

**A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA APPROVING AND AUTHORIZING THE ISSUANCE OF THE HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA MULTIFAMILY MORTGAGE REVENUE NOTE (RIDGE ROAD), SERIES 2023, IN ONE OR MORE SERIES, IN A TOTAL PRINCIPAL AMOUNT APPROVED BY THE GOVERNMENTAL LENDER SERVICER, BUT IN NO EVENT IN AN AMOUNT GREATER THAN \$55,000,000, FOR THE BENEFIT OF ECG RIDGE ROAD, LP, A FLORIDA LIMITED PARTNERSHIP, TO PROVIDE FINANCING FOR THE ACQUISITION, CONSTRUCTION, AND EQUIPPING OF A MULTIFAMILY RESIDENTIAL HOUSING PROJECT LOCATED IN LEON COUNTY, FLORIDA, COMMONLY KNOWN AS "RIDGE ROAD;" APPROVING THE FORMS OF AND AUTHORIZING THE EXECUTION AND DELIVERY OF THE FUNDING LOAN AGREEMENT, THE BORROWER LOAN AGREEMENT, THE LAND USE RESTRICTION AGREEMENT, THE ASSIGNMENT OF MORTGAGE AND FUNDING LOAN DOCUMENTS, AND OTHER DOCUMENTS IN CONNECTION WITH THE ISSUANCE AND DELIVERY OF THE GOVERNMENTAL NOTE; AUTHORIZING THE NEGOTIATED SALE AND PRIVATE PLACEMENT OF THE GOVERNMENTAL NOTE; AUTHORIZING THE APPOINTMENT OF A FISCAL AGENT; DESIGNATING FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA, AS THE INITIAL ISSUER SERVICER, COMPLIANCE AGENT, AND FINANCIAL MONITOR, AND APPROVING THE FORMS AND AUTHORIZING THE EXECUTION AND DELIVERY OF A COMPLIANCE MONITORING AGREEMENT, CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT, AND FINANCIAL MONITORING AGREEMENT; APPROVING A CREDIT UNDERWRITING REPORT; DESIGNATING A PLACEMENT AGENT; AUTHORIZING ALL OTHER NECESSARY ACTIONS, AGREEMENTS, CERTIFICATES, OR INSTRUMENTS REQUIRED TO ISSUE AND DELIVER THE GOVERNMENTAL NOTE; AND PROVIDING AN EFFECTIVE DATE.**

**WHEREAS**, the Legislature of the State of Florida (the "State") has enacted the Florida Housing Finance Authority Law, Sections 159.601 through 159.623, Florida Statutes, as amended (the "Act"), pursuant to which the State has empowered each county in the State to create by ordinance a separate public body corporate and politic to be known as a housing finance authority of the county for the purpose of alleviating a shortage of housing and creating capital for investment in housing in the area of operation of such housing finance authority; and

**WHEREAS**, the Housing Finance Authority of Leon County, Florida (the "Governmental Lender") is empowered to issue its revenue bonds, notes, or other evidences of indebtedness to finance the acquisition, construction, and development of multifamily rental housing for persons of low, middle, or moderate income at prices or rentals they can afford; and

**WHEREAS**, the Governmental Lender has the power to issue revenue bonds for the purposes described in the Act, including, without limitation, to refund outstanding obligations of the Governmental Lender, to finance the purchase of mortgage loans originated to persons of low, middle, and moderate income, and to stimulate the acquisition, construction and rehabilitation of housing within Leon County, Florida (the "County"); and

**WHEREAS**, the Governmental Lender has determined that there exists a shortage of safe and sanitary housing for persons and families of low, middle, or moderate income within the County; and

**WHEREAS**, pursuant to the Act and the Funding Loan Agreement (the "Funding Loan Agreement"), by and among the Governmental Lender, Allianz Life Insurance Company Of North America, or other designee of R4 Capital Funding LLC (the "Funding Lender"), and U.S. Bank Trust Company, National Association (the "Fiscal Agent"), ECG Ridge Road, LP, a Florida limited partnership (the "Borrower"), has requested that the Governmental Lender issue its Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023 (the "Governmental Note"); and

**WHEREAS**, the Governmental Lender has determined to issue, sell, and deliver the Governmental Note in an amount approved by First Housing Development Corporation of Florida, a Florida corporation (the "Governmental Lender Servicer"), for the purpose of funding the loan (the "Funding Loan"); provided, however, such amount shall not exceed \$55,000,000; and

**WHEREAS**, to secure payment of the Governmental Note, the Governmental Lender, the Funding Lender, and the Fiscal Agent will enter into the Funding Loan Agreement to provide for, among other things, the security for the Governmental Note; and

