing under the laws of the state of its organization, with full legal right, power and authority to execute and deliver the Guarantor Documents; (2) such Guarantor has, by all necessary legal actions, duly authorized the execution and delivery of the Guarantor Documents; (3) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of such Guarantor for the execution and delivery by such Guarantor of the Guarantor Documents and the performance by such Guarantor thereunder; (4) the execution and delivery by such Guarantor of the Guarantor Documents and the performance by such Guarantor thereunder do not violate any applicable law, rule, or regulation or any court order by which such Guarantor is bound, and such actions do not in any material respect constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which such Guarantor is a party or by which it is bound; (5) there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to the knowledge of such Guarantor, threatened against such Guarantor, nor any basis therefor, which would have a material adverse effect upon the financial condition of such Guarantor or the consummation of the transactions on the part of such Guarantor contemplated by the Guarantor Documents; and (6) such other matters reasonably requested by the Purchaser;

(f) Certificates of each Guarantor who is a natural person, dated the Closing Date and in form and substance reasonably satisfactory to the Purchaser, signed by such Guarantor

that: (1) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental body is required by or on behalf of such Guarantor for the execution and delivery by such Guarantor of the Guarantor Documents to which he is a party and the performance by the such Guarantor of his obligations thereunder; (2) the execution and delivery by the Guarantor Documents to which he is a party and the performance by such Guarantor of his obligations thereunder do not violate any applicable law, rule, or regulation or any court order by which such Guarantor is bound, and such actions do not in any material respect constitute a default under any agreement, indenture, mortgage, lease, note or other obligation or instrument to which such Guarantor is a party or by which he is bound; (3) there is no legal action, suit, proceeding, inquiry or investigation at law or in equity (before or by any court, agency, arbitrator, public board or body or other entity or person) pending or, to the best knowledge of such Guarantor, threatened against such Guarantor, nor to the best knowledge of such Guarantor any basis therefor, which would have a material adverse effect upon the financial condition of such Guarantor or the consummation of the transactions on the part of such Guarantor contemplated by the Guarantor Documents to which he is a party; and (4) such other matters reasonably requested by the Purchaser;

(g) Incumbency certificates of the Borrower, the General Partner, the Sole Member and each Guarantor who is not a natural person certifying, in each case, that each of the attached organizational documents, certificate of good standing, authorizing resolution and evidence of incumbency is true, correct and complete and has not been amended, modified or rescinded;

(h) Opinions of counsel to the Borrower, the General Partner, the Sole Member and the Guarantor dated the date of the issuance of the Bonds and addressed to the Issuer, the Trustee and the Purchaser as to the matters on Exhibit C attached hereto;

(i) A tax opinion of Bond Counsel from Bracewell LLP, dated the date of issuance of the Bonds and addressed to the Issuer, the Trustee and the Purchaser, in form and substance acceptable to the Purchaser;

(j) An opinion of counsel to the Issuer, or of Bond Counsel acting in such capacity, dated the date of issuance of the Bonds and addressed to the Trustee and the Purchaser, in form and substance acceptable to the Purchaser, which opinion shall include an opinion that the Bonds are exempt from registration under the 1933 Act and the Indenture is exempt from qualification under the 1939 Act;

(k) A Comptroller's Certificate attached to the initial Bond and an opinion of the Texas Attorney General as to the legality and validity of the Bonds dated the date of its approval of the Bonds;

(l) A pro forma mortgagee title insurance policy issued by the Title Company to the Trustee, dated effective as of the date of recording of the Mortgage (with gap coverage from the date of issuance of the Bonds), in form, scope and substance satisfactory to the Purchaser, insuring the lien of the Mortgage in an amount equal to the initial face amount of the Bonds, subject only to such liens and encumbrances as the Purchaser may approve, containing all the requirements included in the Purchaser's list of title requirements provided to the Borrower via e-mail, to the extent available in the State;

(m) Evidence of the insurance required under the Loan Agreement, including, without limitation, flood insurance to the extent that any portion of the Project is located in a Special Flood Hazard area as defined by the United States Department of Housing and Urban Development;

(n) A certified legal description and as-built ALTA/NSPS Land Title Survey of the land included in the Project by a surveyor approved by the Purchaser in form and substance acceptable to the Purchaser, containing all the requirements included in the Purchaser's list of survey requirements and form of surveyor's certificate provided to the Borrower via e-mail, to the extent available in the State;

(o) Evidence in such form as the Purchaser may reasonably require of (i) satisfactory subdivision of the Project and zoning for all buildings and improvements; (ii) the valid issuance of all necessary permits and licenses to construct, occupy and operate the buildings and improvements, including, without limitation, all permits and licenses required under applicable law with respect to subdivision, zoning, safety, building, occupancy, fire protection, environmental, energy and similar matters; (iii) the availability of all utility and municipal services required for the operation of the Project; and (iv) the availability of means of access to and from the Project, by means of public ways or easements benefiting the Project;

(p) Evidence reasonably satisfactory to the Purchaser that building permits have been provided or will be provided upon the payment of fees, if applicable;

(q) A budget detailing the costs of the proposed construction of the Project, and plans and specifications in respect of such construction, all satisfactory to the Originator;

(r) Copies of contracts with an architect, a general contractor or prime subcontractor and a structural engineer, satisfactory to the Purchaser, for the performance of the construction of the Project, plus consents of the assignments of all such contracts to the Trustee by each professional;

(s) A report or written confirmation from the Engineering Consultant that (i) the Engineering Consultant has reviewed the final plans and specifications, (ii) the construction contract(s) satisfactorily provide for the construction of the Project, and (iii) in the opinion of the Engineering Consultant, construction of the Project can be completed within twenty-four (24) months following the Closing for an amount not greater than the amounts allocated for such purpose in the submitted budget;

(t) An environmental audit satisfactory to the Purchaser in scope, form and substance, and performed and certified to the Purchaser by an environmental engineer satisfactory to the Purchaser;

(u) An engineering report satisfactory to the Purchaser in scope, form and substance, and prepared and certified to the Purchaser by a structural engineer satisfactory to the Purchaser, and a report showing no infestation by wood-destroying insects;

(v) For each of the Borrower, the General Partner, the Sole Member and the Guarantor (who is not a natural person), a copy of its organizational documents, certified as to accuracy by an authorized representative, as in effect on the date of closing, including copies of all filed documents, which shall, with respect to the Borrower and the General Partner, contain provisions denoting its single purpose entity status, and evidence that all action necessary for the valid execution, delivery and performance by the Borrower, the General Partner, the Sole Member and the Guarantor of this Agreement and the other Borrower Documents or the Guarantor Documents, as applicable, to which it is or is to become a party shall have been duly and effectively taken;

(w) A use of proceeds certificate of the Borrower, dated the Closing Date, in form and substance reasonably satisfactory to the Purchaser and Bond Counsel, respecting certain tax matters, as may be reasonably required by Bond Counsel to enable it to give its opinion, which may be included in the Tax Exemption Agreement;

(x) A non-arbitrage certificate of the Issuer, in form and substance acceptable to Bond Counsel, which may be included in the Tax Exemption Agreement;

(y) A certificate of the Trustee, dated the Closing Date, in form and substance satisfactory to the Purchaser, signed by an authorized officer of the Trustee, that: (i) the Trustee has all necessary power and authority to accept the trusts granted under the Indenture and to perform its duties under the Trustee Documents; (ii) the Trustee Documents have been duly authorized, executed and delivered by an authorized officer of the Trustee; (iii) the Bonds have been authenticated by an authorized representative of the Trustee and delivered to or at the direction of the Purchaser; and (iv) no consent, approval, authorization or order of, or filing, registration or declaration with, any court or governmental agency or body is required on behalf of the Trustee for the execution and delivery by the Trustee of the Trustee Documents or the performance by the Trustee of its obligations thereunder;

(z) A properly completed and executed IRS Form 8038 as to the Bonds to be filed with the IRS promptly following the Closing Date;

(aa) Oral confirmation from the Purchaser that it is ready to close; and

(bb) Such other documents, certificates, financing statements, approvals, assurances and opinions as the Purchaser or the Originator may reasonably request.

7.4 If any of the conditions set forth in Sections 7.1, 7.2 or 7.3 hereof have not been met on the Closing Date, the Purchaser may, at its sole option, terminate this Agreement or proceed to Closing upon waiving in writing such condition under this Agreement. If this Agreement is terminated pursuant to this Section 7.4, no party will have any rights or obligations to the other parties hereto, except as provided in Section 10 below.

Section 8. Actions and Events at the Closing. The following events will take place at the Closing:

(a) The Issuer will deliver the Bonds at the place set forth in Items 5 in Exhibit B to the Purchaser or to its designee, if any. The Bonds so delivered will be in the form required by the Indenture, duly executed on behalf of the Issuer and authenticated by the Trustee, and will be fully registered in the names requested by the Purchaser or its designee, if any.

(b) The Issuer and/or the Borrower will deliver or cause to be delivered to the Purchaser at the place set forth in Item 5 in Exhibit B, or at such other place or places as the Issuer, the Borrower and the Purchaser may mutually agree upon, the materials described in Section 7.3 hereof.

(c) The Purchaser or its designee will deliver to the Trustee, for the account of the Issuer or as the Issuer directs, an amount equal to the Purchase Price of the Bonds, by wire transfer to the Trustee, in immediately available federal funds, which shall be deposited by the Trustee in the Accounts as set forth in the Indenture upon the issuance of the Bonds, and applied as set forth in the Indenture.

Section 9. Termination of Agreement. The Purchaser may terminate this Agreement, without liability therefor, by notifying the Issuer and the Borrower at any time prior to the Closing if:

(a) Any legislation is introduced in, or enacted by, the United States Congress, or shall have been reported out of committee or be pending in committee, or any decision is rendered by any court of competent jurisdiction, or any ruling or regulation, temporary regulation, release or announcement shall have been issued or proposed by the Treasury Department of the United States, the Internal Revenue Service, or any other agency of the government of the United States that, in the reasonable judgment of the Purchaser, has the purpose or effect of causing interest on the Bonds to be includable in gross income of the holders thereof for purposes of federal income taxation or to be an item of tax preference for purposes of the federal alternative minimum tax; or

(b) Any legislation is introduced in, or enacted by the United States Congress or any action is taken by, or on behalf of, the Securities and Exchange Commission, that, in the opinion of counsel to the Purchaser has the effect of requiring (i) the Bonds or the interests in the Loan Agreement or other financing documents to be registered under the 1933 Act or the Indenture to be qualified under the 1939 Act, or (ii) any governmental consents, approvals, orders or authorizations for the consummation of the transactions contemplated by this Agreement, the other Issuer Documents, the other Borrower Documents or the Guarantor Documents which cannot, without undue expense, be obtained prior to the Closing Date.

(c) Any legislation is enacted by the State Legislature in the State which, in the reasonable judgment of the Purchaser, has the purpose or effect of limiting or reducing the expected exemption of the portion of the Project comprised of real property from one hundred percent (100%) of the applicable ad valorem real estate taxation, or any judicial or administrative determination calling into question the availability of the exemption is handed down.

Section 10. Fees and Expenses; Costs of Issuance. The Borrower shall pay or cause to be paid all costs of issuance of the Bonds, including all reasonable expenses incident to the performance of the Purchaser's obligations hereunder in connection with its purchase of the Bonds, including, but not limited to, (i) the fees set forth in Section 2.2(a) of the Loan Agreement, (ii) the cost of the preparation, printing or other reproduction of the Resolution, this Agreement, the other Issuer Documents, the other Borrower Documents and the Guarantor Documents, in reasonable quantities for distribution, (iii) the cost of producing, authenticating and delivering the Bonds, (iv) the fees and disbursements of Bond Counsel, Issuer's counsel, Purchaser's counsel and Trustee's counsel, (v) the fees and expenses, including, without limitation, all initial and continuing fees and expenses, of the Trustee and all paying agents, transfer agents and bond registrars, and (vi) the fees and expenses, including travel expenses, incurred by your representatives in connection with the issuance, sale and delivery of the Bonds.

Section 11. Miscellaneous.

11.1 All notices, demands and formal actions hereunder will be in writing and mailed, telecopied or delivered to the following addresses or such other address as any of the parties shall specify:

If to the Purchaser:      RSZ TAC LLC  
666 Old Country Road, Suite 603  
Garden City, New York 11530  
Attention: Cody Langeness

With a copy to:            Red Stone Tax Exempt Funding II LLC  
Empire State Building  
350 West 5<sup>th</sup> Avenue, Suite 4830  
New York, New York 10118  
Attention: Cody Langeness

   and:      Greenberg Traurig, LLP  
1717 Arch Street, Suite 400  
Philadelphia, Pennsylvania 19103  
Attention: Dianne Coady Fisher

If to the Issuer:            Texas Department of Housing and Community Affairs  
P.O. Box 13941  
Austin, Texas 78711  
Attention: Manager of Multifamily Bonds

If to the Borrower:        Saddlespur Pass Apartments, LP  
c/o Kittle Property Group, Inc.  
310 East 96<sup>th</sup> Street, Suite 400  
Indianapolis, Indiana 46240  
Attention: Jeffrey L. Kittle

With a copy to:            Kittle Property Group, Inc.  
310 East 96<sup>th</sup> Street, Suite 400  
Indianapolis, Indiana 46240  
Attention: David Thompson

   and:      BMDC Saddlespur Pass Apartments GP, LLC  
\_\_\_\_\_  
\_\_\_\_\_  
Attention: \_\_\_\_\_

11.2      This Agreement will inure to the benefit of and be binding upon the parties hereto and their permitted successors and assigns and will not confer any rights upon any other person, except as provided herein with respect to the Originator.

11.3      This Agreement may not be assigned by the Issuer or the Borrower. This Agreement may be assigned by the Purchaser upon written notice of such assignment from the Purchaser to the Issuer and the Borrower. The Purchaser may designate the entity in whose name the Bonds are to be registered at Closing by providing registration information to the Trustee and upon such entity providing to the Trustee and the Issuer an executed investor letter in the form attached as an exhibit to the Indenture on or prior to the Closing Date.

11.4      This Agreement may not be amended without the prior written consent of the Issuer, the Borrower and the Purchaser.

11.5 The representations, covenants and agreements of the Issuer and the Borrower will not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of (a) any investigations made by or on behalf of the Purchaser (or statements as to the results of such investigations) concerning such representations, covenants and agreements, and (b) delivery of and payment for the Bonds.

11.6 This Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered will be an original, but all such counterparts will together constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Agreement.

11.7 This Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of the Bonds.

11.8 This Agreement will become effective and binding upon the respective parties hereto upon the execution and delivery hereof by the parties hereto and will be valid and enforceable as of the time of such execution and delivery.

11.9 If any provision of this Agreement is held or deemed to be or is, in fact, inoperative, invalid or unenforceable as applied in any particular case in any jurisdiction or jurisdictions, or in all jurisdictions because it conflicts with any provision of any constitution, statute, rule of public policy, or any other reason, such circumstances will not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance or of rendering any other provision or provisions of this Agreement invalid, inoperative or unenforceable to any extent whatsoever.

11.10 This Agreement will be governed by and construed in accordance with the laws of the State applicable to agreements to be performed wholly therein, without regard to conflict of laws principles.

11.11 The obligations of the Purchaser hereunder shall be without recourse to any shareholder, trustee, officer, employee, agent or manager of the Purchaser and no shareholder, trustee, officer, employee, agent or manager of the Purchaser shall be personally liable for the payment of any obligation of the Purchaser hereunder. In the event any legal actions or proceedings are brought in respect of such obligations, any judgment against the Purchaser shall be enforced only against the assets of the Purchaser and not against any property of any shareholder, trustee, officer, employee, agent or manager of the Purchaser.

11.12 As an inducement to the agreement of the Purchaser to purchase the Bonds pursuant to the terms of this Agreement, the Borrower agrees not to obtain or seek to obtain financing or credit of any kind or nature whatsoever from any other sources in lieu of the financing to be provided by the issuance of the Bonds by the Issuer and the purchase of the Bonds by the Purchaser. In the event of a breach of this covenant, the Purchaser shall be entitled to all remedies available to it, at law and in equity, including specific performance and damages.

Section 12. No Advisory or Fiduciary Role. The Issuer and the Borrower acknowledge and agree that (i) the purchase and sale of the Bonds pursuant to this Agreement is an arm's-length commercial transaction among the Borrower, the Issuer and the Purchaser, (ii) in connection with such transaction, the Purchaser is acting solely as a principal and not as an advisor (including, without limitation, a Municipal Advisor (as such term is defined in Section 975(e) of the Dodd-Frank Wall Street Reform and Consumer Protection Act)), agent or a fiduciary of the Issuer or the Borrower, (iii) the Purchaser has not assumed a

fiduciary responsibility in favor of the Issuer or the Borrower with respect to the offering of the Bonds or the process leading thereto (whether or not the Purchaser, or any affiliate of the Purchaser, has advised or is currently advising the Issuer or the Borrower on other matters) or any other obligation to the Issuer or the Borrower except the obligations expressly set forth in this Agreement, (iv) the Purchaser has financial and other interests that differ from those of the Issuer and the Borrower, and (v) each of the Issuer and the Borrower has consulted with its own legal and financial advisors to the extent it deemed appropriate in connection with the offering of the Bonds.

Section 13. Compliance with Texas Government Code.

The Purchaser hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Agreement is a contract for goods or services, will not boycott Israel during the term of this Agreement. The foregoing verification is made solely to comply with Section 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 Purchaser understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Purchaser and exists to make a profit.

The Purchaser represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Purchaser and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Purchaser understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Purchaser and exists to make a profit.

[SIGNATURES APPEAR ON FOLLOWING PAGES]

If the foregoing accurately sets forth our mutual understanding concerning the subject matter hereof, kindly indicate your acceptance by executing this Agreement and returning this executed Agreement to the undersigned.

**RSZ TAC LLC**

By: \_\_\_\_\_  
Name: Cody Langeness  
Title: President

[SIGNATURES CONTINUED ON NEXT PAGE]

Accepted as of the date first above written:

**ISSUER: TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

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

Name: Monica Galuski

Title: Director of Bond Finance/Chief Investment Officer

[SIGNATURES CONTINUED ON NEXT PAGE]

Accepted as of the date first above written:

**BORROWER:**            **SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development Corporation,  
a Texas nonprofit public facility corporation,  
its Sole Member

By: \_\_\_\_\_  
Tammye Trevino, Secretary

## EXHIBIT A

### **Glossary of Terms**

“1933 Act” means the Securities Act of 1933, as amended.