**WHEREAS**, the Governmental Lender and the Borrower will enter into the Borrower Loan Agreement (the "Borrower Loan Agreement") with respect to the Governmental Note, pursuant to which a loan to the Borrower in the amount of the Funding Loan for a multifamily residential housing project located in the County, commonly known as "Ridge Road" (the "Project") will be made and secured; and

**WHEREAS**, as a condition to making the Funding Loan, the Borrower will enter into that certain First Mortgage, Assignment of Rents and Leases, Mortgage and Fixture Filing (the "Mortgage") in favor of the Governmental Lender; and

**WHEREAS**, the Mortgage along with certain other documents described herein will be assigned by the Governmental Lender to the Fiscal Agent pursuant to that certain Assignment of Mortgage and Funding Loan Documents (the "Assignment"); and

**WHEREAS**, the Borrower Loan shall be evidenced by a Promissory Note delivered by the Borrower to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent (the "Borrower Note"); and

**WHEREAS**, in addition to issuance of the Governmental Note, it is anticipated that the Florida Housing Finance Corporation, the Governmental Lender, and Elmington Affordable, LLC will provide subordinate loans to the Borrower in the amounts and upon the terms and conditions as described in their respective subordinate loan documents; and

**WHEREAS**, as a condition of facilitating the Funding Loan and in connection with the issuance of the Governmental Note, the Governmental Lender, the Fiscal Agent, and the Borrower will enter into the Land Use Restriction Agreement (the "Land Use Restriction Agreement") in order to preserve the tax-exempt status of the Governmental Note; and

**WHEREAS**, the Governmental Lender has determined that a negotiated sale and private placement of the Governmental Note to the Funding Lender is in the best interest of the Governmental Lender; and

**WHEREAS**, the Funding Lender has expressed its intention to purchase the Governmental Note authorized hereby in whole, and the Governmental Lender finds that the public interest and necessity require that the Governmental Lender, at this time, make arrangements for the sale of such Governmental Note; and

**WHEREAS**, in order to further secure payment of the Governmental Note, certain guaranties will be provided by the Borrower, ECG Ridge Road GP, LLC; ECG Ridge Road Developer, LLC, Elmington Affordable, LLC; and Clayton Hunter Nelson, individually; and

**WHEREAS**, the Governmental Lender desires to appoint U.S. Bank Trust Company, National Association as Fiscal Agent; and

**WHEREAS**, the Governmental Lender Servicer will initially be the issuer servicer, compliance monitoring agent, and financial monitor with respect to the Governmental Note; and

**WHEREAS**, the Governmental Lender desires to approve the Credit Underwriting Report for the Project prepared by the Governmental Lender Servicer for the Governmental Lender (the "Credit Underwriting Report"); and

**WHEREAS**, the Governmental Lender desires to grant to its appropriate officers the authority to do and perform and execute all other documents and instruments, not mentioned herein, necessary to issue the Governmental Note; and

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

**SECTION 1. FINDINGS AND DETERMINATIONS.** The Governmental Lender hereby finds and determines that:

- (a) All statements and provisions of the foregoing recitals are incorporated herein as findings and determinations of the Governmental Lender.

(b) A negotiated sale and private placement of the Governmental Note is in the best interest of the Governmental Lender in light of the prevailing unsettled condition of the bond market, and the necessity of complying with provisions of the Internal Revenue Code of 1986, as amended, which make it essential that the Governmental Lender have maximum flexibility in structuring the Governmental Note, which flexibility would not be possible in competitive bidding.

(c) Based upon such findings, the Governmental Lender approves the negotiated sale and private placement of the Governmental Note to the Funding Lender.

(d) Prior to executing and delivering the Funding Loan Agreement, the Governmental Lender shall have received disclosure statements from the Funding Lender setting forth the information required by Section 218.385, Florida Statutes, as amended.

(e) In addition to the words and terms defined or described herein, and unless the context otherwise requires, the terms defined in the documents identified and described in the foregoing recitals and in this Resolution shall have the meanings herein that are ascribed to them in the Funding Loan Agreement and/or the Borrower Loan Agreement.

**SECTION 2. AUTHORIZATION AND DETAILS OF THE GOVERNMENTAL NOTE.** In accordance with the Act and the Funding Loan Agreement, the Governmental Lender hereby authorizes the issuance of its Governmental Note to be designated as "Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023," or such other name or series designation as may be determined by the Governmental Lender, in a total principal amount approved by the Governmental Lender Servicer; provided, however, such total principal amount shall not exceed \$55,000,000. The Governmental Note shall mature in the years and in the amounts, bear interest at such rate or rates, be payable at such times and in such manner, and shall be subject to redemption, all as described in the Funding Loan Agreement and the Governmental Note. The Governmental Note is issuable as provided in the Funding Loan Agreement.

**SECTION 3. APPROVAL OF FUNDING LOAN AGREEMENT.** The Governmental Lender hereby approves the form and content of the Funding Loan Agreement among the Governmental Lender, the Funding Lender, and the Fiscal Agent, attached hereto as **EXHIBIT A**. The Chair, Vice Chair, or any member of the Governmental Lender is hereby authorized to execute and deliver the Funding Loan Agreement on behalf of the Governmental Lender, and the Secretary or the Assistant Secretary of the Governmental Lender is authorized to attest thereto, in substantially the form attached hereto as **EXHIBIT A**, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bryant Miller Olive P.A. ("Bond Counsel") and Nabors, Giblin & Nickerson P.A. (the "Governmental Lender Counsel") may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

**SECTION 4. APPROVAL OF BORROWER LOAN AGREEMENT.** The Governmental Lender hereby approves the form and content of the Borrower Loan Agreement, between the Governmental Lender and the Borrower attached hereto as **EXHIBIT B**. The Chair, Vice Chair, or any member of the Governmental Lender is hereby authorized to execute and deliver the Borrower Loan Agreement on behalf of the Governmental Lender, and the Secretary or the Assistant Secretary of the Governmental Lender is authorized to attest thereto, in substantially the form attached hereto as **EXHIBIT B**, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bond Counsel and Governmental Lender Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

**SECTION 5. APPROVAL OF LAND USE RESTRICTION AGREEMENT.** The Governmental Lender hereby approves the form and content of the Land Use Restriction Agreement, among the Governmental Lender, the Borrower, and the Fiscal Agent attached hereto as **EXHIBIT C**. The Chair, Vice Chair, or any member of the Governmental Lender is hereby authorized to execute and deliver the Land Use Restriction Agreement on behalf of the Governmental Lender, and the Secretary or the Assistant Secretary of the Governmental Lender is authorized to attest thereto, in substantially the form attached hereto as **EXHIBIT C**, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bond Counsel and Governmental Lender Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

**SECTION 6. APPROVAL OF COMPLIANCE MONITORING AGREEMENT, CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT AND CREDIT UNDERWRITING REPORT.**

(a) The Governmental Lender Servicer is hereby appointed to perform the duties of compliance monitoring agent pursuant to the Compliance Monitoring Agreement, among the Governmental Lender, the Borrower, the Fiscal Agent, and the Governmental Lender Servicer (the "Compliance Monitoring Agreement"), the duties of issuer servicer under the Construction Loan and Mortgage Servicing Agreement, among the Governmental Lender, the Borrower, the Fiscal Agent, and the Governmental Lender Servicer (the "Mortgage Servicing Agreement"), and the duties of the financial monitor under the Financial Monitoring Agreement, among the Governmental Lender, the Borrower, the Fiscal Agent, and the Governmental Lender Servicer (the "Financial Monitoring Agreement"). The forms of the Compliance Monitoring Agreement, the Mortgage Servicing Agreement, and the Financial Monitoring Agreement attached hereto as **EXHIBITS D, E, and F** respectively, are hereby approved. The Chair, Vice Chair, or any member of the Governmental Lender is hereby authorized to execute and deliver the Compliance Monitoring Agreement, the Mortgage Servicing Agreement, and the Financial Monitoring Agreement on behalf of the Governmental Lender, and the Secretary or the Assistant Secretary of the Governmental Lender is authorized to attest thereto, in

substantially the forms attached hereto as **EXHIBITS D, E, and F**, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bond Counsel and Governmental Lender Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

(b) The Governmental Lender hereby approves the Credit Underwriting Report prepared by the Governmental Lender Servicer in connection with the Project and delivered to the Governmental Lender with any open or unresolved issues constituting closing conditions which must be satisfied to the Governmental Lender's satisfaction prior to the issuance of the Governmental Note (as evidenced by the execution and delivery of the Governmental Note by the Governmental Lender).