“1939 Act” means the Trust Indenture Act of 1939, as amended.

“Accounts” means all of the funds and accounts to be established under, and defined in, the Indenture, including the Project Fund (and within such Project Fund, the Bond Proceeds Account, the Equity Account, the Capitalized Interest Account and the Insurance and Condemnation Proceeds Account), the Costs of Issuance Fund, the Replacement Reserve Fund, the Tax and Insurance Escrow Fund, the Rebate Fund, the Bond Fund, the Surplus Fund, the Redemption Fund and the Operating Reserve Fund.

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

“Agreement” means this Bond Purchase Agreement, as amended from time to time.

“Assignment of Capital Contributions” means that certain Assignment of Capital Contributions to be dated as of January 1, 2021, from the Borrower to the Trustee.

“Assignment of Management Agreement and Consent” means that certain Assignment of Management Agreement to be dated as of January 1, 2021, from the Borrower to the Trustee, together with the consent of the manager of the Project.

“Assignment of Project Documents” means that certain Assignment of Project Documents to be dated as of January 1, 2021, from the Borrower to the Trustee.

“Assignment of Rents” means that certain Assignment of Leases, Rents and Other Income to be dated as of January 1, 2021, from the Borrower to the Trustee.

“Bonds” means those certain Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021, to be issued in the original aggregate principal amount of \$ \_\_\_\_\_.

“Borrower” means Saddlespur Pass Apartments, LP, a limited partnership duly organized, validly existing and in good standing under the laws of the State, together with its permitted successors and assigns hereunder.

“Borrower Documents” means, collectively, this Agreement, the Loan Agreement, the Regulatory Agreement, the Mortgage, the Note, the Assignment of Rents, the Environmental Indemnity, the Assignment of Project Documents, the Assignment of Management Agreement and Consent, the Assignment of Capital Contributions, the General Partner Pledge, the Replacement Reserve, the Ground Lease and all other agreements, documents and certificates as may be required to be executed and delivered by the Borrower to carry out, give effect to, and consummate the transactions contemplated by this Agreement or by the other Borrower Documents.

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

“Closing” means the proceeding at which the actions described in Section 8 are performed.

“Closing Date” means the date on which the Closing takes place.

“Developer” means [\_\_\_\_\_], together with its permitted successors and assigns, as developer and recipient, of the developer fee in respect of the Project.

“Developer Fee Pledge” means that certain Developer Pledge and Security Agreement to be dated as of January 1, 2021 from the Developer, in favor of the Trustee.

“Early Prepayment Premium” means the greater of (a) \$0 and (b) the product of (i) the difference between (x) \_\_\_\_\_ percent (\_\_\_%) less (y) the then-current 17-year SIFMA Swap Rate with an end date of January 1, 2038, times (ii) the Outstanding principal amount of the Bonds, times (iii) the number of months remaining from the date of a prepayment to which this definition applies until January 1, 2038, divided by twelve (12). The Controlling Person (as such term is defined in the Indenture) shall calculate, or cause to be calculated, the Early Prepayment Premium and deliver the calculation thereof, in reasonable detail to the Trustee and Issuer, not later than five (5) Business Days prior to the date of a prepayment to which this definition applies.

“Engineering Consultant” means Hillmann Consulting, LLC, or any other engineering consultant chosen by the Originator.

“Environmental Indemnity” means that certain Environmental Indemnity Agreement to be dated as of January 1, 2021, from the Borrower and the Guarantor for the benefit of the Trustee.

“General Partner” means BMDC Saddlepur Pass Apartments GP, LLC, a limited liability company, duly organized and validly existing under the laws of the State, together with its permitted successors and assigns hereunder.

“General Partner Pledge” means that certain Limited Guaranty, Pledge of Partnership Interests and Security Agreement dated as of January 1, 2021 from the General Partner in favor of the Trustee.

“Ground Lease” means that certain Ground Lease dated as of [January 1], 2021, by and between Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, and its permitted successors and assigns, as landlord (the “Ground Lessor”), and the Borrower, as tenant, as the same may be amended, modified or supplemented from time to time.

“Guarantor” means, collectively, jointly and severally, Jeffrey L. Kittle, and individual and a resident of the State of Indiana and Herman & Kittle Properties, Inc., a corporation organized and existing under the laws of the State of Indiana, together with their respective heirs, executors, legal and personal representatives and permitted successors and assigns.

“Guarantor Documents” means, collectively, the Guaranty of Recourse Obligations to be dated as of January 1, 2021, the Guaranty of Debt Service and Stabilization to be dated as of January 1, 2021, the Guaranty of Completion to be dated as of January 1, 2021, the Guaranty of Operating Deficits to be dated as of January 1, 2021, each from the Guarantor for the benefit of the Trustee and the Environmental Indemnity.

“Indenture” means that certain Indenture of Trust to be dated as of January 1, 2021, by and between the Issuer and the Trustee.

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

“Issuer Assignment” means, collectively, the Issuer’s endorsement of the Note and that certain Assignment of Deed of Trust Documents to be dated as of January 1, 2021, from the Issuer to the Trustee.

“Issuer Documents” means, collectively, the Indenture, the Loan Agreement, the Regulatory Agreement, the Issuer Assignment and this Agreement.

“Loan Agreement” means that certain Loan Agreement to be dated as of January 1, 2021, by and among the Issuer, Red Stone Servicer, LLC, as initial Controlling Person and the Borrower.

“Mortgage” means that certain Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) to be dated as of January 1, 2021, from the Borrower to a trustee for the benefit of the Issuer and assigned to the Trustee.

“Note” means the promissory note of the Borrower to be dated the date of issuance of the Bonds from the Borrower to the Issuer and endorsed to the Trustee.

“Originator” means Red Stone Tax Exempt Funding II LLC, a Delaware limited liability company.

“Project” means that certain 216-unit multifamily rental housing facility with related amenities and site improvements and related personal property and equipment located in San Antonio, Texas, the acquisition, construction, installation and equipping of which are being financed in part with the proceeds of the Bonds.

“Purchaser” means RSZ TAC LLC, or its designee or nominee, together with their respective permitted successors and assigns hereunder.

“Regulatory Agreement” means that certain Regulatory and Land Use Restriction Agreement dated as of January 1, 2021, among the Issuer, the Trustee, Bexar Management and Development Corporation and the Borrower.

“Replacement Reserve” means that certain Replacement Reserve and Security Agreement dated as of January 1, 2021, between the Borrower and the Trustee.

“Resolution” means the resolution adopted by the Issuer on [\_\_\_\_\_, 2021], relating to the transactions contemplated by this Agreement.

“Sole Member” means Bexar Management and Development Corporation, a nonprofit public facility corporation duly organized and validly existing under the laws of the State, together with its permitted successors and assigns hereunder.

“State” means the State of Texas.

“Tax Exemption Agreement” means that certain Tax Exemption Certificate and Agreement dated as of January 1, 2021, by and among the Issuer, the Borrower and the Trustee.

“Title Company” means First American Title Insurance Company.

“Trustee” means BOKF, NA, a national banking association duly organized and validly existing under the laws of the United States of America, or its successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee under the Indenture.

“Trustee Documents” means the Indenture, the Regulatory Agreement and all other agreements, documents and certificates as may be required to be executed and delivered by the Trustee to carry out, give effect to, and consummate the transactions contemplated by this Agreement and the other Trustee Documents.

“You” and similar terms refer collectively to the Issuer and the Borrower.

## EXHIBIT B

### Terms of Bonds

1. Title of Bonds: \$ \_\_\_\_\_ Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021
2. Purchase Price of Bonds: \$ \_\_\_\_\_
3. Basic Bond Terms:
  - (a) Date of the Bonds: January \_\_, 2021, except for the Bonds initially delivered under the Indenture, which shall be dated [\_\_\_\_\_] 1, 20\_\_].
  - (b) Interest Payment Dates: First Business Day of each month commencing March 1, 2021
  - (c) Aggregate Principal Amount of Bonds: \$ \_\_\_\_\_
  - (d) Maturity Date for Bonds: [January 1, 2061]
  - (e) Bondholder right to demand redemption: Bondholders will have a right to require redemption of Bonds in whole at par on or after [January 1, 2038]
  - (f) Interest Rate for Bonds: [\_\_\_\_\_] % per annum, which rate shall be equal to the sum of (a) 2.95%, plus (b) the product of (i) 87% and (ii) the fixed swap rate quoted ten (10) Business Days prior to the Closing Date utilizing 3-Month LIBOR as the floating rate leg with a 15 year term as determined by the Controlling Person after getting market quotations from a financial institution providing such interest rate swaps.
  - (g) Redemption Provisions:
    - (i) mandatory sinking fund: Bonds are subject to mandatory sinking fund redemption in part on a quarterly basis from amounts to be deposited monthly into the Redemption Fund on the dates and in the amounts shown on Schedule 3 to Loan Agreement.
    - (ii) optional prepayment: no optional prepayment will be permitted prior to December 31, 2033; from January 1, 2033 until December 31, 2037, Bonds may be optionally redeemed at the redemption price equal to one hundred and one percent (101%) of the principal amount thereof, plus the Early Prepayment Premium; from and after January 1, 2038, Bonds may be optionally redeemed at the redemption price equal to one hundred percent (100%) of the principal amount thereof, plus interest accrued thereon to, but not including, the redemption date.
    - (iii) mandatory redemption: Bonds are otherwise subject to mandatory redemption as set forth in the Indenture, including, without limitation,

mandatory redemption in part in the amount of \$[8,800,000] in connection with and as a condition to stabilization.

(h) CUSIP#: [\_\_\_\_\_]

4. Certain Required Funded Accounts:

(a) Tax and Insurance Escrow Fund – ongoing as required under the Indenture

(b) Replacement Reserve Fund – ongoing as required under the Indenture

(c) Operating Reserve Fund – \$[635,800], to be deposited on or before December 31, 2029; ongoing as required under the Indenture

(d) Project Fund – funds sufficient to pay all estimated costs of construction shall be deposited into the Indenture at Closing or be paid during the construction period pursuant to the Borrower’s partnership agreement

5. Time of Closing: 1 p.m., Eastern Time

(a) Date of Closing: January \_\_, 2021

(b) Place of Closing: Bracewell LLP  
111 Congress Avenue, Suite 2300  
Austin, Texas 78701

(c) Delivery of Bonds: At place of Closing

## EXHIBIT C

### **Matters to be Covered by Opinions of Counsel to the Borrower, the General Partner, the Sole Member, the Ground Lessor, the Developer and the Guarantor**

1. Organization and Qualification. The Borrower is duly formed and validly existing as a limited partnership under the laws of the State of Texas. The General Partner is duly formed and validly existing as a limited liability company under the laws of the State of Texas. The Sole Member is duly formed and validly existing as a nonprofit public facility corporation under the laws of the State of Texas. Each Guarantor (who is not a natural person) is duly formed and validly existing as a corporation under the laws of the State of Indiana.

2. Authority and Authorization. Each of the Borrower, the General Partner and the Sole Member has all requisite power and authority to execute and deliver the Borrower Documents to which it is a party and to perform its obligations under the Borrower Documents to which it is a party, and all such action has been duly and validly authorized by all necessary action on its part. Each Guarantor has all requisite power and authority to execute and deliver the Guarantor Documents and to perform its obligations under the Guarantor Documents, and all such action has been duly and validly authorized by all necessary action on its part.

3. Execution and Binding Effect. The Borrower Documents have been duly and validly executed and delivered by the Borrower and constitute legal, valid and binding obligations of the Borrower, enforceable in accordance with the terms thereof, except as such enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights. The Guarantor Documents have been duly and validly executed and delivered by the Guarantor and constitute the legal, valid and binding obligation of the Guarantor, enforceable in accordance with the terms thereof, except as such, enforceability may be limited by bankruptcy, insolvency or other similar laws of general application affecting the enforcement of creditors' rights.

4. Authorization and Filings. No authorization, consent, approval, license, exemption or other action by, and no registration, qualification, designation, declaration or filing with, any governmental authority is or will be necessary in connection with the execution and delivery of the Borrower Documents or the Guarantor Documents, or the consummation of the transactions contemplated, other than the recordings and filings referred to in paragraphs 7, 8 and 9 below.

5. Absence of Conflicts. To the best of counsel's knowledge, neither the execution and delivery of the Borrower Documents and the Guarantor Documents, nor consummation of the transactions therein contemplated, nor performance of or compliance with the terms and conditions thereof will (a) violate any Legal Requirement, or (b) conflict with or result in a breach of or a default under the organizational documents of the Borrower, the General Partner, the Sole Member or any Guarantor, or any agreement or instrument to which any of such parties is a party or by which any of such parties or any of their properties (now owned or hereafter acquired) may be subject or bound.

6. Litigation. To the best of counsel's knowledge after due inquiry, there is no pending or threatened proceeding by or before any governmental authority against or affecting the Borrower, the General Partner, the Sole Member, the Guarantor, the Project or any of the Borrower's affiliates which, if adversely decided, would have a material adverse effect on the business, operations, condition (financial or otherwise) or prospects of the Borrower, the General Partner, the Sole Member or the Guarantor or on the ability of the Borrower, the General Partner or the Guarantor to perform their respective obligations under the Borrower Documents or the Guarantor Documents, as applicable, or on the operation of the Project.

7. Validity of Mortgage Liens. The Mortgage is in appropriate form for recording and, when recorded in the real estate records for Bexar County, Texas, will create in favor of a trustee for the benefit of the Issuer, and assigned to the Trustee a valid mortgage lien upon and security interest in the Project.

8. Validity of Assignment of Rents. The Assignment of Rents is in appropriate form for recording and, when recorded in the real estate records for Bexar County, Texas, will create in favor of the Trustee a valid collateral assignment, as opposed to an absolute assignment, of the rents, leases and profits of the Project, subject to the Issuer's collection of rents complying with the terms of the Texas Assignment of Rents Act (Chapter 64 of the Property Code).

9. Perfection of Security Interests. The Borrower Documents, the General Partner Pledge and the Developer Fee Pledge, and, when filed with the Secretary of State of the State of Texas and in the real estate records of Dexar County, Texas, as applicable, the UCC financing statements, will create in the Trustee valid and perfected security interests in the collateral described therein.

10. Remedies. The Borrower Documents and the Guarantor Documents do not omit essential remedies that in the opinion giver's experience are generally found in similar documents for mortgage loans in the State of Texas.

11. Real Estate Tax Exemption. The portion of the Project that is comprised of real property qualifies for the exemption from one hundred percent (100%) of the applicable ad valorem real estate taxes.

## PROMISSORY NOTE

AFTER THE ENDORSEMENT AS HEREON PROVIDED AND PLEDGE OF THIS NOTE, THIS NOTE MAY NOT BE ASSIGNED, PLEDGED, ENDORSED OR OTHERWISE TRANSFERRED EXCEPT TO AN ASSIGNEE OR SUCCESSOR OF THE TRUSTEE IN ACCORDANCE WITH THE INDENTURE, BOTH REFERRED TO HEREIN.

FOR VALUE RECEIVED, SADDLESPUR PASS APARTMENTS, LP, a limited partnership duly formed and validly existing under the laws of the State of Texas (the "Borrower"), by this promissory note hereby promises to pay to the order of the Texas Department of Housing and Community Affairs (the "Issuer") the principal sum of THIRTY-FOUR MILLION and no/100 Dollars (\$34,000,000), together with interest on the unpaid principal amount hereof, from the Issue Date (as defined in the Indenture referenced below) until paid in full, at a rate per annum equal to the rate of interest borne by the Bonds (as hereinafter defined), and premium, if any, on the Bonds. All such payments of principal, interest and premium, if any, shall be made in funds which shall be immediately available on the due date of such payments and in lawful money of the United States of America at the principal corporate trust office of BOKF, NA in Fort Worth, Texas, or its successor as trustee under the Indenture.

The principal amount and interest shall be payable two Business Days before the dates and in the amounts set forth on Schedule 3 to the Agreement (as hereinafter defined) and two Business Days before any other date that any payment of interest, premium, if any, or principal is required to be made in respect of the Bonds pursuant to the Indenture whether at maturity, upon acceleration or by sinking fund redemption or mandatory redemption, until the principal of, premium, if any, and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Indenture, a sum which will enable the Trustee to pay the amount payable on such date as principal of (whether at maturity or upon mandatory redemption or acceleration or otherwise), premium, if any, and interest on the Bonds, as provided in the Indenture, subject to prepayment as provided in the Indenture and the Agreement.

This promissory note is the "Note" referred to in the Loan Agreement, dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the "Agreement") among the Borrower, Red Stone Servicing, LLC, as initial Controlling Person and the Issuer, the terms, conditions and provisions of which are hereby incorporated by reference.

This Note and the payments required to be made hereunder are irrevocably assigned, without recourse, representation or warranty, and pledged to BOKF, NA, as trustee (the "Trustee") under the Indenture of Trust, dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), by and between the Issuer and the Trustee, and such payments will be made directly to the Trustee for the account of the Issuer pursuant to such assignment. Such assignment is made as security for the payment of \$34,000,000 in aggregate principal amount of the Issuer's Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021 (the "Bonds"), issued by the Issuer pursuant to the Indenture. All the terms, conditions and provisions of the Indenture and the Bonds are hereby incorporated as a part of this Note.

Under certain circumstances, the Borrower may at its option and may be required to, prepay all or any part of the amount due on this Note, together with accrued interest thereon, as provided in the Agreement.

Presentation, demand, protest and notice of dishonor are hereby expressly waived by the Borrower.

On and subject to the terms and exceptions set forth in Section 10.13 of the Loan Agreement, the obligations under this Note are non-recourse to the Borrower and its partners.

The Borrower hereby promises to pay reasonable costs of collection and reasonable attorneys' fees in case of default on this Note, as set forth in the Agreement. Time is of the essence under this Note and in the performance of every term, covenant and obligation contained herein.

This Note shall be governed by, and construed in accordance with, the laws of the State of Texas, without regard to conflict of laws principles.

**SADDLESPUR PASS APARTMENTS, LP,**  
a Texas limited partnership

By: BMDC Saddlespur Pass Apartments GP, LLC,  
a Texas limited liability company,  
its General Partner

By: Bexar Management and Development  
Corporation, a Texas nonprofit public  
facility corporation, its Sole Member

By: \_\_\_\_\_  
TAMMYE TREVINO, Secretary

This instrument prepared by and  
when recorded return to:

Greenberg Traurig, LLP  
1717 Arch Street, Suite 400  
Philadelphia, Pennsylvania 19103  
Attention: Dianne Coady Fisher, Esquire

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**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**

from

**SADDLESPUR PASS APARTMENTS, LP,**  
the Grantor,

to

[\_\_\_\_\_] ,  
as the Deed of Trust Trustee,

for the benefit of

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**  
the Beneficiary

Dated as of January 1, 2021

Relating to:

§ \_\_\_\_\_  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021

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**TABLE OF CONTENTS**

Article 1 COVENANTS AND AGREEMENTS OF THE GRANTOR..... 5

    Section 1.01. Payment and Performance of Secured Obligations ..... 5

    Section 1.02. Maintenance, Repair, Alterations ..... 5

    Section 1.03. Required Insurance..... 5

    Section 1.04. Casualties; Insurance Proceeds ..... 5

    Section 1.05. Assignment of Policies Upon Foreclosure ..... 6

    Section 1.06. Condemnation ..... 6

    Section 1.07. Obligations Unconditional; Waiver of Offset ..... 7

    Section 1.08. Taxes and Impositions; Deposits into Tax and Insurance Escrow Fund..... 7

    Section 1.09. Utilities ..... 8

    Section 1.10. Actions Affecting Property ..... 8

    Section 1.11. Actions by the Beneficiary to Preserve Property ..... 9

    Section 1.12. Transfer of Property by the Grantor ..... 9

    Section 1.13. Full Performance Required; Survival of Warranties ..... 10

    Section 1.14. Liens ..... 10

    Section 1.15. Beneficiary’s Powers..... 10

    Section 1.16. Trade Names ..... 10

    Section 1.17. Grantor Remains Liable ..... 11

    Section 1.18. Warranties and Representations of Grantor ..... 11

    Section 1.19. Other Instruments..... 11

    Section 1.20. Further Acts..... 11

Article 2 ASSIGNMENT OF RENTS, ISSUES AND PROFITS ..... 15

    Section 2.01. Assignment of Rents, Issues and Profits ..... 15

    Section 2.02. Collection Upon Default ..... 16

    Section 2.03. Further Assignments ..... 16

Article 3 REMEDIES UPON DEFAULT ..... 16

    Section 3.01. Event of Default ..... 16

    Section 3.02. Acceleration Upon Default..... 16

    Section 3.03. Remedies ..... 17

    Section 3.04. Power of Sale ..... 17

    Section 3.05. Foreclosure. .... 19

    Section 3.06. Appointment of Receiver ..... 20

    Section 3.07. Application of Funds After Default..... 20

    Section 3.08. Costs of Enforcement ..... 20

    Section 3.09. Remedies Not Exclusive ..... 21

Article 4 SECURITY AGREEMENT ..... 21

    Section 4.01. Creation of Security Interest..... 21

    Section 4.02. Representations, Warranties and Covenants of the Grantor..... 22

    Section 4.03. Use of Personal Property by the Grantor..... 22

    Section 4.04. Remedies Upon an Event of Default. .... 22

    Section 4.05. Security Agreement..... 23

    Section 4.06. Fixture Filing..... 24

    Section 4.07. Financing Statements ..... 24

Article 5 MISCELLANEOUS ..... 24

    Section 5.01. Amendments..... 24

    Section 5.02. Future Advances..... 24

    Section 5.03. Business Purpose..... 24

Section 5.04.	Grantor Waiver of Rights.....	24
Section 5.05.	Statements by the Grantor .....	25
Section 5.06.	Notices.....	25
Section 5.07.	Captions.....	25
Section 5.08.	Invalidity of Certain Provisions .....	25
Section 5.09.	Subrogation .....	25
Section 5.10.	Attorneys' Fees .....	25
Section 5.11.	Governing Law.....	26
Section 5.12.	Construction .....	26
Section 5.13.	Non-foreign Entity .....	26
Section 5.14.	Access to Property and Dissemination of Information.....	26
Section 5.15.	Successors and Assigns .....	27
Section 5.16.	No Merger of Lease.....	27
Section 5.17.	Counterparts; Electronic Signatures .....	27
Section 5.19.	WAIVER OF TRIAL BY JURY.....	27
Section 5.20.	Notice of Additional Provisions Regarding Insurance .....	28
Section 5.21.	Extended Low-Income Housing Commitment.....	28
Article 6 DEED OF TRUST TRUSTEE.....		28
Section 6.01.	Concerning Deed of Trust Trustee .....	28
Section 6.02.	Indemnity .....	30

**LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY  
AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**

This **LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS, SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**, dated as of January 1, 2021 (as amended, modified, supplemented or assigned from time to time, this “Deed of Trust”), by **SADDLESPUR PASS APARTMENTS, LP**, a limited partnership, duly organized and validly existing under the laws of the State of Texas (together with its successors and assigns, the “Grantor”), whose address is c/o Herman & Kittle Properties, Inc., 500 East 96<sup>th</sup> Street, Suite 300, Indianapolis, Indiana 46240 and its U.S. employer identification number is [\_\_\_\_], to [\_\_\_\_], [an individual and a resident of the State of Texas] (together with any successor deed of trust trustee hereunder, the “Deed of Trust Trustee”) whose address is [\_\_\_\_], Attention: \_\_\_\_\_, for the benefit of **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (together with its successors and assigns, the “Beneficiary”), whose address is P.O. Box 13940, Austin, Texas 78711.

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

**WHEREAS**, the Grantor is the holder of leasehold estate in the real property described on Exhibit A hereto (the “Land”) pursuant to the terms of a Ground Lease dated as of [January 1], 2021 (as the same may be amended modified and supplemented from time to time, the “Ground Lease”) between Bexar Management and Development Corporation, as landlord (together with its successors and assigns, the “Ground Lessor”), and the Grantor, as tenant, intended to be recorded in the office of the recorder of deeds in and for Bexar County prior to the recording of this Deed of Trust; and

**WHEREAS**, the Grantor intends to construct a multifamily apartment housing facility including related personal property and equipment, located in San Antonio, Bexar County, Texas, which is being acquired and constructed with the proceeds of certain bonds known as Multifamily Housing Revenue Bonds (The Montage Apartments), Series 2021, in the original principal amount of \$\_\_\_\_\_ (the “Bonds”), issued by the Beneficiary (together with its successors and assigns, the “Issuer”); and

**WHEREAS**, the Bonds are being issued pursuant to a certain Indenture of Trust dated as of January 1, 2021, by and between the Issuer and BOKF, NA, a national banking association, as trustee (the “Bond Trustee”) (as amended, modified, or supplemented from time to time, the “Indenture”); and

**WHEREAS**, pursuant to a Loan Agreement dated as of January 1, 2021, by and among the Issuer, Red Stone Servicer, LLC (the “Controlling Person”) and the Grantor (as amended, modified, or supplemented from time to time, the “Loan Agreement”), the Grantor is obligated to make loan payments to the Issuer in accordance with a certain note evidencing such loan dated as of the date of issuance of the Bonds (as amended, modified, or supplemented from time to time, the “Note”) in the amounts and at the times corresponding to the debt service and other payments required in respect of the Bonds; and

**WHEREAS**, the rights, title and interest of the Issuer under the Loan Agreement (other than Reserved Rights), this Deed of Trust and the Note are being assigned contemporaneously with the execution and delivery hereof to the Bond Trustee; and

**WHEREAS**, the Indenture, the Loan Agreement, the Note and any other document or instrument given by the Grantor at any time to evidence or further secure any obligations assumed or undertaken by the Grantor in connection with the Bonds are sometimes hereinafter collectively referred to as the “Bond Documents”; and

**WHEREAS**, all capitalized terms used herein without definition have the meanings given such terms in the Indenture or the Loan Agreement.

## **GRANTING CLAUSES**

**NOW, THEREFORE, FOR AND IN CONSIDERATION** of issuance of the Bonds and the loan of the proceeds thereof by the Issuer to the Grantor, of the respective representations, covenants and agreements hereinafter contained, and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, the Grantor hereby absolutely and irrevocably grants, bargains, sells, warrants, conveys, aliens, premises, releases, assigns, sets over and confirms to the Deed of Trust Trustee, with the power of sale, and with right of entry and possession in accordance with the terms of the Bond Documents, in trust for the benefit of the Beneficiary, and its respective successors and assigns, and grants the Beneficiary a lien and a security interest in all estate, right, title and interest which the Grantor now has or may later acquire in and to the following property:

ALL OF the Grantor's leasehold estate in the land located in San Antonio, Bexar County, Texas, which is described in Exhibit A (hereinafter sometimes called the "Land") and other Property hereinafter described, and subject to the terms of this Deed of Trust;

TOGETHER WITH all right, title and interest of the Grantor in and to, and remedies under (a) any and all leases, subleases, license agreements, concessions, tenancies and other use or occupancy agreements (whether oral or written), or any part thereof, now or hereafter existing, covering or affecting any or all of the Property (as hereinafter defined), all extensions and renewals thereof, and all modifications, amendments and guaranties thereof (each of which is hereinafter called a "Lease"), and (b) any and all rents, income, receipts, revenues, royalties, issues, profits, contract rights, accounts receivable, or general intangibles growing out of or in connection with the Leases (whether from residential or non-residential space) and other payments, payable to the Grantor pursuant to any Lease, including, without limitation, cash or securities deposited under any Lease to secure performance by the tenants of their obligations under the Leases, whether such cash or securities are to be held until the expiration of the term of such Leases or are to be applied to one or more of the installments of rent coming due prior to the expiration of such terms and further including subsidy payments received from any source (collectively, the "Rents"), subject, however, to the provisions hereof; and

TOGETHER WITH all right, title and interest of the Grantor in and to any and all rights, alleys, ways, tenements, hereditaments, easements, passages, waters, water rights, water courses, riparian rights, licenses, franchises, privileges and appurtenances now or hereafter to the same belonging or in any way appertaining, as well as any after-acquired right, title, interest, franchise, license, reversion and remainder; and

TOGETHER WITH all right, title and interest of the Grantor, including any after-acquired right, title or reversion, in and to the rights of way, streets, avenues and alleys, open or proposed, located wholly or partially within the boundary of the Land or adjacent thereto; and

TOGETHER WITH all right, title and interest of the Grantor in and to all buildings, structures, surface parking and other improvements of every kind and description now or hereafter erected or placed on the Land, all additions, alterations and replacements thereto or thereof, and all materials now owned or hereafter acquired by the Grantor and intended for the operation, construction, reconstruction, alteration and repair thereof, all of which materials shall be deemed to be included within the Property (hereinafter defined) immediately upon the delivery thereof to the Land (all of which are hereinafter called collectively the "Improvements" and, the Improvements and the Land are hereinafter called the "Premises"); and

TOGETHER WITH all right, title and interest of the Grantor in and to all of the walks, fences, shrubbery, driveways, fixtures, machinery, apparatus, equipment, fittings, and other goods of every kind and description whatsoever, now owned or hereafter acquired by the Grantor and attached to or contained in and used for any present or future operation or management of the Land or the Improvements, including, without limitation, all lighting, laundry, incinerating and power equipment; all engines, boilers, machines, motors, furnaces, compressors and transformers; all generating equipment; all pumps, tanks, ducts, conduits, wires, switches, fans, switchboards, and other electrical equipment and fixtures; all telephone equipment; all piping, tubing, plumbing equipment and fixtures; all heating, refrigeration, air conditioning, cooling, ventilating, sprinkling, water, power and communications equipment, systems and apparatus; all water coolers and water heaters; all fire prevention, alarm and extinguishing systems and apparatus; all cleaning equipment; all lift, elevator and escalator equipment and apparatus; all partitions, shades, blinds, awnings, screens, screen doors, storm doors, exterior and interior signs, gas fixtures, stoves, ovens, refrigerators, garbage disposals and compactors, dishwashers, cabinets, mirrors, mantles, floor coverings, carpets, rugs, draperies and other furnishings and furniture installed or to be installed or used or usable in any way in the operation of any Improvements or appurtenant facilities erected or to be erected in or upon the Land; and every renewal, replacement or substitution therefor, whether or not the same are now or hereafter attached to the Land in any manner; all except for any right, title or interest therein held by any tenant of any or all of the Land or the Improvements, or by any other person, so long as such tenant or other person is not a party hereto or bound, with respect to such right, title or interest, by the provisions hereof (it being agreed by the parties hereto that all personal property owned by the Grantor and placed by it on the Land shall, so far as permitted by law, be deemed to be affixed to the Land, appropriated to its use, and covered by this Deed of Trust); and

TOGETHER WITH all of the Grantor's right, title and interest in and to any and all easements and appurtenances, including, without limitation, any easements and agreements which are or may be established to allow satisfactory ingress to, egress from and operation of the Land and the Improvements; and

TOGETHER WITH any and all judgments, awards of damages (including, but not limited to, severance and consequential damages), payments, proceeds, settlements or other compensation heretofore or hereafter made, including interest thereon, and the right to receive the same, as a result of, in connection with, or in lieu of (a) any condemnation, either temporarily or permanently, (b) any change or alteration of the grade or widening of any street or road, and (c) any other damage, destruction, or injury to, or decrease in value of, the Land or the Improvements or any part thereof, to the extent of all Secured Obligations at the date of receipt by the Beneficiary of any such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon, and of the reasonable counsel fees, costs and disbursements, if any, incurred by the Beneficiary in connection with the collection of such judgment, award of damages, payment, proceeds, settlement or other compensation, including interest thereon; and

TOGETHER WITH all of the Grantor's rights in and to policies of insurance including any and all payments, proceeds, settlements or other compensation heretofore or hereafter made, including any interest thereon, and the right to receive the same, from any and all insurance policies covering the Land or the Improvements or any portion thereof; and

TOGETHER WITH all right, title and interest of the Grantor in and to the Management Agreement by and between the Grantor and Kittle Property Group, Inc., a corporation organized and existing under the laws of the State of Indiana, dated [\_\_\_\_\_, 20\_\_], and any modifications, amendments, extensions, renewals, replacements or substitutions thereof thereafter made; and

TOGETHER WITH all right, title and interest of the Grantor in and to all contract rights (including any contract deposits), but not any contract obligations or liabilities, relating to or arising out of any agreement to sell, transfer, assign, convey or encumber the Land, the Improvements, any portion thereof, any interest therein, or any ownership interest in the Grantor; and

TOGETHER WITH all right, title and interest of the Grantor in and to all plans and specifications, surveys, reports, diagrams, drawings, service contracts, accounting records, invoices, change orders, licenses, authorizations, certificates, variances, approvals and other permits necessary or appropriate to permit the construction, reconstruction, repair or alteration, addition, improvement, use, operation and management of the Land and the Improvements; and

TOGETHER WITH all of the Grantor's cash, bank accounts, notes and other instruments, documents, accounts receivable, contract rights, permits, receipts, sales and promotional literature and forms, advertising materials and the like, trademarks, names, logos, copyrights and other items of intangible personal property now or hereafter owned by the Grantor relating to the ownership, operation, development, leasing or management of the Land or the Improvements;

TO HAVE AND TO HOLD the Land, the Improvements, fixtures, personal property, tenements, hereditaments, appurtenances and other property interests granted hereinabove (hereinafter collectively called the "Property") unto the Deed of Trust Trustee and the Beneficiary and their respective successors and assigns, subject only to the Permitted Encumbrances;

**FOR THE PURPOSE OF SECURING:**

(a) the payment of the Indebtedness, including the loan and all interest, principal, premiums, fees and charges evidenced by or owing under the Note or any of the other Bond Documents; and

(b) payment and performance of each and every other obligation, covenant and agreement of the Grantor contained in the Note and the Loan Agreement from and after the execution and delivery thereof, together with any extensions, modifications, renewals or refinancings of any of the foregoing; and

(c) performance of every obligation, covenant and agreement of the Grantor contained in any other Bond Document or in any other agreement or instrument now or hereafter executed by the Grantor which recites that the obligations thereunder are secured by this Deed of Trust; and

(d) payment of all sums, with interest thereon at the rate set forth in the Indenture that may become due and payable to or for the benefit of the Beneficiary pursuant to the terms of this Deed of Trust; and

(e) the reimbursement of the Beneficiary or the Controlling Person for all money advanced, as provided herein, and all expenses (including, reasonable attorneys' fees) incurred or paid by, the Beneficiary or the Controlling Person on account of any action (whether formal litigation or otherwise) that may arise in connection with this Deed of Trust, the Bond Documents or the Property, or in obtaining possession of the Property as hereinafter provided.

The obligations described in clauses (a) through (d) above shall hereinafter be referred to collectively as the "Secured Obligations."

**TO PROTECT THE SECURITY GRANTED BY THIS DEED OF TRUST, THE GRANTOR, AGREES AS FOLLOWS:**

**ARTICLE 1**  
**COVENANTS AND AGREEMENTS OF THE GRANTOR**

Section 1.01. Payment and Performance of Secured Obligations. The Grantor shall pay and perform when due all of the Secured Obligations, including all of the Grantor's obligations under the Loan Agreement and all of the other Bond Documents, in accordance with the terms thereof.

Section 1.02. Maintenance, Repair, Alterations. The Grantor (i) shall maintain, keep and preserve the Property in accordance with the terms of the Loan Agreement and this Deed of Trust; (ii) shall not commit or permit any waste or deterioration of the Property, other than normal wear and tear; (iii) shall comply with the provisions of the Ground Lease and all Leases in all material respects; (iv) shall not abandon the Property or any portion thereof or leave the Premises vacant or deserted; (v) shall not, without the Controlling Person's consent, initiate, join in or consent to any change in any zoning ordinance, general plan, specific plan, private restrictive covenant or other public or private restriction limiting the uses which may be made of the Premises other than Permitted Encumbrances; (vi) shall secure and maintain in full force and effect all permits necessary for the use, occupancy and operation of the Premises; (vii) shall not cause or permit any fixture or any article of Personal Property (as defined in Article 4 below) to be removed from the Premises without the prior written consent of the Controlling Person except in accordance with Section 4.02(a); and (viii) except as otherwise prohibited or restricted by the Bond Documents, shall do any and all other acts which may be reasonably necessary to protect and preserve the value of the Property and the rights of the Beneficiary with respect thereto.

Section 1.03. Required Insurance. The Grantor shall at all times provide, maintain and keep in force, or cause to be provided, maintained and kept in force, at no expense to the Beneficiary, policies of insurance in form and amounts, issued by such insurance companies, associations or organizations, and covering such casualties, risks, perils, liabilities and other hazards as are required under Section 6.4 of the Loan Agreement.