**SECTION 7. APPROVAL OF ASSIGNMENT.** The Governmental Lender hereby approves the form and content of the Assignment, by the Governmental Lender to the Fiscal Agent, attached hereto as **EXHIBIT G**. The Chair, Vice Chair, or any member of the Governmental Lender is hereby authorized to execute and deliver the Assignment on behalf of the Governmental Lender, and the Secretary or the Assistant Secretary of the Governmental Lender is authorized to attest thereto, in substantially the form attached hereto as **EXHIBIT G**, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bond Counsel and Governmental Lender Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

**SECTION 8. EXECUTION OF GOVERNMENTAL NOTE.** The Chair, Vice Chair, or any member of the Governmental Lender and Secretary or Assistant Secretary of the Governmental Lender are hereby authorized and directed to execute, by manual or facsimile signature, the Governmental Note in definitive form. The Governmental Note shall be in substantially the form set forth in the Funding Loan Agreement, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bond Counsel and Governmental Lender Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

**SECTION 9. AUTHENTICATION AND DELIVERY OF GOVERNMENTAL NOTE.** Upon its execution in the form and manner set forth in the Funding Loan Agreement, the Governmental Lender shall deliver the Governmental Note to the Fiscal Agent for authentication, and the Fiscal Agent is hereby authorized and directed to authenticate and to deliver the Governmental Note to the Funding Lender in accordance with the Funding Loan Agreement upon receipt of the purchase price therefor.

**SECTION 10. APPROVAL OF BORROWER NOTE.** The Governmental Lender hereby approves the form and content of the Borrower Note given to the Governmental Lender and assigned to the Fiscal Agent to evidence and secure the Borrower's payment obligations under the Borrower Loan Agreement in the form set forth in the Borrower Loan Agreement. The Chair, Vice Chair, or any member of the Governmental Lender is hereby authorized to execute and deliver the Borrower Note on behalf of the Governmental Lender, and the Secretary or the Assistant Secretary of the Governmental Lender is authorized to attest thereto, in substantially the form set forth in the Borrower Loan Agreement, with such changes, modifications, insertions, and deletions as the Chair, Vice Chair, or any member of the Governmental Lender may deem necessary, and with such changes as Bond Counsel and Governmental Lender Counsel may deem necessary and appropriate. Such execution and delivery shall be conclusive evidence of the approval thereof by the Governmental Lender.

**SECTION 11. NEGOTIATED SALE AND PRIVATE PLACEMENT OF GOVERNMENTAL NOTE.** Based on the findings contained in herein, the Governmental Lender finds that it is necessary and in the best interest of the Governmental Lender that the Governmental Note is sold on a negotiated basis directly to the Funding Lender so long as (a) the interest rate on the Governmental Note does not exceed the maximum rate permitted by Section 215.84, Florida Statutes, the principal amount is not in excess of \$55,000,000, and the maturity date of the Governmental Note is not later than forty (40) years from the date of issuance thereof, and (b) the Authority receives from the Funding Lender a truth-in-bonding statement required by Section 218.385, Florida Statutes.

**SECTION 12. APPOINTMENT OF FISCAL AGENT AND PLACEMENT AGENT.** RBC Capital Markets, LLC is hereby appointed as the placement agent in connection with the issuance of the Governmental Note and U.S. Bank Trust Company, National Association is hereby appointed as fiscal agent.

**SECTION 13. AUTHORIZATIONS AND FURTHER ACTIONS.** The Chair, Vice Chair, Secretary, assistant Secretary, or any other member of the Governmental Lender, the administrator of the Governmental Lender, and such other officers and employees or agents of the Governmental Lender as may be designated by the Chair, are each designated as agents of the Governmental Lender in connection with the issuance and delivery of the Governmental Note and are authorized and empowered, collectively or individually, to take all actions and steps, to approve, execute, and deliver, if appropriate, all contracts, agreements, and such other instruments, to approve the form of and approve such changes and complete all omissions and blank spaces in such instruments, documents, and contracts, including the exhibits thereto, and to take such other and further actions as they may deem necessary or desirable to accomplish the intent thereof, including the sale, issuance, and delivery of the Governmental Note, including, but not limited to, in consultation with the administrator of the Governmental Lender, Bond Counsel, and Governmental Lender Counsel, executing and delivering certain additional documents as may be necessary; provided, however, that such terms and conditions set forth in such additional documents shall not be inconsistent with the provisions of this Resolution.

**SECTION 14. SEVERABILITY.** If any section, paragraph, clause or provision of this Resolution shall be held to be invalid or ineffective for any reason, the remainder of this Resolution shall continue in full force and effect, it being expressly hereby found and declared that the remainder of this Resolution would have been adopted despite the invalidity or ineffectiveness of such section, paragraph, clause, or provision.

**SECTION 15. REPEALING CLAUSE.** All resolutions or parts thereof of the Governmental Lender in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

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**SECTION 16. EFFECTIVE DATE.** This Resolution shall take effect immediately upon its adoption.