Section 1.04. Casualties; Insurance Proceeds.

(a) The Grantor shall give prompt written notice to the Beneficiary and the Controlling Person of the occurrence of any casualty to or in connection with the Premises or any part thereof that exceeds \$25,000 to repair (a "Material Casualty"), whether or not covered by insurance. The Controlling Person is hereby authorized and empowered by the Grantor to settle, adjust or compromise any and all claims for loss, damage or destruction that constitute a Material Casualty under any policy or policies of insurance without the consent of the Grantor. So long as no Event of Default has occurred and is continuing, the Grantor shall have the right to settle, adjust or compromise any casualty that is not a Material Casualty without the consent of the Beneficiary or the Controlling Person.

(b) In the event of a Material Casualty, all proceeds of insurance shall be payable to the Bond Trustee for deposit into the Insurance and Condemnation Proceeds Account of the Project Fund established under the Indenture, and the Grantor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to the Bond Trustee. If the Grantor receives any proceeds of insurance resulting from a Material Casualty, the Grantor shall promptly pay over such proceeds to the Bond Trustee. In the event of any Material Casualty, the Controlling Person shall direct the Bond Trustee to apply all loss proceeds remaining after deduction of all reasonable expenses of collection and settlement thereof, including reasonable attorneys' and adjustor's fees and expenses, to the restoration of the Improvements, so long as (i) no Event of Default, or event or conditions that with the passage of time, the giving of notice or both would constitute an Event of Default, then exists and is continuing that would not be cured by applying the insurance proceeds to the restoration of the Improvements; (ii) such loss proceeds (including proceeds of property and rental interruption insurance)

shall be in an amount sufficient to complete the restoration of the Improvements and, pay during the period of restoration and re-leasing all debt service or, if such loss proceeds are insufficient, the Grantor shall have deposited with the Beneficiary an amount equal to any deficiency within ten (10) Business Days of the determination of such deficiency and in any event prior to application of any loss proceeds to restoration of the Improvements; (iii) the plans, specifications, construction contracts, architect's agreements and all other material agreements relating to the restoration shall be approved by the Controlling Person in writing, such approval not to be unreasonably delayed, withheld, or conditioned; (iv) the Controlling Person determines, in its sole discretion, that the Premises are capable of being fully restored by the earlier of (A) the date which is twelve (12) months from the occurrence of the loss or damage, and (B) the Maturity Date (as set forth in the Indenture); (v) upon completion of restoration, the Property will be in compliance with the Regulatory Agreement; and (vi) the Grantor shall deliver to the Beneficiary and the Controlling Person a Favorable Opinion of Bond Counsel (as defined in the Indenture) with regard to the restoration of the Premises. If the foregoing conditions are met, the Bond Trustee shall disburse the loss proceeds in accordance with written requisitions approved by the Controlling Person in accordance with customary construction loan practices, and only as restoration is effected and continuing and expenses become due and payable.

(c) If any one or more of the above conditions are not met, the Beneficiary may direct that all or part of the loss proceeds, after deductions as herein provided, shall be applied to the mandatory redemption of the Bonds in accordance with Section 2.12(b)(ii) of the Indenture. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact for the purpose of executing and delivering such notices, certificates and other documents and instruments, in the name of the Grantor, as may be required under the Bond Documents to effect such redemption. If the loss proceeds are not sufficient to satisfy fully the Secured Obligations, the Grantor shall pay to the Beneficiary any deficiency with respect thereto within twenty (20) Business Days of the determination of said deficiency. If the insurance proceeds are made available to the Grantor for restoration of the Improvements, nothing herein contained shall be deemed to excuse the Grantor from repairing or maintaining the Property as provided in Section 1.02 hereof or restoring all damage or destruction to the Premises.

Section 1.05. Assignment of Policies Upon Foreclosure. In the event of foreclosure of this Deed of Trust, exercise of the power of sale hereunder or other transfer of title or assignment of the Property in extinguishment, in whole or in part, of the Secured Obligations, all right, title and interest of the Grantor in and to all policies of property insurance maintained with respect to all or any portion of the Property and all other policies of insurance required by the Loan Agreement and relating to the Property shall inure to the benefit of and pass to the successor in interest to the Grantor or the purchaser or beneficiary of the Property, to the extent the same may be assigned.

Section 1.06. Condemnation.

(a) The Grantor shall promptly notify the Beneficiary and the Controlling Person if the Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Premises, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such condemnation (all the foregoing herein called a "taking"); shall keep the Beneficiary and the Controlling Person currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to the Beneficiary copies of all notices, pleadings, judgments, determinations and other papers received or delivered by the Grantor therein. For purposes of this Deed of Trust, a taking that will decrease the value of the Premises by more than \$25,000, will materially restrict access to the Property, or will affect more than ten percent (10%) of the rentable square footage of the Improvements shall be a "Material Taking." The Controlling Person shall have the right to direct the Beneficiary to appear and participate in any proceedings or negotiations in connection with a Material Taking (or in connection with

any taking if at such time an Event of Default has occurred and is continuing), and in connection with such proceedings the Controlling Person and the Beneficiary may be represented by counsel of their choice. The Grantor will not, without the Controlling Person's prior written consent, enter into any agreement in a Material Taking for the taking of the Premises, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

(b) In the event of any Material Taking, the awards payable in connection therewith are hereby assigned to the Beneficiary, and the Grantor shall pay over such awards remaining after deduction of all reasonable expenses of collection and settlement, to the Bond Trustee for deposit into the Insurance and Condemnation Proceeds Account of the Project Fund established under the Indenture. Subject to the satisfaction of the conditions set forth in Section 1.04(b)(i)-(vi) hereof, the Controlling Person shall cause such awards to be applied to the costs to repair, rebuild or replace the portion of the Premises that was not subject to the taking, upon the terms and conditions as set forth in Section 1.04(b) hereof. If any of the conditions set forth in Section 1.04(b)(i)-(vi) hereof are not met, the Controlling Person may cause such awards to be applied to the mandatory redemption of the Bonds pursuant to Section 2.12(b)(ii) of the Indenture.

(c) If, in the event of the happening of any permanent taking, the Beneficiary shall be obligated to apply any awards received by it in connection with such taking towards the restoration of the Premises, the Grantor shall promptly, whether or not the awards, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Premises that was not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

Section 1.07. Obligations Unconditional; Waiver of Offset. Except as otherwise provided in this Deed of Trust or the other Bond Documents, all sums payable by the Grantor under this Deed of Trust shall be paid without notice, demand, counterclaim, set-off, deduction or defense and without abatement, suspension, deferment, diminution or reduction, and the obligations and liabilities of the Grantor hereunder shall in no way be released, discharged or otherwise affected (except as expressly provided herein or in any of the Bond Documents) by reason of: (i) any damage to or destruction of or any condemnation or similar taking of the Property or any part thereof; (ii) any restriction or prevention of or interference by any third party with any use of the Property or any part thereof; (iii) any title defect or encumbrance or any eviction from the Premises or the Improvements or any part thereof by title paramount or otherwise; (iv) any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Beneficiary, or any action taken with respect to this Deed of Trust by a trustee or receiver of the Beneficiary, or by any court, in any such proceeding; (v) any claim which the Grantor has or might have against the Beneficiary; (vi) any default or failure on the part of the Beneficiary to perform or comply with any of the terms hereof; (vii) any default or failure on the part of the Beneficiary to perform or comply with any of the terms of any other agreement with the Grantor; (viii) any other occurrence whatsoever, whether similar or dissimilar to the foregoing; whether or not the Grantor has notice or knowledge of any of the foregoing; or (ix) any homestead or similar rights. Except as expressly provided herein, the Grantor waives all rights now or hereafter conferred by statute or otherwise to any abatement, suspension, deferment, diminution or reduction of any sum secured hereby and payable by the Grantor.

Section 1.08. Taxes and Impositions; Deposits into Tax and Insurance Escrow Fund.

(a) In accordance with Section 8.2 of the Loan Agreement, the Grantor shall deposit with the Bond Trustee the monthly tax and insurance amount required by Section 8.2 of the Loan Agreement. If at any time and for any reason the funds so deposited are or will be insufficient to pay such amounts as may be then or subsequently due for the payment of all Impositions and the insurance

premiums for policies required hereunder and under the Loan Agreement, the Controlling Person may, without any obligation to do so, advance any amounts required to make up the deficiency, which advances, if any, shall be secured hereby and shall be repayable to the Beneficiary for the reimbursement of the Controlling Person as herein elsewhere provided.

(b) The Grantor shall not suffer, permit or initiate the joint assessment of any real or personal property which may constitute all or a portion of the Property or suffer, permit or initiate any other procedure whereby the lien of the real property taxes and the lien of the personal property taxes shall be assessed, levied or charged to the Property as a single lien; provided, however, that the Grantor shall have the right before any delinquency occurs to contest or object to the amount or validity of any such taxes, assessments or charges by appropriate proceedings, but this shall not be deemed or construed in any way as relieving, modifying or extending the Grantor's covenant to pay any such taxes, assessments or charges at the time and in the manner provided in this Section 1.08, unless the Grantor has given prior written notice to the Controlling Person of the Grantor's intent to so contest or object to a tax, assessment or charge, and unless, at the Controlling Person's sole option, (i) the Grantor shall demonstrate to the Controlling Person's satisfaction that the proceedings to be initiated by the Grantor shall conclusively operate to prevent the sale of the Property, or any part thereof, to satisfy such tax, assessment or charge prior to final determination of such proceedings; and (ii) the Grantor shall furnish a good and sufficient bond or surety as requested by and satisfactory to the Controlling Person; and (iii) the Grantor shall demonstrate to the Controlling Person's satisfaction that the Grantor has provided a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale.

(c) The Grantor hereby agrees to pay and indemnify the Beneficiary, the Bondholder and the Controlling Person from the payment of all documentary stamp taxes and intangible taxes that may be levied upon the holder of the Secured Obligations, the indebtedness evidenced by the other Bond Documents, the making or recording of this Deed of Trust or any evidence of indebtedness secured hereby, or, except as otherwise expressly provided therein, the transactions contemplated by the Loan Agreement, this Deed of Trust or any of the other Bond Documents, including interest, penalties and costs. The Grantor agrees to pay the Beneficiary and the Controlling Person reasonable attorneys' fees and costs incurred in connection with any inquiry from or assertion by any Governmental Authority (as defined in the Indenture) that any such taxes have not been paid promptly when due.

Section 1.09. Utilities. The Grantor shall pay or cause to be paid prior to delinquency all utility charges incurred by the Grantor for the benefit of the Premises or which may become a charge or lien against the Premises for gas, electricity, water or sewer services furnished to the Premises and all other assessments or charges of a similar nature, whether public or private, affecting or related to the Premises or any portion thereof, whether or not such taxes, assessments or charges are or may become liens thereon. The Grantor may contest any such change in good faith and by appropriate proceedings promptly initiated and diligently conducted if (i) such proceedings do not in the opinion of the Controlling Person involve the risk of the sale, forfeiture or loss of the Property subject to such lien or interfere with the operation of the Premises, (ii) the Grantor shall have established a reserve or made other appropriate provision as requested by and satisfactory to the Controlling Person, and (iii) any foreclosure, distraint, sale or other similar proceedings shall have been effectively stayed.

Section 1.10. Actions Affecting Property. The Grantor shall give the Beneficiary and the Controlling Person prompt written notice of the assertion of any claim with respect to, or the filing of any action or proceeding purporting to affect, the Property, the security of this Deed of Trust or the rights or powers of the Deed of Trust Trustee or the Beneficiary. The Grantor shall appear in and contest, in accordance with the direction of the Controlling Person, any such action or proceeding and shall pay all costs and expenses, including costs of evidence of title and reasonable attorneys' fees, in any such action or proceeding.

Section 1.11. Actions by the Beneficiary to Preserve Property. If an Event of Default occurs and is continuing (or prior to an Event of Default if the Controlling Person determines in its sole judgment that the same is necessary to preserve the Premises or the lien of this Deed of Trust or the other Bond Documents thereon or on any other collateral securing the Secured Obligations, or is necessary to protect the life, health or safety of any persons on or near the Premises or the property of any such person), the Controlling Person in its reasonable discretion, without obligation to do so and without releasing the Grantor from any obligation, and, except as provided in the next succeeding sentences, may make any such payment, or perform any other act or take any appropriate action, including, without limitation, entry on the Premises and performance of work thereon, or direct the Beneficiary to do the same in such manner and to such extent as it may deem necessary to protect the security hereof. The Beneficiary shall use reasonable efforts to notify the Grantor prior to making any such payment or doing any such act; provided, however, that the failure to provide such notice shall not in any way affect the Grantor's obligation to reimburse the Beneficiary or the Controlling Person in accordance with this Section 1.11 nor shall either the Beneficiary or the Controlling Person incur any liability to the Grantor as a result of such failure. In connection therewith (without limiting its general powers, whether conferred herein, in any other of the Bond Documents, or by law), the Beneficiary acting at the direction of the Controlling Person shall have and is hereby given the right, but not the obligation, at any time an Event of Default has occurred and is continuing (i) to enter upon the Premises and take possession of the Property; (ii) to make additions, alterations, repairs and improvements to the Property which it may consider necessary or proper to keep the Premises in good condition and repair; (iii) to appear and participate in any action or proceeding affecting or which may affect the security of this Deed of Trust or the rights or powers of the Beneficiary; (iv) to pay, purchase, contest or compromise any encumbrance, claim, charge, lien or debt which in its judgment may affect the security of this Deed of Trust or be prior or superior hereto; and (v) in exercising such powers, to pay necessary expenses, including reasonable attorneys' fees and costs or other necessary or desirable consultants. The Grantor shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary or the Controlling Person an amount equal to all of their respective costs and reasonable expenses incurred in connection with the exercise by the Beneficiary of the foregoing rights, including costs of evidence of title, court costs, appraisals, surveys and reasonable receiver's, trustee's, and attorneys' fees, together with interest thereon from the date of such expenditures to the date of payment at the Default Rate.

Section 1.12. Transfer of Property by the Grantor. The Grantor agrees that, except for Permitted Transfers, and except for the making of residential leases, the Grantor shall not transfer the Property or any portion thereof or interest therein without the prior written consent of the Controlling Person or, to the extent required under the Regulatory Agreement, the Issuer. In the event of any transfer of the Property or any portion thereof or interest therein (other than expressly permitted hereunder or under the Bond Documents, or with the prior written consent of the Controlling Person, the Beneficiary shall have the absolute right at the option of the Controlling Person, without prior demand or notice, to declare all of the Secured Obligations for which the Grantor is then liable to be immediately due and payable. Consent to one such transfer shall not be deemed to be a waiver of the Controlling Person's or the Issuer's right to require consent to future or successive transfers. With respect to any transfer that requires the consent of Controlling Person, the Controlling Person may grant or deny such consent in its sole and absolute discretion, and may charge a reasonable and customary fee in connection with such request for consent. If consent is given, and if this Deed of Trust is not released to the extent of the transferred portion of the Property by a writing executed by the Beneficiary and recorded in the proper city, town, or county records, then any such transfer shall be subject to this Deed of Trust, and any such transferee shall, by accepting such transfer, assume all obligations hereunder and agree to be bound by all provisions contained herein. Such assumption shall not, however, release the Grantor or any maker or guarantor of any of the Secured Obligations from any liability hereunder or thereunder prior to the date of such transfer without the prior written consent of the Controlling Person. The covenants contained in this Section 1.12 shall run with the Land and shall remain in full force and effect until this Deed of Trust is

released or all of the Secured Obligations are fully paid and fully performed. The Beneficiary may, without notice to the Grantor, deal with any transferees with reference to the Secured Obligations in the same manner as the Grantor, without in any way altering or discharging the Grantor's liability with respect thereto.

Section 1.13. Full Performance Required; Survival of Warranties. All obligations, representations, warranties and covenants of the Grantor contained in any Bond Document shall survive the execution and delivery of this Deed of Trust and shall remain continuing obligations, warranties, representations and covenants of the Grantor so long as this Deed of Trust has not been released or any portion of the Secured Obligations remains outstanding, and the Grantor shall fully and faithfully satisfy and perform all such obligations, representations, warranties and covenants.

Section 1.14. Liens. Except for Permitted Encumbrances, the Grantor shall not create, incur, or permit to exist any lien, encumbrance or charge upon the Property, or any portion thereof or interest therein (individually, a "Lien" or "Encumbrance" and collectively, "Liens or Encumbrances") without the consent of the Beneficiary, not to be unreasonably withheld, delayed or conditioned. If the Grantor fails to remove and discharge any Lien or Encumbrance or contest the same in good faith after the same shall have been bonded over to the satisfaction of the Controlling Person, then, in addition to any other right or remedy of the Beneficiary, (i) the Beneficiary may, but shall not be obligated to, take such action at the direction of the Controlling Person as the Controlling Person deems warranted to discharge any Lien or Encumbrance either by paying the amount claimed to be due, or by procuring the discharge of such Lien or Encumbrance by depositing in a court a bond or the amount claimed or otherwise giving security for such claim, or by procuring such discharge in such manner as is or may be prescribed by law, and (ii) upon the expiration of all applicable notice, grace and cure periods, the Beneficiary shall have the absolute right, at the Controlling Person's direction, without prior demand or notice, to declare all of the Secured Obligations for which the Grantor is then liable to be immediately due and payable. The Grantor shall, immediately upon demand therefor by the Beneficiary, pay to the Beneficiary an amount equal to all costs and reasonable expenses incurred by the Beneficiary in connection with the exercise by the Beneficiary of the foregoing right to discharge any such Lien or Encumbrance, together with interest thereon from the date of such expenditure to the date of payment at the Default Rate.

Section 1.15. Beneficiary's Powers. None of the following actions by or caused by the Beneficiary, with or without notice to any person, shall have any effect on either (a) the liability of any other person liable for the payment of any of the Secured Obligations, or (b) the lien or charge of this Deed of Trust upon any portion of the Property not then or theretofore released as security for the full amount of all unpaid or unperformed Secured Obligations: (i) the release of any person so liable, (ii) the extension of the maturity or the alteration of any of the terms of any of the Secured Obligations, (iii) the grant of any other indulgences, (iv) the release or reconveyance of all or any portion of the Property, (v) the taking or release of any other or additional security for any of the Secured Obligations, or (vi) the making of arrangements with debtors in relation thereto.