**ADOPTED** this 9th day of February, 2023.

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

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

ATTEST:

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

## EXHIBIT LIST

EXHIBIT A	FORM OF FUNDING LOAN AGREEMENT
EXHIBIT B	FORM OF BORROWER LOAN AGREEMENT
EXHIBIT C	FORM OF LAND USE RESTRICTION AGREEMENT
EXHIBIT D	FORM OF COMPLIANCE MONITORING AGREEMENT
EXHIBIT E	FORM OF CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT
EXHIBIT F	FORM OF FINANCIAL MONITORING AGREEMENT
EXHIBIT G	FORM OF ASSIGNMENT OF MORTGAGE AND FUNDING LOAN DOCUMENTS

**EXHIBIT A**  
**FORM OF FUNDING LOAN AGREEMENT**

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**FUNDING LOAN AGREEMENT**

**by and among**

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

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**

**and**

**ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**

**Dated as of \_\_\_\_\_ 1, 2023**

**Relating to:**

**\$51,000,000**

**Housing Finance Authority of Leon County, Florida**

**Multifamily Mortgage Revenue Note**

**(Ridge Road),**

**Series 2023**

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## FUNDING LOAN AGREEMENT

This **FUNDING LOAN AGREEMENT** (as amended, modified, or supplemented from time to time, this "**Funding Loan Agreement**"), dated as of \_\_\_\_\_ 1, 2023, made and entered into by and among the **HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**, a public body corporate and politic existing under the laws of the State of Florida (together with its permitted successors and assigns, the "**Governmental Lender**"), **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Fort Lauderdale, Florida, as fiscal agent (together with its successors and assigns, the "**Fiscal Agent**") and **ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA**, a Minnesota corporation, as Funding Lender (together with any successor Funding Lender hereunder and their respective successors and assigns, (the "**Funding Lender**").

### WITNESSETH:

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of the Governmental Lender Finance Authority Law, Sections 159.601 through 159.623, Part IV, Florida Statutes, as amended; Chapter 2, Article III, Division 3, Sections 2-71 et seq., Leon County Code of Laws, as supplemented and amended (collectively, the "**Act**"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe, and sanitary housing for persons or families of low, moderate, and middle income in the State of Florida (the "**State**"); and

**WHEREAS**, the Act authorizes the Governmental Lender (a) to make loans to sponsors to provide financing for residential developments within the State, and intended to be occupied, to the extent required by applicable federal tax law, by persons or families of low, moderate, and middle income, as determined by the Governmental Lender; (b) to authorize the issuance of revenue notes by the Governmental Lender for the purpose of obtaining moneys to make such loans and to provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such notes; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge, or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such notes; and

**WHEREAS**, ECG Ridge Road, LP, a Florida limited partnership (the "**Borrower**"), has applied to the Governmental Lender for a loan (the "**Borrower Loan**"), to finance the acquisition, construction, and equipping of a multifamily rental housing facility consisting of total of 250 units and related personal property and equipment, located in Tallahassee, Leon County, Florida and known as "Ridge Road" (the "**Project Facilities**"); and

**WHEREAS**, the Borrower has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender will make a loan in the principal



amount of \$51,000,000 (the "**Funding Loan**") to the Governmental Lender, the proceeds of which will be loaned pursuant to a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the "**Borrower Loan Agreement**") to finance all or a portion of the acquisition, construction, and equipping of the Project Facilities; and

**WHEREAS**, pursuant to the Borrower Loan Agreement, the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

**WHEREAS**, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Promissory Note, dated the Closing Date (the "**Borrower Note**"), and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project Facilities pursuant to a First Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of the date hereof, made by the Borrower to the Governmental Lender and assigned to the Fiscal Agent covering the Project Facilities (the "**Mortgage**"); and

**WHEREAS**, the Governmental Lender has executed and delivered to the Funding Lender its Multifamily Mortgage Revenue Note (Ridge Road), Series 2023, dated as of the Closing Date (the "**Governmental Note**"), evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement the valid, binding, and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms hereof, have in all respects been duly authorized.

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:

## ARTICLE I DEFINITIONS

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

"**Accountant**" means Tidwell Group, LLC, or such other accounting firm approved in writing by the Controlling Person.

"Act" shall have the meaning given to such term in the first paragraph of this Funding Loan Agreement.

"**Administrative Expense Fund**" means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

"**Advance**" means any advances of the proceeds of the Funding Loan or other sources made or approved by the Funding Lender pursuant to the terms of the Borrower 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 Borrower Loan Agreement.

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

"**Approved Transferee**" means (a) a "qualified institutional buyer" as defined in Rule 144A promulgated under the Securities Act, as in effect on the date hereof, (b) an "accredited investor" as defined in Regulation D promulgated under the Securities Act, (c) any other transferee expressly permitted under the Investor Letter, (d) an Affiliate of the Funding Lender, or (e) a trust or custodial arrangement in which all of the beneficial ownership interests would be owned by one or more other Approved Transferees.