Section 1.16. Trade Names. At the request of the Beneficiary, the Grantor shall execute a certificate in form reasonably satisfactory to the Beneficiary listing all of the trade names and fictitious business names under which the Grantor operates, or intends to operate, any portion of the Property or any business located thereon and representing and warranting that the Grantor does business under no other trade names or fictitious business names with respect to any portion of the Property. The Grantor shall immediately notify the Beneficiary and the Controlling Person in writing of any change in said trade names or fictitious business names, and will, upon request of the Beneficiary, execute any additional financing statements and other certificates necessary to reflect any change in said trade names or fictitious business names.

Section 1.17. Grantor Remains Liable. Anything herein to the contrary notwithstanding, (a) the Grantor shall remain liable under all contracts and agreements relating to the Property, to the extent set forth therein, to perform all of its duties and obligations thereunder to the same extent as if this Deed of Trust had not been executed, (b) the exercise by the Beneficiary of any of its rights hereunder shall not release the Grantor from any of the Grantor's duties or obligations under any contracts and agreements related to the Property, and (c) the Beneficiary shall not have any obligations or liability under any of the contracts or agreements related to the Property by reason of this Deed of Trust and shall not be obligated to perform any of the obligations or duties of the Grantor thereunder or to take any action to collect or enforce any claim for payment assigned hereunder.

Section 1.18. Warranties and Representations of Grantor. The Grantor represents and warrants to the Beneficiary as follows:

(a) The Grantor is the holder of a leasehold estate in the Land under the Ground Lease and is the fee simple owner of the Improvements thereon, and the owner of the remainder of the Property free and clear of any lien, security interest, charge or encumbrance, except for the lien and charge of this Deed of Trust and the Permitted Encumbrances and will warrant and defend title to the Property against all claims and demands (subject to the Permitted Encumbrances).

(b) The Grantor has good, right and lawful authority to encumber the Property with and grant the lien and charge created by this Deed of Trust, and the execution, delivery and performance by the Grantor of this Deed of Trust have been duly authorized by all necessary parties and do not and will not (i) violate the partnership agreement, articles of incorporation, charter or by-laws of the Grantor or any direct or indirect constituent partner of the Grantor or any provision of any law, rule or regulation, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to the Grantor, or (ii) result in a breach of or constitute a default under any material indenture or loan or credit agreement or any other material agreement, lease or instrument to which the Grantor is a party or by which the Grantor or its properties may be bound or affected. The Grantor will warrant and defend its title to the Property against claims of all persons and entities whomsoever (other than Permitted Encumbrances), and the Grantor will maintain and preserve the lien and charge of this Deed of Trust so long as this Deed of Trust has not been released or any of the Secured Obligations is outstanding.

(c) No authorization, approval or other action by, and no notice to or filing with, any governmental authority or regulatory body (other than the Beneficiary), other than the recordation of this Deed of Trust in the official records of the city, town or county in which the Property is located, and the filing of an appropriate UCC-1 financing statement in the Office of the Texas Secretary of State, is required (i) for the grant by the Grantor of the lien created hereby or for the execution, delivery and performance by the Grantor of this Deed of Trust, or (ii) for the perfection of the security interests granted hereunder or the exercise by the Beneficiary of the rights and remedies conferred hereunder (except as may be required by the express terms of this Deed of Trust).

Section 1.19. Other Instruments. The Grantor shall punctually pay all amounts due and payable under, and shall promptly and faithfully perform or observe each and every other obligation or condition to be performed or observed under the Bond Documents, each mortgage, deed to secure debt, deed of trust, security agreement or other lien or security interest, or encumbrance, lease, sublease, declaration, covenant, condition, restriction, license, order or other instrument or agreement which affects the Property, in law or in equity.

Section 1.20. Further Acts. The Grantor shall do and perform all acts requested by in writing by the Beneficiary or the Controlling Person necessary to keep valid and effective the charges and lien hereof and to carry into effect its objectives and purposes, in order to protect the Deed of Trust Trustee

and the Beneficiary. Promptly upon written request, from time to time, of the Beneficiary or the Controlling Person and at the Grantor's expense, the Grantor shall execute, acknowledge and deliver to the Beneficiary such other and further instruments and do such other acts as in the reasonable opinion of the Beneficiary or the Controlling Person may be necessary or appropriate to (a) grant to the Beneficiary the priority perfected lien and security interest in respect of the Property to secure all of the Secured Obligations, (b) grant to the Deed of Trust Trustee and the Beneficiary, to the fullest extent permitted by applicable law, the right to foreclose on the Property judicially or nonjudicially or to exercise the power of sale; (c) correct any defect, error or omission which may be discovered in the contents of this Deed of Trust (including all exhibits and/or schedules hereto) or any of the other Bond Documents, (d) identify more fully and subject to the liens, encumbrances and security interests and assignments created hereby and properly intended by the terms hereof to be covered hereby (including any renewals, additions, substitutions, replacements or appurtenances to the Property), (e) assure the intended priority of this Deed of Trust and of such liens, encumbrances, security interests and assignments, and (f) otherwise effect the intent of this Deed of Trust. Without limiting the generality of the foregoing, the Grantor, upon the Beneficiary's or the Controlling Person's written request, at such times and as often as may be reasonably necessary, and, to the extent consistent with applicable law, at the Grantor's own expense, shall promptly record, rerecord, file and refile in such offices, this Deed of Trust, and every other instrument in addition or supplemental hereto, including applicable financing statements, as may be necessary to create, perfect, maintain and preserve the liens, encumbrances and security interests (and priority thereof) intended to be created hereby and the rights and remedies of the Deed of Trust Trustee and the Beneficiary hereunder. Upon written request by the Beneficiary or the Controlling Person, the Grantor shall supply evidence of fulfillment of its obligations under this Section 1.20.

Section 1.21. Leasehold Deed of Trust Provisions.

(a) The Grantor warrants and covenants that:

(i) the Ground Lease is a valid and subsisting lease of the property therein described and purported to be demised thereby for the term therein set forth, is in full force and effect in accordance with the terms thereof, and has not been modified, except such modifications of which the Beneficiary has received copies and approved in writing;

(ii) there are no defaults under the Ground Lease not heretofore waived by the parties thereto and all rents payable by the Grantor under the Ground Lease have been paid to the extent they were due and payable prior to the date hereof;

(iii) there exists no event or condition which, with the giving of notice or the passage of time, or both, could become a default or an event of default under the Ground Lease;

(iv) the Grantor is the owner and holder of the Ground Lease and the leasehold estate created thereby;

(v) the Grantor will not, without the prior written consent of the Controlling Person, modify, assign, supplement, release, surrender or terminate or permit the termination (whether voluntary or involuntary) of the Ground Lease or any other lease of the Property now in existence or hereafter created and any attempt to do so shall be void and of no force and effect; and

(vi) the Grantor shall advise the Beneficiary and the Controlling Person in writing of the receipt of any communication or notice (written or otherwise) within twenty-four (24) hours of receipt, (i) given by the Ground Lessor to the Grantor of any default in the performance or observance of any of the terms, covenants or conditions of the Ground Lease on the part of the Grantor, as

tenant thereunder, to be performed and/or observed, or (ii) any summons, notice or legal process which may affect the validity of the Ground Lease, or the terms thereof, or which may affect either the Grantor's or the Beneficiary's interest in or possession of the Property or any part thereof, and will contemporaneously therewith deliver to the Beneficiary and the Controlling Person a true copy of each such notice when such communication or notice is written. The Grantor will furnish to the Beneficiary and the Controlling Person, immediately upon written request, any and all information concerning the Grantor's performance of its duties and obligations under the Ground Lease. The Grantor shall deliver to the Beneficiary and the Controlling Person true and complete copies of any and all notices, agreements and other documentary evidence showing the Grantor's compliance with the terms of the Ground Lease.

(b) The Grantor covenants and agrees that it will at all times fully perform and comply with all agreements, covenants, terms and conditions imposed upon or assumed by it as tenant under the Ground Lease, and that if the Grantor shall fail so to do the Beneficiary or the Controlling Person may (but shall not be obligated to) take any action the Beneficiary or the Controlling Person deems necessary or desirable to prevent or to cure any default by the Grantor in the performance of or compliance with any of the Grantor's covenants or obligations under the Ground Lease. Upon receipt by the Beneficiary of any written notice of default by the Grantor under the Ground Lease, the Beneficiary may rely thereon and, at the direction of the Controlling Person, take any action as aforesaid to cure such default even though the existence of such default or the nature thereof be questioned or denied by the Grantor or by any party on behalf of the Grantor. The Grantor hereby expressly grants to the Beneficiary and the Controlling Person, and agrees that the Beneficiary and the Controlling Person shall have, the absolute and immediate right to enter in and upon the Premises or any part thereof to such extent and as often as the Beneficiary or the Controlling Person, in its sole discretion, deems necessary or desirable in order to prevent or to cure any such default by the Grantor under the Ground Lease. The Beneficiary or the Controlling Person, with or without possession, may, but shall not be obligated to, perform the Grantor's obligations under the Ground Lease and/or may pay and expend such sums of money as the Beneficiary or the Controlling Person in its sole discretion deems necessary for any such purpose, and the Grantor hereby agrees to pay to the Beneficiary, immediately and without demand, all such sums so paid and expended by the Beneficiary together with interest thereon from the date of each such payment at the Default Rate. All sums so paid and expended by the Beneficiary or the Controlling Person, and the interest thereon, shall be added to and be secured by the lien of this Deed of Trust. In addition to the other remedies set forth in this Deed of Trust, the Beneficiary shall have all the rights and remedies granted to a "leasehold mortgagee" under the Ground Lease.

(c) The Grantor further covenants and agrees:

(i) that, unless the Controlling Person shall otherwise expressly consent in writing, the fee title to the Land and the leasehold estate demised by the Ground Lease shall not merge but shall always remain separate and distinct, notwithstanding the union of such estates either in the Ground Lessor or in the Grantor, or in a third party by purchase or otherwise. If the Grantor acquires the fee title or any other estate, title or interest in the Land, or any part thereof, the lien of this Deed of Trust shall attach to, cover and be a lien upon such acquired estate, title or interest and the same shall thereupon be and become a part of the Property with the same force and effect as if specifically encumbered herein. The Grantor agrees to execute all instruments and documents which the Beneficiary or the Controlling Person may require to ratify, confirm and further evidence the Beneficiary's lien on the acquired estate, title or interest.

(ii) that the Grantor shall enforce its rights under the Ground Lease and shall use its best efforts to obtain and deliver to the Beneficiary and the Controlling Person within ten (10) days after written demand by the Beneficiary and the Controlling Person, an estoppel certificate from the Ground Lessor under the Ground Lease setting forth (A) that the Ground Lease has not been modified or,

if it has been modified, the date of each modification (together with copies of each such modification), (B) the amount of the basic rent and other charges payable under the Ground Lease, (C) the date to which all rental charges have been paid by the tenant under the Ground Lease, and (D) whether there are any alleged defaults of the tenant under the Ground Lease and, if there are, setting forth the nature thereof in reasonable detail.

(iii) Furthermore, the Grantor hereby appoints the Beneficiary and each of the Beneficiary's officers its true and lawful attorneys-in-fact to execute and deliver all the instruments and documents described in clause (c)(i) above in the name and on behalf of the Grantor. This power, being coupled with an interest, shall be irrevocable as long as any amount secured hereby remains unpaid.

(d) Notwithstanding anything to the contrary contained herein, this Deed of Trust shall not constitute an assignment of the Ground Lease within the meaning of any provision thereof prohibiting its assignment and the Beneficiary shall have no liability or obligation thereunder by reason of its acceptance of this Deed of Trust. The Beneficiary shall be liable for the obligations of the tenant arising under the Ground Lease for only the period of time during which the Beneficiary is in actual possession of the leased premises or has acquired, by foreclosure or otherwise, and is holding all of the Grantor's right, title and interest therein, and shall not be liable for any periods before or after such period.

(e) Upon the occurrence and continuation of an Event of Default, the Grantor hereby conveys and assigns to the Beneficiary all of its rights, privileges and prerogatives under the Ground Lease to surrender, terminate, cancel, assign, modify, change, supplement, alter or amend the Ground Lease, which rights, privileges and prerogatives shall be exercised by the Beneficiary at the written direction of the Controlling Person. Prior to the occurrence of an Event of Default, the Grantor will not surrender, terminate, cancel, assign, modify, change, supplement, alter or amend the Ground Lease without the prior written consent of the Controlling Person.

(f) The Grantor agrees that:

(i) If there shall be filed by or against the Grantor a petition under the Bankruptcy Code, 11 U.S.C. § 101 et seq., or any successor or similar statute, or similar state law (the "Code") and if the Grantor, as tenant under the Ground Lease, or the Grantor's bankruptcy trustee (the "Bankruptcy Trustee") shall decide to reject the Ground Lease pursuant to the Code, the Grantor and/or the Bankruptcy Trustee shall give the Beneficiary not less than forty-five (45) days prior written notice of the date of which the Grantor and/or the Bankruptcy Trustee shall apply to the Bankruptcy Court for the authority to reject the Ground Lease. The Beneficiary shall have the right, but not the obligation, to serve upon the Grantor or the Bankruptcy Trustee within such forty-five (45) day period a notice stating that (A) the Beneficiary demands that the Grantor and/or the Bankruptcy Trustee assign the Ground Lease to the Beneficiary pursuant to the Code, and (B) the Beneficiary covenants to cure or provide adequate assurance of prompt cure of all curable defaults and provide adequate assurance of future performance under the Ground Lease. If the Beneficiary serves upon the Grantor and/or the Bankruptcy Trustee the notice described in the preceding sentence, the Grantor and/or the Bankruptcy Trustee shall not seek to reject the Ground Lease and shall comply with the demand provided for in clause (A) of the preceding sentence within forty-five (45) days after the notice shall have been given subject to the performance by the Beneficiary of the covenant provided in clause (B) of the preceding sentence.

(ii) Effective upon the entry of an order for relief in respect of the Grantor under the Code, the Grantor and the Bankruptcy Trustee hereby assign and transfer to the Beneficiary a non-exclusive right to apply to the Bankruptcy Court under the Code on behalf of any and all parties for an order extending the period during which the Ground Lease may be rejected or assumed.

(iii) The lien of this Deed of Trust attaches to all the Grantor's and the Bankruptcy Trustee's rights and remedies at any time arising under or pursuant to the Code, including, without limitation, all of the Grantor's rights to remain in possession of the Property thereunder.

(g) The Grantor agrees that in the event the Ground Lessor, or its successors and assigns, files or has filed against it a petition under the Code, the Grantor shall not, without the Controlling Person's prior written consent, elect to treat the Ground Lease as terminated or rejected under the Code. Any such election made without the Controlling Person's prior written consent shall be null and void and of no effect. In addition to the foregoing, the Grantor hereby irrevocably assigns to the Beneficiary the Grantor's right to elect to treat the Ground Lease as terminated or rejected under the Code and the Beneficiary may exercise the rights hereunder at any time, which right shall be exercised by the Beneficiary at the Controlling Person's direction.

(h) The Grantor hereby unconditionally assigns, transfers and sets over to the Beneficiary all of the Grantor's claims and rights to the payment of damages arising from any rejection by the Ground Lessor of the Ground Lease under the Code. The Beneficiary, acting upon the Controlling Person's direction, shall have the right to proceed in its own name or in the name of the Grantor in respect to any claim, suit, action or proceeding relating to the rejection of the Ground Lease, including, without limitation, the right to file and prosecute, to the exclusion of the Grantor, any proofs of claim, complaints, motions, applications, notices and other documents, in any case in respect of the Ground Lessor under the Code. This assignment constitutes a present, irrevocable and unconditional assignment of the foregoing claims, rights, and remedies.

## **ARTICLE 2 ASSIGNMENT OF RENTS, ISSUES AND PROFITS**

Section 2.01. Assignment of Rents, Issues and Profits. As part of the consideration for the Secured Obligations, and not as additional security therefor, the Grantor hereby irrevocably, absolutely and presently assigns and transfers to the Beneficiary all of the Rents of the Property and hereby gives to and confers upon the Beneficiary the right, power and authority to collect such Rents. The Grantor irrevocably appoints the Beneficiary its true and lawful attorney-in-fact, acting at the written direction of the Controlling Person, at any time and from time to time, to demand, receive and enforce payment, to give receipts, releases and satisfactions, and to sue in its name or in the name of the Grantor, for all such Rents, and apply the same to the payment of the Secured Obligations; provided, however, that the Grantor shall have and is hereby granted the right, in the form of a revocable license, to enforce payment, give satisfactions, sue for and collect such Rents (but not more than one (1) month in advance unless the written approval of the Controlling Person has first been obtained), and to retain and enjoy the same, so long as an Event of Default shall not have occurred hereunder and be continuing. The assignment of the Rents in this Article 2 is intended to be an absolute assignment from the Grantor to the Beneficiary and not merely the passing of a security interest. The Grantor and the Beneficiary further agree that, solely for the purposes of any bankruptcy of the Grantor or its general partners, during the term of this Deed of Trust, the Rents shall not constitute property of the Grantor (or of any estate of the Grantor) within the meaning of 11 U.S.C. §541, as amended from time to time. To the extent that specific terms and requirements of this Deed of Trust or any other Bond Document, conflict with the specific terms and requirements of the Texas Assignment of Rents Act, as codified in Tex. Prop. Code, Chapter 64, as the same may be amended, modified or supplemented from time to time ("TARA"), (a) to the extent such terms and requirements of TARA may be superseded by an agreement between the parties, the specific terms and requirements of this Deed of Trust or the other Bond Documents hereby supersedes such specific terms and requirements of TARA; and (b) to the extent that such terms and requirements of TARA cannot be superseded by an agreement between the parties, the specific terms and requirements of TARA shall control, and the parties further agree that all other terms and requirements of this Deed of

Trust or the other Bond Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect.

Section 2.02. Collection Upon Default. Upon the occurrence and during the continuation of an Event of Default hereunder, the license granted to the Grantor in Section 2.01 hereof shall be automatically revoked without notice. Upon such revocation of said license, the Beneficiary may, at any time without notice, upon the written direction of the Controlling Person, either in person, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Secured Obligations, enter upon and take possession of the Premises, or any part thereof, and, with or without taking possession of the Premises or any part hereof, in its own name sue for or otherwise collect such Rents (including those past due and unpaid, and all prepaid rents and all other monies which may have been or may hereafter be deposited with the Grantor by any lessee or tenant of the Grantor to secure the payment of any rent or for any services thereafter to be rendered by the Grantor for any other obligation of any tenant to the Grantor arising under any Lease). The Grantor agrees that, during the continuation of any Event of Default hereunder, the Grantor shall promptly deliver all such Rents and monies to the Beneficiary. The Beneficiary shall apply such Rents and monies (other than security deposits), less costs and expenses of operation and collection (including reasonable attorneys' fees whether or not suit is brought or prosecuted to judgment), at the written direction of the Controlling Person, to the payment of any Secured Obligations, in such order as the Controlling Person may determine, notwithstanding that said indebtedness or the performance of said obligation may not then be due. The collection of such Rents, or the entering upon and taking possession of the Premises, or the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default or be deemed or construed to make the Beneficiary a mortgagee-in-possession of the Premises or any portion thereof.