"**Approving Opinion of Tax Counsel**" means any opinion of Tax Counsel delivered pursuant to this Funding Loan Agreement with respect to the excludability of interest on the Governmental Note from gross income of the Noteowners thereof for federal income tax purposes or other matters specified in this Funding Loan Agreement. Each such opinion shall be addressed to the Funding Lender, the Controlling Person, the Fiscal Agent, and the Governmental Lender.

"**Architect**" means Southeast Venture Design, LLC, or such other architectural firm approved in writing by the Controlling Person.

"**Architect's Agreement**" means the contract, dated \_\_\_\_\_, 20\_\_, between the Borrower and the Architect, providing for the design of the Improvements and the supervision of the construction thereof, including ongoing monthly inspection of the Improvements,

certification of Requisitions, and certification of Final Completion, among other things, as the same may be amended, modified or supplemented from time to time.

**"Assignment of Capital Contributions"** means the Assignment of Capital Contributions, dated the date hereof, by the Borrower for the benefit of the Funding Lender.

**"Assignment of HAP Contract"** means the Assignment of Agreement to Enter into Housing Assistance Payments and Housing Assignment Payment Contract, dated as of the date hereof, made by the Borrower to the Funding Lender for the HAP Contracts in effect for the Project Facilities, consented to by HUD.

**"Assignment of Management Agreement and Consent"** means the Assignment of Management Agreement, dated as of the date hereof, by the Borrower to and for the benefit of the Funding Lender, consented to by the Managing Agent.

**"Assignment of Project Documents"** means the Assignment of Project Documents, dated as of the date hereof, made by the Borrower in favor of the Funding Lender.

**"Authorized Amount"** shall mean the amount specified on the Schedule of Financial Terms as the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

**"Authorized Officer"** means (a) when used with respect to the Governmental Lender, the Chair, Vice-Chair, Secretary, and any other, officer or employee of the Governmental Lender designated to perform a specified act, to sign a specified document, or to act generally on behalf of the Governmental Lender, as evidenced by a written certificate; (b) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent; and (c) when used with respect to the Governmental Lender Servicer, any Person who is authorized in writing to take the action in question on behalf of the Governmental Lender Servicer.

**"Authorized Person"** means one or more individuals duly authorized to bind the Borrower in connection with the administration of the Project Facilities. The initial Authorized Persons of the Borrower are C. Hunter Nelson and Cary Rosenblum.

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

**"Borrower"** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**"Borrower Costs of Issuance"** means all fees, costs, and expenses (other than Governmental Lender Costs of Issuance) incurred in connection with the issuance of the Governmental Note and the extension of the Funding Loan.

**"Borrower Costs of Issuance Account"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"Borrower Loan"** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**"Borrower Loan Agreement"** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**"Borrower Loan Documents"** means the Mortgage, the Borrower Note, the Borrower Loan Agreement, the Land Use Restriction Agreement, the Governmental Lender Assignment, the Subordination Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Borrower Loan or any portion thereof.

**"Borrower Note"** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**"Business Day"** means any day on which the offices of the Fiscal Agent, 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 created pursuant to Section 4.2 of this Funding Loan Agreement.

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

**"Closing Date"** means the date on which the initial Funding Loan proceeds are disbursed hereunder as set forth on the Schedule of Financial terms.

**"Closing Memorandum"** means the Closing Memorandum for the Governmental Note, dated the Closing Date, and providing the details for the delivery of the Governmental Note, the receipt and application of the proceeds of the Governmental Note and other moneys, and the Costs of Issuance to be paid with respect to the Governmental Note.

**"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 Fiscal Agent or the Funding Lender is granted a security interest to secure payment of the Borrower Note or Governmental Note.

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

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

(b) 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 (i) that the Punchlist Items do not have a total cost to complete exceeding two percent (2%) of the contract price of the Work, nor an estimated time to complete, as reasonably determined by the Engineering Consultant, exceeding forty-five (45) days (except for items such as landscaping, the completion of which is subject to seasonal conditions), (ii) such Punchlist Items do not substantially interfere with or prevent the use and occupancy of the Project Facilities, (iii) such Punchlist Items do not include major appliances or materially affect the systems (including plumbing, electrical, HVAC, mechanical, roofing, and sprinklers) serving the Project Facilities or major structural components of the Project Facilities, and (iv) adequate reserves, in amounts equal to 110% of the cost of completion of such items as estimated by the Architect and approved by the Engineering Consultant (or 125%, with respect to the items described in subsection (i) as being subject to seasonal conditions) have been deposited into the Project Fund;

(c) 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); and

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

(e) the Completion Certificate in the form required under the Borrower Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person; and

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

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

**"Compliance Monitoring Agreement"** means the Compliance Monitoring Agreement, dated as of the date hereof, by and among the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent, and the Borrower, as amended, supplemented, or restated from time to time.