Section 2.03. Further Assignments. Upon written demand of the Beneficiary or the Controlling Person, the Grantor shall, from time to time hereafter, execute and deliver to the Beneficiary recordable collateral assignments of any and all Leases or the collateral assignment of other agreements relating to, or affecting the use, occupancy, management or maintenance of, or services provided to, the Property or now or hereafter affecting the Property or any portion thereof. Each such assignment shall be made by an instrument (herein, an "Assignment of Leases") in form and substance satisfactory to the Beneficiary; provided, however, that no such Assignment of Leases shall be construed as imposing upon the Beneficiary any obligation with respect to the Leases or any of them. The Beneficiary may, at the written direction of the Controlling Person, exercise its rights hereunder or under any such Assignment of Leases, and such exercise shall not constitute a waiver of any right hereunder or thereunder. All Leases (and all Rents and security deposits derived therefrom or associated therewith) to which any such Assignment of Leases refers shall be controlled by the terms and provisions of said instrument to the extent that the provisions of this Deed of Trust are inconsistent therewith. To the extent not inconsistent, all rights and remedies of the Beneficiary under any such Assignment of Leases and under this Deed of Trust shall be cumulative.

### **ARTICLE 3 REMEDIES UPON DEFAULT**

Section 3.01. Event of Default. The term "Event of Default," as used herein means an "Event of Default" as defined in the Loan Agreement.

Section 3.02. Acceleration Upon Default. During the existence of an Event of Default, the Beneficiary, acting at the written direction of the Controlling Person, may declare all Secured Obligations to be immediately due and payable without any presentment, demand, protest or notice of any kind; provided no such declaration shall be required, and acceleration shall be deemed to have occurred, if the

Event of Default is an event set forth in Section 7.1(g) of the Loan Agreement. The Grantor acknowledges that the power of sale granted in this Deed of Trust may be exercised by the Beneficiary without prior judicial hearing. The Beneficiary will be entitled to collect all costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees and costs, costs of documentary evidence, abstracts and title reports.

Section 3.03. Remedies.

(a) During the existence of an Event of Default, the Beneficiary, acting at the written direction of the Controlling Person, may either in person or by agent, with or without bringing any action or proceeding, or by a receiver appointed by a court and without regard to the adequacy of its security,

- (i) enter upon the Premises and take possession of the Property, or any part thereof, in its own name, and do any act which it deems necessary or desirable to preserve the value, marketability or rentability of the Property, or part thereof or interest therein, increase the income therefrom or protect the security hereof;
- (ii) with or without taking possession of the Premises, sue for or otherwise collect the Rents including those past due and unpaid, and apply the same, less costs and expenses of operation and collection including reasonable attorneys' fees, to the payment of any Secured Obligations, all in such order as the Beneficiary may determine;
- (iii) deliver to the Deed of Trust Trustee a written declaration of default and demand for sale, and a written notice of default and of election to cause the Property to be sold, and cause any or all of the Property to be sold under the power of sale granted by this Deed of Trust in any manner permitted by applicable law;
- (iv) specifically enforce any of the covenants hereof; or
- (v) exercise all other rights and remedies provided herein, in any of the other Bond Documents, or provided by law or equity.

(b) The entering upon the Premises and taking possession of the Property, the collection of such Rents and the application thereof as aforesaid, shall not cure or waive any default or notice of default hereunder or invalidate any act done in response to such default or pursuant to such notice of default and, notwithstanding the continuance in possession, by the Beneficiary or a receiver of all or any portion of the Property or the collection, receipt and application of any of the Rents thereby, the Beneficiary shall be entitled to exercise every right provided for in any of the Bond Documents or by law during the existence of any Event of Default.

Section 3.04. Power of Sale. During an Event of Default, the Beneficiary, upon the direction of the Controlling Person may request the Deed of Trust Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

(a) The Deed of Trust Trustee is hereby authorized and empowered, and it shall be the Deed of Trust Trustee's special duty, upon such request of the Beneficiary, acting upon the direction of the Controlling Person, to sell the Property, or any part thereof, at public auction to the highest bidder for cash at public auction, with or without having taken possession of same. Such sale will be made at the designated location of the county in which all or any part of the Land to be sold is situated (whether the parts or parcel, if any, situated in different counties are contiguous or not, and without the necessity of

having any personalty present at such sale). Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Section 51.002 of the Texas Property Code, as amended, or, if and to the extent such statute is not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust.

(b) Subject to any applicable requirements at the time of sale governing sales of Texas real property under the powers of sale conferred by deeds of trust, at any time during the bidding, the Deed of Trust Trustee may require a bidding party (i) to disclose its full name, state and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable); and (ii) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "Questioned Bidder") declines to comply with the Deed of Trust Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Deed of Trust Trustee, acting upon the direction of the Controlling Person, in the Controlling Person's sole and absolute discretion, deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Deed of Trust Trustee may continue the bidding with reservation; and in such event (1) the Deed of Trust Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Deed of Trust Trustee, all bids by the Questioned Bidder shall be null and void.

(c) The Deed of Trust Trustee, acting upon the direction of the Controlling Person, in the Controlling Person's sole and absolute discretion, may determine that a credit bid may be in the best interest of the Grantor and the Beneficiary, and elect to direct the Deed of Trust Trustee to sell the Property for credit or for a combination of cash and credit; provided, however, (i) the Deed of Trust Trustee shall have no obligation to accept any bid except an all cash bid, and (ii) the Deed of Trust Trustee shall be required to accept the highest bid. In the event the Deed of Trust Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Deed of Trust Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced provided that it is recommenced within the time frame set forth in the Notice of Sale given pursuant to Section 51.002 of the Texas Property Code, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

(d) Sale of a part of the Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid in full. It is intended by each of the foregoing provisions of this subsection that the Deed of Trust Trustee may, after any request or direction by Controlling Person, sell the Land and the Improvements and other interests constituting a part of the Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Property separately from the remainder of the Property. It shall not be necessary to have present or to exhibit at any sale any of the Property.

(e) After any sale under this clause (e), the Deed of Trust Trustee shall make good and sufficient the deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in

the name of the Grantor, conveying the Property or any part thereof so sold to the purchaser or purchasers with special warranty of title by the Grantor. It is agreed that in any the deeds, assignments or other conveyances given by the Deed of Trust Trustee, any and all statements of fact or other recitals therein made as to the identity of the Beneficiary, the occurrence and continuance of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute the Deed of Trust Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of the Beneficiary or by or on behalf of the Deed of Trust Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals are true, correct, and complete.

(f) The following shall be the basis for the finder of fact's determination of the fair market value of the Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Property will be repaired or improved in any manner before a resale of the Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Property, including, without limitation, brokerage commissions, title insurance, a survey of the Property, tax prorrations, reasonable attorneys' fees, and marketing costs; (iv) the gross fair market value of the Property shall be further discounted to account for any estimated holding costs associated with maintaining the Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (ii) and/or (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Property must be given by persons having at least five (5) years' experience in appraising property similar to the Property and who have conducted and prepared a complete written appraisal of the Property taking into consideration the factors set forth above.

#### Section 3.05. Foreclosure.

(a) When the Secured Obligations, or any part thereof, shall become due, whether upon maturity, by acceleration or otherwise, and the same are not timely paid, the Deed of Trust Trustee, acting at the written direction of the Controlling Person, may institute an action of foreclosure against the Property, or take such other action at law or in equity of the enforcement of this Deed of Trust and realization on the Property or any other security herein or elsewhere provided for as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Secured Obligations, with interest from and after the occurrence of the Event of Default at the Default Rate together with all other sums due by the Grantor in accordance with the provisions of this Deed of Trust and the other Bond Documents including all sums which may have been paid, incurred or advanced by or on behalf of the Beneficiary or the Controlling Person for taxes, water or sewer rents, charges or claims, payments of prior liens, insurance appraiser's charges, publication costs, and costs (which may be estimated as to items to be expended after entry of judgment) of procuring all such abstracts of title, title searches and examinations, title insurance policies, and similar data and assurances with respect to title as the Beneficiary or the Controlling Person may deem reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such judgment the true condition of the title to or the value of the Property, all costs of suit, together with interest at the Default Rate on any judgment obtained by the Beneficiary from and after the date of such judgment including the period from and after the date of any judicial sale until actual payment is made of the full amount due the Beneficiary as a result of such sale, and a reasonable attorney's commission for collection.

(b) If any or all of the Premises or any estate or interest therein is to be sold under the provisions of this Deed of Trust, by virtue of a judicial sale, it may be sold, as an entirety or in one or more parcels, by one sale or by several sales held at one time or at different times, with such postponement of any such sale as the Beneficiary, acting at the written direction of the Controlling Person, may deem appropriate and without regard to any right of the Grantor or any other person to the marshaling of assets. The Beneficiary or the Controlling Person may bid and become the purchaser at any such sale.

(c) Upon any sale of the Grantor's interest in any or all of the Property in accordance with the terms of this Deed of Trust, whether, by other foreclosure or judicial proceedings, the proceeds of such sale, together with any other sum then held as security hereunder or due under any of the provisions hereof as part of the Property (after paying all expenses of sale, including reasonable attorneys' fees, and all taxes, assessments or impositions in connection with the Property which the Beneficiary deems it advisable or expedient to pay and all sums advanced, with interest thereon, as provided herein shall be applied) to the payment of the Secured Obligations then due and owing under the Bond Documents and secured hereby and interest thereon to the date of payment and prepayment fees, if any, paying over the surplus, if any, less the expense, if any, of obtaining possession, to the Grantor or any person entitled thereto upon the surrender and delivery to the purchaser of possession of the Property.

Section 3.06. Appointment of Receiver. If an Event of Default has occurred and is continuing, the Beneficiary, acting at the written direction of the Controlling Person, may apply for the appointment of a receiver of the Premises and/or the Rents, without notice except as required by law, and shall be entitled to the appointment of the receiver as a matter of right, without consideration of the value of the Premises, the solvency of any person liable for the payment of the Secured Obligations, or the effect of the, receivership on the operation of the Premises or the Grantor's business thereon.

Section 3.07. Application of Funds After Default. Except as otherwise herein provided or provided in the other Bond Documents, during the existence of an Event of Default hereunder, the Beneficiary, acting at the written direction of the Controlling Person, may, at any time without notice, apply any or all sums or amounts received and held by the Beneficiary (other than the security deposits from tenant leases) to pay insurance premiums, taxes, assessments and other impositions in connection with the Property, or apply amounts received as rents or income of the Property, or as insurance or condemnation proceeds, and all other sums or amounts received by the Beneficiary from or on account of the Grantor or the Property, or otherwise, to any of the Secured Obligations then due and payable, in such manner and order as the Beneficiary, acting at the written direction of the Controlling Person, may elect, notwithstanding that said indebtedness or the performance of said obligation may not yet be due. The receipt, use or application of any such sum or amount shall not be construed (i) to affect the maturity of any Secured Obligations or any of the rights or powers of the Beneficiary hereunder or under the terms of the Bond Documents; or (ii) any of the obligations of the Grantor or any guarantor hereunder or under the Bond Documents; or (iii) to cure or waive any default or notice of default hereunder or under any of the Bond Documents; or to (iv) invalidate any act of the Beneficiary.

Section 3.08. Costs of Enforcement. If any Event of Default occurs and is continuing, the Beneficiary and the Controlling Person may employ an attorney or attorneys to protect their respective rights hereunder. The Grantor agrees to pay to the Beneficiary or the Controlling Person (as applicable), on demand, the reasonable fees and expenses of such attorneys and all other costs of enforcing the obligations secured hereby, including recording fees, receivers' fees and expenses, and all other reasonable expenses, of whatever kind or nature, incurred by the Beneficiary, in connection with the enforcement of the Secured Obligations, whether or not such enforcement includes the filing of a lawsuit. Until paid, such sums shall be secured hereby and shall bear interest, from date of expenditure, at the Default Rate.

Section 3.09. Remedies Not Exclusive. The Beneficiary shall be entitled to enforce payment and performance of any Secured Obligations and to exercise all rights and powers under this Deed of Trust or under any Bond Documents or other agreement to which it is a party or any law now or hereafter in force, notwithstanding some or all of the Secured Obligations may now or hereafter be otherwise secured, whether by guaranty, deed of trust, mortgage, deed to secure debt, pledge, lien, assignment or otherwise. Neither the acceptance of this Deed of Trust nor its enforcement, whether by court action or pursuant to the power of sale or other powers herein contained, shall prejudice or in any manner affect the Beneficiary's rights to realize upon or enforce any other security now or hereafter held by the Beneficiary, it being agreed that the Beneficiary shall be entitled to enforce this Deed of Trust and any other security now or hereafter held by the Beneficiary in such order and manner as the Controlling Person in its sole discretion may direct. No remedy herein conferred upon or reserved to the Beneficiary is intended to be exclusive of any other remedy herein or by law provided or permitted, but each shall be cumulative and shall be in addition to every other remedy given hereunder now or hereafter existing at law or in equity or by statute. Every power or remedy given hereunder or under any of the Bond Documents to the Beneficiary or to which the Beneficiary may be otherwise entitled may be exercised, concurrently or independently, from time to time and as often as may be deemed expedient by the Beneficiary or the Controlling Person, and the Beneficiary and the Controlling Person may pursue inconsistent remedies.

#### **ARTICLE 4 SECURITY AGREEMENT**

Section 4.01. Creation of Security Interest. The Grantor hereby grants to the Beneficiary, as security for the Secured Obligations, a "security interest" (as such term is defined in the Uniform Commercial Code of the State of Texas) in all of the Grantor's right, title and interest in, to and under the following property, whether now owned or hereafter acquired or arising: (i) that portion of the Property that constitutes personal property under the Uniform Commercial Code, (ii) any accounts, chattel paper, inventory, equipment, instruments, investment property, documents, deposit accounts, commercial tort claims, letter-of-credit rights, goods, general intangibles, money, oil, gas and other minerals before extraction, and supporting obligations (each term in this clause (ii) having the meaning given to it under the Uniform Commercial Code), (iii) all renewals, replacements of any of the aforementioned items, or articles in substitution therefor or in addition thereto and (iv) all proceeds and products of the foregoing (said property described in clauses (i) through (iv) is hereinafter referred to collectively as the "Personal Property"). The foregoing sentence is intended to grant in favor of the Beneficiary a continuing lien and security interest in all of the Grantor's assets. The Grantor authorizes the Beneficiary and its counsel to file UCC financing statements in form and substance satisfactory to the Beneficiary, describing the collateral as "all assets of the debtor, whether now owned or existing or hereafter acquired or arising, and all proceeds and products thereof, including, without limitation, all fixtures on the Premises" or words to that effect, and any limitations on such collateral description, notwithstanding that such collateral description may be broader in scope than the Personal Property. By executing and delivering this Deed of Trust, the Grantor has granted, in the same manner and with the same effect described in the granting clauses hereof, to the Beneficiary, as additional security, a security interest in the Personal Property which are subject to the Uniform Commercial Code. If any Event of Default shall occur, the Beneficiary shall have, in addition to any and all other rights and remedies set forth in this Deed of Trust, and may exercise without demand, any and all rights and remedies granted to a secured party under the Uniform Commercial Code, including, but not limited to, the right to take possession of the Personal Property, or any part thereof, and the right to advertise and sell the Personal Property, or any part thereof, pursuant to and in accordance with the power of sale provided for in this Deed of Trust. The Grantor agrees that any notice of sale or other action intended by the Beneficiary with respect to the Personal Property, or any part thereof, shall constitute reasonable notice if it is sent to the Grantor not less than ten (10) days prior to any such sale or intended action.

Section 4.02. Representations, Warranties and Covenants of the Grantor. The Grantor hereby represents, warrants and covenants as follows:

(a) Other than books and records and other types of tangible Personal Property that is customarily kept or located in the Grantor's off-site offices, the tangible portion of the Personal Property shall be kept on or at the Premises and the Grantor shall not, without the prior written consent of the Controlling Person, remove the Personal Property or any portion thereof therefrom except such portions or items of Personal Property as are consumed or worn out in ordinary usage, all of which shall be promptly replaced by the Grantor with similar items of comparable value if required for the efficient operation of the Premises.

(b) The Grantor shall promptly notify the Controlling Person of its receipt of any written material claim against the Personal Property adverse to the interest of the Beneficiary therein.

(c) Without the prior written consent of the Controlling Person, the Grantor shall not create or suffer to be created pursuant to the Uniform Commercial Code any other security interest in the Personal Property, including replacements and additions thereto.

Section 4.03. Use of Personal Property by the Grantor. Unless an Event of Default has occurred and is continuing hereunder, the Grantor may have possession of the Personal Property and use it in any lawful manner not inconsistent with this Deed of Trust and not inconsistent with any policy of insurance covering the Premises or the Personal Property.

Section 4.04. Remedies Upon an Event of Default.

(a) In addition to the remedies provided in Article 3 hereof, upon the occurrence of an Event of Default and during the continuation thereof, the Beneficiary may, acting at the written direction of the Controlling Person, at the Controlling Person's option, do any one or more of the following:

(i) Either personally, or by means of a court appointed receiver, take possession of all or any of the Personal Property and exclude therefrom the Grantor and all others claiming under the Grantor, and thereafter hold, store, use, operate, manage, maintain and control, make repairs, replacements, alterations, additions and improvements to and exercise all rights and powers of the Grantor with respect to the Personal Property or any part thereof;

(ii) Without notice to or demand upon the Grantor, make such payments and do such acts as the Controlling Person may direct to protect the Beneficiary's security interest in the Personal Property (including paying, purchasing, contesting or compromising any unbonded Lien or Encumbrance (other than Permitted Encumbrances), whether superior or inferior to such security interest) and in exercising any such powers or authority to pay all expenses (including litigation costs and reasonable attorneys' fees) incurred in connection therewith;

(iii) Require the Grantor from time to time to assemble the tangible Personal Property, or any portion thereof, at a place designated by the Beneficiary and promptly deliver such Personal Property to the Beneficiary or an agent or representative designated by the Beneficiary;

(iv) Realize upon the Personal Property or any part thereof as herein provided or in any manner permitted by law and exercise any and all of the other rights and remedies conferred upon the Beneficiary by this Deed of Trust or by any of the other Bond Documents or by law, either concurrently or in such order as the Controlling Person may determine;

(v) Sell or cause to be sold in such order as the Controlling Person may determine, as a whole or in such parcels as the Controlling Person may determine, the Personal Property;

(vi) Sell, lease or otherwise dispose of the Personal Property at public or private sale, upon terms and in such manner as the Controlling Person may determine, and the Beneficiary or the Controlling Person may be a purchaser at any sale; and

(vii) Subject to the notice requirement set forth in this Deed of Trust, exercise any remedies of a secured party under the Uniform Commercial Code or any other applicable law.

The Beneficiary, the Controlling Person and their respective agents and representatives shall have the right to enter upon any or all of the Premises to exercise the Beneficiary's rights hereunder.

(b) Unless the Personal Property is perishable or threatens to decline speedily in value or is of a type customarily sold on a recognized market, and notwithstanding anything to the contrary set forth in this Deed of Trust, the Beneficiary shall give the Grantor at least fifteen (15) days' prior written notice of the time and place of any public sale of the Personal Property or other intended disposition thereof to be made, which notice the Grantor agrees is reasonable. Such notice shall be delivered to the Grantor at its address set forth in the opening paragraph of this Deed of Trust in accordance with Section 5.06 hereof.

(c) Subject to the terms of Section 6.7 of the Indenture, the proceeds of any sale under Section 4.04(a)(vi) shall be applied as follows:

(i) to the repayment of the costs and reasonable expenses of taking, holding and preparing for the sale and the selling of the Personal Property (including costs of litigation and reasonable attorneys' fees) and the discharge of all Impositions, Liens and Encumbrances, and claims thereof, if any, on the Personal Property prior to the security interest granted herein (except any Impositions or Liens and Encumbrances subject to which such sale shall have been made);

(ii) the payment of the Secured Obligations, including interest, in such order as the Controlling Person shall determine;

(iii) to be held as collateral for any obligation of the Grantor to the Beneficiary under the Bond Documents; and

(iv) the surplus, if any, shall be paid to the Grantor or to whosoever may be lawfully entitled to receive the same, or as a court of competent jurisdiction may direct.

(d) The Beneficiary, acting upon the written direction of the Controlling Person, shall have the right to enforce one or more remedies under this Section 4.04 successively or concurrently and such action shall not operate to stop or prevent the Beneficiary from pursuing any further remedy that it may have. Any repossession or retaking or sale of the Personal Property pursuant to the provisions hereof shall not operate to release the Grantor until full payment of any deficiency due and owing under the terms of the applicable guaranty has been made in cash.

Section 4.05. Security Agreement. This Deed of Trust constitutes and shall be deemed to be a "security agreement" for all purposes of the Uniform Commercial Code; and the Beneficiary shall be entitled to all the rights and remedies of a "secured party" under the Uniform Commercial Code as to any Personal Property. Information concerning the security interest in Personal Property can be obtained

from the Beneficiary at its address set forth in the opening paragraph of this Deed of Trust. The mailing address of the Grantor (debtor) is also set forth in the opening paragraph to this Deed of Trust.

Section 4.06. Fixture Filing. Some of the Personal Property is or is to become fixtures on the Premises and this instrument is to be recorded in the real estate records. This Deed of Trust is effective as a financing statement filed as a fixture filing, executed by the Grantor, as debtor, in favor of the Beneficiary, as secured party, with respect to all fixtures included in the Property and the Personal Property. Products of the collateral are also covered. Information concerning the security interest in fixtures can be obtained from the Beneficiary at its address set forth in the opening paragraph of this Deed of Trust. The mailing address of the Grantor (debtor) is also set forth in the opening paragraph of this Deed of Trust.

Section 4.07. Financing Statements. The Grantor hereby authorizes the Beneficiary to file any financing statements, as well as extensions, renewals and amendments thereof, and any reproductions of this Deed of Trust in such form as the Beneficiary may reasonably require to perfect a security interest with respect to such items. The Grantor shall pay all costs of filing such financing statements and any extensions, renewals, amendments and releases thereof, and shall pay all reasonable costs and expenses of any record searches for financing statements as the Beneficiary or the Controlling Person may reasonably require. The filing of such financing statements shall under no circumstance be construed as impairing either the Beneficiary's remedies or the priority of the lien granted hereby, and the Grantor agrees that all items of Personal Property are, and at all times, for all purposes and in all proceedings (both legal and equitable) shall be, at the election of the Beneficiary, regarded as part of the real estate encumbered by this Deed of Trust.

## ARTICLE 5 MISCELLANEOUS

Section 5.01. Amendments. No amendment (as to amendments, subject to the next sentence) or waiver of any provision of this Deed of Trust nor consent to any departure by the Grantor herefrom shall in any event be effective unless the same shall be in writing and signed by the Beneficiary with the prior written consent of the Controlling Person, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given. All amendments to this Deed of Trust shall be made in accordance with any applicable provisions of Article VIII of the Indenture and shall require the written consent of the Controlling Person.

Section 5.02. Future Advances. Upon the Grantor's request, until this Deed of Trust is released of record, the Beneficiary may advance or re-advance additional sums of money (consisting of the proceeds of Bonds or protective advances) to the Grantor from time to time and such advances or re-advances shall become part of the Secured Obligations secured hereby to the fullest extent permitted by law.

Section 5.03. Business Purpose. The Grantor hereby stipulates and warrants that the Secured Obligations are a commercial facility and that such facility is being granted solely to acquire or carry on a business, professional or commercial enterprise or activity.

Section 5.04. Grantor Waiver of Rights. The Grantor waives, to the extent permitted by law, (a) the benefit of all laws now existing or that may hereafter be enacted providing for any appraisalment before sale of any portion of the Property, (b) all rights of redemption, valuation, appraisalment, stay of execution, notice of election to mature or declare due the whole of the indebtedness secured hereby and marshaling in the event of foreclosure of the liens hereby created, (c) all rights and remedies which the

Grantor may have or be able to assert by reason of applicable laws pertaining to the rights and remedies of sureties, and (d) all homestead rights.

Section 5.05. Statements by the Grantor. The Grantor shall, within ten (10) days after a request from the Beneficiary or the Controlling Person, deliver to the Beneficiary and the Controlling Person a written statement setting forth the then unpaid amounts of the Secured Obligations and stating whether any offset or defense exists against payment of such amounts.

Section 5.06. Notices. All notices, requests and demands to be made hereunder to the parties hereto shall be in writing and shall be given in the manner prescribed in the Loan Agreement, to the addresses provided therein. All notices provided herein to the Beneficiary shall also be provided to the Controlling Person.

Section 5.07. Captions. The captions or headings at the beginning of each Section hereof are for the convenience of the parties and are not a part of this Deed of Trust.

Section 5.08. Invalidity of Certain Provisions. Every provision of this Deed of Trust is intended to be severable. In the event any term or provision hereof is declared to be illegal or invalid for any reason whatsoever by a court of competent jurisdiction, such illegality or invalidity shall not affect the balance of the terms and provisions hereof, which terms and provisions shall remain binding and enforceable. If the lien of this Deed of Trust is invalid or unenforceable as to any part of the Secured Obligations, or if the lien is invalid or unenforceable as to any part of the Property, the unsecured or partially secured portion of the Secured Obligations shall be completely paid prior to the payment of the remaining secured or partially secured portion of the Secured Obligations, and all payments made under the Secured Obligations, whether voluntary or under foreclosure or other enforcement action or procedure, shall be considered to have been first paid on and applied to the full payment of that portion of the Secured Obligations which is not secured or fully secured by the lien of this Deed of Trust.

Section 5.09. Subrogation. To the extent that the Beneficiary or the Controlling Person pays any outstanding lien, charge or prior encumbrance against the Property, the Beneficiary or the Controlling Person, as applicable, shall be subrogated to any and all rights and liens held by any owner or holder of such outstanding liens, charges and prior encumbrances, irrespective of whether said liens, charges or encumbrances are released.

Section 5.10. Attorneys' Fees. If the Secured Obligations are not paid when due or if any Event of Default occurs and is continuing, the Grantor agrees to pay all costs of enforcement and collection incurred by the Beneficiary or the Controlling Person, including reasonable attorneys' fees, whether or not such enforcement and collection includes the filing of a lawsuit. As used herein, the terms "attorneys' fees" and "attorneys' fees and costs" shall each mean the reasonable fees and expenses of counsel to the parties hereto, which may include printing, photocopying, duplicating and other expenses, air freight charges, and fees billed for law clerks, paralegals, librarians and others not admitted to the bar but performing services under the supervision of an attorney. The terms "attorneys' fees" and "attorneys' fees and costs" shall also each include all such reasonable fees and expenses incurred with respect to appeals, arbitrations and bankruptcy proceedings, and whether or not any action or proceeding is brought with respect to the matter for which said reasonable fees and expenses were incurred and shall also include all such fees and expenses incurred in enforcing any judgment. This agreement to pay costs is part of and not a limitation on any obligation on the part of the Grantor to pay costs and expenses under the Loan Agreement.

Section 5.11. Governing Law. THIS DEED OF TRUST SHALL BE GOVERNED BY AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF TEXAS, WITHOUT GIVING EFFECT TO ITS CONFLICT OF LAWS PRINCIPLES.

Section 5.12. Construction. Whenever required by the context hereof, the singular shall be deemed to include the plural, and the plural shall be deemed to include the singular, and the masculine, feminine and neuter genders shall each be deemed to include the others. Except as otherwise indicated herein, all section and exhibit references in this Deed of Trust shall be deemed to refer to the sections and exhibits of and to this Deed of Trust, and the terms “herein,” “hereof,” “hereto,” “hereunder” and similar terms refer to this Deed of Trust generally rather than to the particular provision in which such term is used. Whenever the words “including,” “include” or “includes” are used in this Deed of Trust, they shall be interpreted as though immediately followed by the words “without limitation.” As used herein, the word “person” includes corporation, partnership, limited liability company, and any other form of association, as well as any governmental or quasi-governmental body or agency.

Section 5.13. Non-foreign Entity. Section 1445 of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”) provides that a transferee of a U.S. real property interest must withhold tax if the transferor is a foreign person. To inform the Beneficiary that the withholding of tax will not be required in the event of the disposition of the Property pursuant to the terms of this Deed of Trust, the Grantor hereby certifies, under penalty of perjury, that the Grantor is not a foreign corporation, foreign partnership, foreign trust or foreign estate, as those terms are defined in the Internal Revenue Code and the regulations promulgated thereunder, that the Grantor’s U.S. employer identification number and that the Grantor’s principal place of business is as set forth on the first page of this Deed of Trust. It is understood that the Beneficiary may disclose the contents of this certification to the Internal Revenue Service and that any false statement contained herein could be punished by fine, imprisonment or both. The Grantor shall execute such further certificates, which shall be signed under penalty of perjury, as the Beneficiary shall reasonably require. The covenants set forth in this Section shall survive the foreclosure of the lien of this Deed of Trust or acceptance of a deed in lieu thereof.

Section 5.14. Access to Property and Dissemination of Information. The Grantor hereby authorizes the Deed of Trust Trustee, the Beneficiary, the Controlling Person, any prospective bidder at any foreclosure sale or in connection with the exercise of the power of sale hereunder and their respective officers, directors, employees, agents and independent contractors, upon reasonable prior notice and so long as such persons do not unreasonably interfere with the Grantor’s operations on the Premises or the rights of tenants, to enter upon all or any portion of the Premises at any time and from time to time (during the existence of an Event of Default) for the purpose of conducting such tests, inspections, inquiries, examinations, studies, analyses, samples, surveys and other information-gathering activities (collectively, “Tests and Studies”) with respect to the Premises as any of them may from time to time deem reasonably necessary or appropriate, including Tests and Studies with respect to the structural integrity of the Improvements and the presence of hazardous substances in or around the Premises. The Grantor hereby covenants and agrees to reasonably cooperate with such persons and entities in their efforts to conduct Tests and Studies, and further covenants and agrees to make reasonably available to such persons and entities such portions of the Premises as any of them may designate. The results of all Test and Studies shall be and at all times remain the property of such persons and entities, and under no circumstances shall any such person have any obligation whatsoever to disclose or otherwise make available to the Grantor or any other person such results or any other information obtained by them in connection with such Tests and Studies, unless such Tests and Studies are used to demonstrate or provide evidence of an Event of Default. Notwithstanding the foregoing provisions of this Section 5.14, the Beneficiary reserves the right, and the Grantor expressly authorizes the Beneficiary, to make available to any person (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Property) any and all information which the Beneficiary may have with respect to

the Premises, whether provided by the Grantor or any other person or obtained as a result of Tests and Studies (including environmental reports, surveys and engineering reports). The Grantor consents to the Beneficiary's notifying any person (either as a part of a Notice of Sale or otherwise) of the availability of any or all of the Tests and Studies and the information contained therein. The Grantor acknowledges that the Beneficiary cannot control or otherwise assure the truthfulness or accuracy of the Tests and Studies, and that the release of the Tests and Studies or any information contained therein to prospective bidders at any foreclosure sale of the Property may have a material and adverse effect upon the amount which a person may bid at such sale. The Grantor agrees that the Beneficiary shall have no liability whatsoever as a result of delivering in accordance with this Section 5.14 any or all of the Tests and Studies or any information contained therein to any person, and the Grantor hereby releases, remises and forever discharges the Beneficiary from any and all claims, damages or causes of action arising out of, connected with or incidental to the Tests and Studies or the delivery thereof in accordance with this Section 5.14 to any person.

Section 5.15. Successors and Assigns. This Deed of Trust applies to, inures to the benefit of and binds the Grantor and the heirs, legatees, devisees, administrators, personal representatives, executors and the successors and assigns thereof, and the Beneficiary. The term "Beneficiary" means the Person named herein as the Beneficiary, and its successors-in-interest or assigns under the Bond Documents from time to time, whether or not named as the Beneficiary herein and any such successor or assignee shall be for all purposes the sole Beneficiary after the date of such substitution. Without limiting the generality of the foregoing, (a) the parties acknowledge that this Deed of Trust is being assigned to the Bond Trustee immediately following execution and delivery hereof; and (b) the Controlling Person and the Bondholders are and shall be express third party beneficiaries of the rights of the Beneficiary hereunder. The term "Grantor" means the Grantor named herein and the successors-in-interest, if any, of the named the Grantor in and to the Property or any part thereof. If there is more than one Grantor hereunder, their obligations are joint and several. This Section shall not be deemed a waiver of any of the provisions of Section 1.12 hereof, Section 6.12 of the Loan Agreement or Section 10 of the Regulatory Agreement.

Section 5.16. No Merger of Lease. Upon the foreclosure of the lien created by this Deed of Trust on the Property or the exercise of the power of sale granted hereunder pursuant to the provisions hereof, any Lease then existing and affecting all or any portion of the Property shall not be destroyed or terminated by application of the law of merger or as a matter of law or as a result of such foreclosure unless the Beneficiary or any purchaser at such foreclosure or exercise of the power of sale shall so elect. If both the lessor's and lessee's estate under any Lease or any portion thereof which constitutes a part of the Property shall at any time become vested in one owner, this Deed of Trust and the lien created hereby shall not be destroyed or terminated by application of the doctrine of merger unless the Beneficiary so elects as evidenced by recording a written declaration so stating, and, unless and until the Beneficiary so elects, the Beneficiary shall continue to have and enjoy all of the rights and privileges of the Beneficiary hereunder as to the separate estates.

Section 5.17. Counterparts; Electronic Signatures. This Deed of Trust may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Deed of Trust.

Section 5.19. WAIVER OF TRIAL BY JURY.

(a) **THE GRANTOR, THE DEED OF TRUST TRUSTEE, THE CONTROLLING PERSON, THE BOND TRUSTEE AND THE BENEFICIARY EACH COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS DEED OF TRUST OR THE**

**RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY.**

- (b) **THE GRANTOR, THE DEED OF TRUST TRUSTEE, THE CONTROLLING PERSON, THE BOND TRUSTEE AND THE BENEFICIARY EACH WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

Section 5.20. Notice of Additional Provisions Regarding Insurance. Any terms to the contrary contained in this Deed of Trust notwithstanding, the following requirements are hereby imposed pursuant to Section 307.052 of the Texas Finance Code:

- (a) **THE GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN AN AMOUNT AT LEAST EQUAL TO THE INDEBTEDNESS, (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER, AND (iii) NAME THE BENEFICIARY AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS.**
- (b) **IF THE GRANTOR FAILS TO COMPLY WITH SUBSECTION (a) ABOVE, THE BENEFICIARY MAY, BUT WILL NOT BE OBLIGATED TO, OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE, SUBJECT TO PRIOR WRITTEN NOTICE TO THE GRANTOR.**

Section 5.21. [Extended Low-Income Housing Commitment. The Beneficiary agrees 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 Property, and that such Extended Use Agreement shall be deemed a Permitted Encumbrance.]

**ARTICLE 6  
DEED OF TRUST TRUSTEE**

Section 6.01. Concerning Deed of Trust Trustee.

(a) The Deed of Trust Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in the Deed of Trust Trustee's opinion, such action would be likely to involve the Deed of Trust Trustee in expense or liability, unless requested so to do by a written instrument signed by the Beneficiary and, if the Deed of Trust Trustee so requests, unless the Deed of Trust Trustee is tendered security and indemnity satisfactory to the Deed of Trust Trustee against any and all cost, expense, and liability arising therefrom and if such request is made and such security and indemnity is tendered, the Deed of Trust Trustee shall act in accordance with such request or direction of the Beneficiary. The Deed of Trust Trustee shall not be responsible for the execution, acknowledgment, or validity of the Bond Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and the Deed of Trust Trustee makes no

representation in respect thereof or in respect of the rights, remedies, and recourses of the Beneficiary.