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

(a) all conditions to Completion have been satisfied;

(b) 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;

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

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

(e) 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 Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender) or in connection with the Subordinate Debt, and any other encumbrances approved by the Controlling Person in writing;

(f) 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) and the Borrower shall have obtained an unconditional waiver and release (or a conditional waiver and release conditioned solely upon receipt of final payment) of mechanics' and materialmen's liens for all of the Improvements at the Project Facilities and true copies thereof have been delivered to the Controlling Person;

(g) the Construction Deliveries Certificate in the form required under the Borrower Loan Agreement shall have been provided to the Controlling Person and shall be reasonably acceptable to the Controlling Person;

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

(i) if construction work resulted in new structures or expansion of foot prints of the existing structures, the Fiscal Agent shall have received an as-built ALTA/NSPS Urban Class Survey certified to the Fiscal Agent and the Controlling Person;

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

(k) the Borrower has, in form and substance reasonably acceptable to the Controlling Person, completed the Environmental Completion Conditions, if any.

**"Construction Contract"** means the guaranteed maximum price contract, dated on or about September 16, 2022, between the Borrower and the Contractor, providing for the construction of the Improvements and certification of Requisitions, among other things, as the same may be amended, modified, or supplemented from time to time.

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

**"Contamination"** means the release, discharge, disposal, or presence 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 and emanating into or upon any land or water or air, or otherwise into the environment.

**"Contingency Draw-Down Agreement"** means the Contingency Draw-Down Agreement of even date herewith between the Funding Lender and the Borrower relating to possible conversion of the Funding Loan from a draw down loan to a fully funded loan.

**"Contractor"** means Elmington Construction, LLC, or such other firm approved in writing by the Controlling Person.

**"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 Funding Lender to act as a Controlling Person hereunder, in accordance with Article VII hereof. If at any time a Controlling Person has not been designated by the Funding Lender, all references herein and in other Funding Loan Documents to "Controlling Person" shall refer to the Funding Lender. The initial Controlling Person is R4 Servicer LLC.

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



**"Costs of Issuance"** means, as applicable, (a) the fees (excluding ongoing fees), costs, and expenses of (i) the Governmental Lender, the Governmental Lender's counsel, and the Governmental Lender's financial advisor, (ii) Tax Counsel, (iii) the Fiscal Agent and the Fiscal Agent's counsel, (iv) the Funding Lender and the Funding Lender's counsel, (v) the Borrower's counsel attributable to the funding of the Funding Loan and the Borrower's financial advisor, if any, and (vi) the Governmental Lender Servicer, and (b) all other fees, costs, and expenses directly associated with the Funding Loan, including, without limitation, printing costs, costs of reproducing documents, and filing and recording fees.

**"Costs of Issuance Fund"** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"Costs of Issuance Requisition"** means a requisition for disbursement from the Governmental Lender Costs of Issuance Account or the Borrower Costs of Issuance Account in substantially the applicable form attached to this Funding Loan Agreement as Exhibit C.

**"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 Tax Counsel.

**"County"** means Leon County, Florida.

**"Debt Service Schedule"** means the schedule of debt service payments with respect to the Borrower Note, together with any replacement thereof, each as delivered by Controlling pursuant to Section 2.1(f) of the Borrower Loan Agreement.

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

**"Default Interest"** means interest payable at the Default Rate.

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

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

(a) the day on which the Borrower, the Governmental Lender, the Fiscal Agent, or any Noteowner is advised in writing by the Commissioner or any District Director of the Internal Revenue Service that the interest on the Governmental Note is

included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes;

(b) the day on which the Borrower receives notice from the Fiscal Agent in writing that the Fiscal Agent has received (i) a notice in writing by any Noteowner or former Noteowner that the Internal Revenue Service has issued a statutory notice of deficiency or similar notice to such Noteowner or former Noteowner that asserts in effect that the interest on the Governmental Note received by such Noteowner or former Noteowner is included in the gross income of such Noteowner or former Noteowner for federal income tax purposes, or (ii) an opinion of Tax Counsel that concludes in effect that the interest on the Governmental Note is included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes;

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

(d) the day on which the Borrower, the Governmental Lender, the Fiscal Agent, or any Noteowner 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 Governmental Note is included in the gross income of any Noteowner or former Noteowner thereof for federal income tax purposes;

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

**"Developer"** means ECG Ridge Road Developer, LLC, a Tennessee limited liability company, authorized to conduct its business in the State, together with its successors and assigns approved by the Controlling Person.