(b) At the direction of the Beneficiary, the Deed of Trust Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for the Beneficiary) upon any matters arising hereunder, including the preparation, execution, and interpretation of this Deed of Trust, and shall be fully protected in relying as to legal matters on the advice of counsel; (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys; (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys-in-fact, either corporate or individual, not regularly in the employ of the Deed of Trust Trustee, and the Deed of Trust Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney-in-fact, if selected with reasonable care and approved by the Beneficiary, or for any error of judgment or act done by the Deed of Trust Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for the Deed of Trust Trustee's negligence or bad faith or failure to act in accordance with the terms hereof; and (iv) any and all other lawful action as the Beneficiary or the Controlling Person may instruct the Deed of Trust Trustee to take to protect or enforce the Beneficiary's rights hereunder. The Deed of Trust Trustee shall not be personally liable in case of entry by the Deed of Trust Trustee, or anyone entering by virtue of the powers herein granted to the Deed of Trust Trustee, upon the Property for debts contracted for or liability or damages incurred in the management or operation of the Property. The Deed of Trust Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by the Deed of Trust Trustee hereunder, believed by the Deed of Trust Trustee in good faith to be genuine. The Deed of Trust Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by the Deed of Trust Trustee in the performance of the Deed of Trust Trustee's duties hereunder and to reasonable compensation for such of the Deed of Trust Trustee's services hereunder as shall be rendered. The Grantor will, from time to time, pay the compensation due to the Deed of Trust Trustee hereunder and reimburse the Deed of Trust Trustee for, and save the Deed of Trust Trustee harmless against, any and all liability and expenses which may be incurred by the Deed of Trust Trustee in the performance of the Deed of Trust Trustee's duties.

(c) All moneys received by the Deed of Trust Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and the Deed of Trust Trustee shall be under no liability for interest on any moneys received by the Deed of Trust Trustee hereunder.

(d) The Deed of Trust Trustee may resign by the giving of notice of such resignation in writing or verbally to the Beneficiary and the Grantor. If the Deed of Trust Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, the Beneficiary shall prefer to appoint a substitute Deed of Trust Trustee or multiple substitute Deed of Trust Trustees, or successive substitute Deed of Trust Trustees or successive multiple substitute Deed of Trust Trustees, to act instead of the aforementioned Deed of Trust Trustee, the Beneficiary and the Grantor shall have full power to appoint a substitute Deed of Trust Trustee (or, if preferred, multiple substitute Deed of Trust Trustees) in succession who shall succeed (and if multiple substitute Deed of Trust Trustees are appointed, each of such multiple substitute Deed of Trust Trustees shall succeed) to all the estates, right, powers, and duties of the aforementioned Deed of Trust Trustee. Such appointment may be executed by any authorized agent of the Beneficiary, and if the Beneficiary be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. The Grantor hereby ratifies and confirms

any and all acts which the aforementioned Deed of Trust Trustee, or the Deed of Trust Trustee's successor or successors in this trust, shall do lawfully by virtue hereof, excluding such acts of said Persons consisting of fraud, gross negligence, or intentional misconduct. If multiple substitute Deed of Trust Trustees are appointed, each of such multiple substitute Deed of Trust Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Deed of Trust Trustees, whenever any action or undertaking of such substitute Deed of Trust Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

(e) Should any deed, conveyance, or instrument of any nature be reasonably required from the Grantor by any Deed of Trust Trustee or substitute Deed of Trust Trustee to more fully and certainly vest in and confirm to the Deed of Trust Trustee or substitute Deed of Trust Trustee such estates, rights, powers, and duties, then, upon request by the Deed of Trust Trustee or substitute Deed of Trust Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by the Grantor.

(f) Any substitute Deed of Trust Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Deed of Trust Trustee herein; but nevertheless, upon the written request of the Beneficiary or of the substitute Deed of Trust Trustee, the Deed of Trust Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Deed of Trust Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Deed of Trust Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Deed of Trust Trustee to the substitute Deed of Trust Trustee so appointed in the Deed of Trust Trustee's place.

(g) By accepting or approving anything required to be observed, performed, or fulfilled or to be given to the Deed of Trust Trustee or the Beneficiary pursuant to this Deed of Trust, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither the Deed of Trust Trustee nor Beneficiary shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by the Deed of Trust Trustee or the Beneficiary.

#### Section 6.02. Indemnity.

(a) The Grantor shall indemnify, defend, protect and hold harmless the Beneficiary, the Controlling Person and the Deed of Trust Trustee, their respective parents, subsidiaries, directors, officers, employees, representatives, agents, successors, and assigns from and against any and all liability, damage, loss, cost, or expense (including, without limitation, reasonable attorneys' fees and expenses), action, proceeding, claim or dispute incurred or suffered by the foregoing parties so indemnified except as the result of the gross negligence (for any party other than the Issuer) or willful misconduct 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 or the Property, or any interest of the Grantor, the Deed of Trust Trustee or the Beneficiary therein, or the right of occupancy thereof by the Grantor, the Deed of Trust Trustee or the Beneficiary, whether or not any such litigation is prosecuted to a final, non-appealable judgment;

(ii) any dispute among or between any of the constituent parties or other partners or venturers of the Grantor if the Grantor is a general or limited partnership, or among or

between any employees, officers, directors, shareholders, members or managers of the Grantor if the Grantor is a corporation or limited liability company, or among or between any members, trustees or other responsible parties if the Grantor is an association, trust or other entity;

(iii) any action taken or not taken by the Beneficiary, the Controlling Person or the Deed of Trust Trustee which is allowed or permitted under this Deed of Trust relating to the Grantor, the Property, any constituent parties or otherwise in connection with this Deed of Trust, including, without limitation, the protection or enforcement of any lien, security interest or other right, remedy or recourse created or afforded by this Deed of Trust;

(iv) any action brought by the Beneficiary or the Deed of Trust Trustee against the Grantor under this Deed of Trust, whether or not such action is prosecuted to a final, non-appealable judgment; and

(v) any and all loss, damage, costs, expense, action, causes of action, or liability (including reasonable attorneys' fees and costs) directly or indirectly arising from or attributable to the use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence of a hazardous substance on, in, under or about the property, whether known or unknown at the time of the execution hereof, including, without limitation, (1) all foreseeable consequential damages of any such use, generation, manufacture, production, storage, release, threatened release, discharge, disposal, or presence; and (2) the costs of any required or necessary environmental investigation or monitoring, any repair, cleanup, or detoxification of the property, and the preparation and implementation of any closure, remedial, or other required plans.

**THE INDEMNIFICATION OF THE PARTY BEING INDEMNIFIED AS PROVIDED IN THIS SECTION 6.02 SHALL REMAIN IN FULL FORCE AND EFFECT IF LOSSES DIRECTLY OR INDIRECTLY RESULT FROM, ARISE OUT OF, OR RELATE TO, OR ARE ASSERTED TO HAVE RESULTED FROM, ARISEN OUT OF OR RELATED TO, THE SOLE OR CONTRIBUTORY NEGLIGENCE OF ANY SUCH INDEMNIFIED PARTY.**

**THE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTEST OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER BOND DOCUMENTS, AND TO ADVISE AND DEFEND BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE WITH RESPECT TO ANY SUCH RIGHTS, REMEDIES AND RECOURSES. THE GRANTOR SHALL REIMBURSE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE FOR THEIR RESPECTIVE REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) THAT SAID PERSONS INCURRED PROMPTLY 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 REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY THE BENEFICIARY, THE CONTROLLING PERSON AND/OR THE DEED OF TRUST TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 6.02 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY THE GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO**

**THE PROPERTY AND THE EXERCISE BY BENEFICIARY, THE CONTROLLING PERSON  
OR THE DEED OF TRUST TRUSTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN.**

[Signatures appear on following page]



**CONSENT AND JOINDER TO LEASEHOLD DEED OF TRUST, ASSIGNMENT OF RENTS,  
SECURITY AGREEMENT AND FIXTURE FILING (WITH POWER OF SALE)**

Intending to be legally bound hereby, the undersigned **BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION**, a Texas nonprofit public facility corporation (the “Land Owner”), as fee owner of the real property described on Exhibit A to the Deed of Trust (as hereinafter defined) and any ancillary personal property located thereon or used in connection therewith (the “Property”), hereby joins in that certain Leasehold Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (With Power of Sale) dated as of January 1, 2021 (the “Deed of Trust”) from **SADDLEPUR PASS APARTMENTS, LP**, a limited partnership, duly organized and validly existing under the laws of the State of Texas (the “Grantor”), in favor of a deed of trust trustee for the benefit of **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (the “Beneficiary”), for the purpose of: (a) subjecting its fee title to the Property (as defined in the Deed of Trust) to the lien of the Deed of Trust, to be bound by the Deed of Trust, and each and every term, condition, covenant and agreement as contained in the Deed of Trust, to the same extent as if the Land Owner had been the named Grantor therein executing and delivering the Deed of Trust; (b) acknowledging and consenting to the existence of the Deed of Trust; (c) agreeing that the undersigned shall not declare an event of default under or exercise its option to terminate or exercise any other remedies under the Ground Lease under any circumstances permitted thereunder without the prior written consent of the Controlling Person and that any attempted action in violation of such agreement shall be of no force or effect whatsoever; and (d) consenting to and agreeing to be bound by the terms of the Deed of Trust as set forth herein, to the extent applicable to the Land Owner.

By executing and delivering this Consent and Joinder to Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) (as amended, modified or supplemented from time to time, this “Consent and Joinder”), the Land Owner does hereby irrevocably grant, convey, and assign unto the Deed of Trust Trustee, for the benefit of the Beneficiary, and grants the Beneficiary a lien on and a security interest in, all of its right, title and interest in and to the Property, as defined in the Deed of Trust (which, for purposes of this Consent and Joinder, shall be deemed to include the Land Owner’s interest in the Ground Lease), to secure the Secured Obligations. The Land Owner acknowledges and agrees that, upon the occurrence and during the continuance of an Event of Default by the Grantor, the Deed of Trust Trustee and/or the Beneficiary may take such action, without notice or demand, as it deems advisable to protect and enforce its rights against the Grantor, the Land Owner and in and to the Property, to the fullest extent under the terms of the Deed of Trust (which, without limiting the generality of the foregoing, may include, at the election of the Beneficiary, foreclosing upon or exercising the power of sale with respect to the Land Owner’s interests in the Property, as defined in the Deed of Trust, and/or foreclosing upon the Grantor’s interests in such Property, all in accordance with the terms and provisions of the Deed of Trust and this Consent and Joinder).

Upon foreclosure or exercise of the power of sale under the Deed of Trust, or assignment of the Property in lieu of thereof, (a) the Deed of Trust Trustee or its designee shall have the right to acquire the leasehold interest in the Property created under the Ground Lease in its own name or the name of a nominee without consent or approval of the Land Owner, (b) the acquiring Deed of Trust Trustee or its nominee shall have the right to further assign or sublet the leasehold interest or a portion thereof to a third party, and (c) the Land Owner shall recognize the purchaser or other transferee in connection therewith as the “tenant” under the Ground Lease.

The Land Owner acknowledges and agrees that it will not be possible for the Grantor to construct the Improvements without obtaining a loan or loans from one or more persons or entities in order to finance the construction of said Improvements and the development of the Project Facilities. Therefore, the Land Owner hereby covenants and agrees that its interest in the Ground Lease and its ownership

interest in the Premises are and shall be subject to, subordinate and inferior to any and all loans (interim, permanent, “cash flow,” “soft” or refinancings thereof) obtained by the Grantor for the purpose of financing the construction of the Improvements and the development and operation of the Project Facilities, and to the lien of any mortgages (each, a “Permitted Leasehold Mortgage”), assignments of rents and leases, security agreements, and other collateral or security documents or instruments required by the lender or lenders providing such financing, and to all renewals, extensions, modifications, consolidations, replacements and refinancings thereof, and to all advances made or hereafter to be made upon the security of such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments. The Land Owner shall, at the Grantor’s request, join in, execute and/or deliver any and all such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments as may be reasonably required by such lender or lenders in order to subject and subordinate the Land Owner’s interest in the Ground Lease and its ownership interest in the fee simple title to the Property or to otherwise consent to or facilitate the subordination or encumbrance of the Grantor’s interest in the Ground Lease and the Improvements to the lien of such documents or instruments, and upon the Grantor’s request shall join in, execute and/or deliver any and all such further instruments or assurances as any such lender or lenders may reasonably deem necessary to evidence or confirm the subordination of the Ground Lease or the encumbrance of the Land Owner’s interest in such Ground Lease and the Land Owner’s ownership interest in the Land to the lien of any such mortgages, assignments of rents and leases, security agreements, and other collateral or security documents or instruments. Provided, however, and notwithstanding anything contained herein or in the Deed of Trust to the contrary, the Land Owner shall not be required to suffer, incur, accept or assume any personal liability for any such financing, loans or indebtedness, or any costs or expenses thereof, or any other indebtedness or liability of the Grantor thereunder, and any mortgage, assignment of rents and leases, security agreements, and other collateral or security documents or instruments of any nature whatsoever which the Land Owner may be called upon to join in, execute and/or deliver under and pursuant to this Consent and Joinder shall expressly exculpate the Land Owner from and against any and all such personal liability.

The Grantor may, without the Land Owner’s consent, assign or mortgage the Ground Lease (including any options it contains) to any leasehold mortgagee for the purposes described above (each a “Permitted Leasehold Mortgagee”). A Permitted Leasehold Mortgagee (and anyone whose title derives from a Permitted Leasehold Mortgagee) may, without the Land Owner’s consent, hold a foreclosure sale, take title to the Lease, and transfer or assign the Lease, either in its own name or through a nominee.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms either in the Indenture or the Mortgage.

[Signatures appear on following page]

The undersigned, as the Land Owner in the foregoing Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale), hereby acknowledges its receipt of such agreement and consents to the provisions thereof as of the date first written above.

**BEXAR MANAGEMENT AND DEVELOPMENT CORPORATION**, a Texas nonprofit public facility corporation

By: \_\_\_\_\_  
Tammy Trevino, Secretary

ACKNOWLEDGMENT

STATE OF TEXAS            §  
  §  
COUNTY OF BEXAR       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared Tammy Trevino, Secretary of Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, 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)

**EXHIBIT A**

DESCRIPTION OF REAL PROPERTY

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**ASSIGNMENT OF DEED OF TRUST DOCUMENTS**

from

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**

to

**BOKF, NA,**  
as Trustee,

with the consent of

**SADDLESPUR PASS APARTMENTS, LP**

Dated as of January 1, 2021

Relating to:

\$ \_\_\_\_\_

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(The Montage Apartments), Series 2021

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This instrument prepared by and  
when recorded return to:

Greenberg Traurig, LLP  
1717 Arch Street, Suite 400  
Philadelphia, Pennsylvania 19103  
Attention: Dianne Coady Fisher, Esquire

## **ASSIGNMENT OF DEED OF TRUST DOCUMENTS**

This **ASSIGNMENT OF DEED OF TRUST DOCUMENTS**, dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, this "Assignment") from the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (together with its successors and assigns, the "Assignor"), to **BOKF, NA**, a national banking association, as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the "Assignee") under the Indenture of Trust dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the "Indenture"), by and between the Assignor as Issuer and the Assignee as Trustee,

### **WITNESSETH:**

**WHEREAS**, Saddlespur Pass Apartments, LP, a limited partnership organized and existing under the laws of the State of Texas (together with its permitted successors and assigns, the "Borrower") has:

(i) entered into a Loan Agreement with the Assignor and Red Stone Servicer, LLC, dated as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the "Loan Agreement"), evidencing indebtedness in the aggregate principal amount of \$ \_\_\_\_\_ (the "Loan"); and

(ii) executed and delivered to the Assignor a certain promissory note dated January \_\_, 2021 (as the same may be amended, modified or supplemented from time to time, the "Promissory Note") in the principal amount of \$ \_\_\_\_\_ and made to the order of the Assignor, as payee, further evidencing the Loan; and

(iii) delivered to the Assignor, with a joinder of Bexar Management and Development Corporation, a Leasehold Deed of Trust, Assignment of Rents, Security Agreement and Fixture Filing (With Power of Sale) dated as of as of January 1, 2021 (as the same may be amended, modified or supplemented from time to time, the "Deed of Trust") made to a trustee for the benefit of the Assignor, securing the Promissory Note, recorded in the deed records of Bexar County, Texas, and relating to the real estate described in Exhibit A hereto; and

**WHEREAS**, the Loan Agreement, the Promissory Note and the Deed of Trust, 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"; and

**WHEREAS**, 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 (as defined in the Indenture) of the Assignor, and the Assignee desires to acquire the Assignor's rights, title and interest as aforesaid under the Deed of Trust Documents in accordance with the terms hereof, and the Assignee is joining in the execution of this Assignment in order to evidence its acceptance hereof; and

**WHEREAS**, the Borrower 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 Borrower to the Assignee as more fully set forth therein and herein.

**NOW THEREFORE**, in consideration of issuance of the Bonds (as defined in the Indenture) and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, and intending to be legally bound hereby, 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 sells, assigns and 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 the Reserved Rights of the Assignor. The Assignee hereby accepts the Assignor's assignment of the Deed of Trust Documents, excluding the Reserved Rights of the Assignor, and hereby agrees to be bound by the terms of the Deed of Trust Documents and to assume all obligations of the Assignor thereunder. 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.

Section 4. Counterparts; Electronic Signatures. This Assignment may be executed in any number of counterparts, each executed counterpart constituting an original, but all counterparts together constituting only one instrument. To the fullest extent permitted by applicable law, electronically transmitted or facsimile signatures shall constitute original signatures for all purposes under this Assignment.

Section 5. Governing Law. 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 its conflicts of laws and principles.

[Signatures appear on following pages]

**IN WITNESS WHEREOF**, the parties have caused this Assignment of Deed of Trust Documents to be executed by their duly authorized representatives as of the date first written above.

**ASSIGNOR:**

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**

By: \_\_\_\_\_  
Name: James B. "Beau" Eccles  
Title: Secretary to the Board

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF TRAVIS       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared James B. "Beau" Eccles, Secretary to the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, 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)

**ASSIGNEE:**

**BOKF, NA, as Trustee**

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

Name:

Title:

**ACKNOWLEDGMENT**

STATE OF TEXAS §

§

COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared \_\_\_\_\_, a \_\_\_\_\_ of BOKF, NA, a national banking association, who acknowledged that she or 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)



**BEXAR MANAGEMENT AND  
DEVELOPMENT CORPORATION**, a Texas  
nonprofit public facility corporation

By: \_\_\_\_\_  
Tammye Trevino, Secretary

ACKNOWLEDGMENT

STATE OF TEXAS           §  
  §  
COUNTY OF BEXAR       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2021 personally appeared Tammye Trevino, Secretary of Bexar Management and Development Corporation, a Texas nonprofit public facility corporation, 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)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF PROPERTY**