**"Developer Fee Pledge"** means the Developer Limited Guaranty, Pledge and Security Agreement, dated as of the date hereof, from Developer in favor of the Funding Lender.

**"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

Borrower Loan Agreement as Schedule 4, together with any modifications or amendments thereto made in accordance with the Borrower Loan Agreement and with the prior written consent of the Controlling Person.

**"Draw-Down Notice"** shall mean a notice described in Section 1.01 of the Contingency Draw-Down Agreement regarding the conversion of the Funding Loan from a draw down loan to a fully funded loan.

**"Effective Gross Revenues"** of the Borrower means, for the Testing Period prior to the determination of Stabilized NOI, the annualized aggregate revenues during such period generated from all tenants and others occupying or having a right to occupy or use the Project Facilities or any portion thereof pursuant to leases, including (at the Controlling Person's reasonable discretion, taking into account whether such income is recurring and is appropriate for a stabilized property), vending machine income, cable TV revenues, laundry service and parking income, as adjusted in the Controlling Person's judgment for factors including but not limited to: (a) seasonal fluctuation in the rental rate in the market in which the Project Facilities are located; (b) evidence of rent deterioration; (c) 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); (d) economic vacancy at the higher of: (i) Underwritten Economic Vacancy, or (ii) actual economic vacancy based on the annualized vacancies of the Project Facilities; (e) 30-day or more delinquencies; (f) low-income restrictions required by any applicable federal, state or local subsidy program, or any restrictive covenant or regulatory agreement; and (g) other applicable adjustments as reasonably determined by the Controlling Person; Effective Gross Revenues shall exclude revenues from Section 8 vouchers to the extent such revenues cause the rent on any unit to exceed the maximum allowable tax credit rent designated for such unit.

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

**"Engineering Consultant"** means a consultant licensed to practice in the State and chosen by the Controlling Person.

**"Environmental Audit"** means the written Phase I Environmental Site Assessment for the Project Facilities prepared by Partner Engineering and Science, Inc., dated [December 20, 2022] (Partner Project Number: 22-393560.1).

**"Environmental Completion Conditions"** shall mean \_\_\_\_\_.

**"Environmental Indemnity"** means the Environmental Indemnity Agreement, dated as of the date hereof, by the Borrower and Purchaser Guarantor in favor of the Funding Lender.

**"Environmental Laws"** means all Legal Requirements governing or relating to the protection of the environment, natural resources or human health concerning (a) Contamination, (b) activities at any of the Project Facilities, (c) repairs or construction of any Improvements, (d) handling of any materials at any of the Project Facilities, (e) releases into or upon the air, soil, surface water or ground water from any of the Project Facilities, and (f) 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 (a) 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, (b) any other natural resources, (c) a floodplain or other flood hazard area as defined pursuant to any applicable state Legal Requirements, (d) a portion of the coastal zone for purposes of the federal Coastal Zone Management Act, or (e) any other area development of which is specifically restricted under applicable Legal Requirements by reason of its physical characteristics or prior use.

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

**"Equity Account"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

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

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

**"Event of Default"** means, (a) with respect to this Funding Loan Agreement, any of the events specified in Section 5.1 hereof, or (b) with respect to the Borrower Loan Agreement, any of the events specified in Section 7.1 thereof.

**"Expenses"** means the aggregate annualized operating expenses (including replacement reserves) of the Project Facilities as reasonably determined by the Controlling Person in an amount equal to the greater of: (a) the actual amount of aggregate annualized Expenses for the

Testing Period prior to the determination of Stabilized NOI, provided that such actual expenses reflect normalized/stabilized operations as reasonably determined by the Controlling Person; and (b) Underwritten Expenses.

**"Favorable Opinion of Tax Counsel"** means an opinion of Tax Counsel, addressed to the Governmental Lender and the Funding Lender, with a copy to the Controlling Person, to the effect that a proposed action, event, or circumstance does not adversely affect the excludability from gross income, for federal income tax purposes, of the interest payable on the Governmental Note, which opinion may be subject to customary assumptions and exclusions.

**"Final Credit Underwriting Report"** means the Housing Finance Authority of Leon County, Florida Credit Underwriting Report for Ridge Road prepared by the Governmental Lender Servicer, dated \_\_\_\_\_, 2023.

**"Financial Monitoring Agreement"** means the Financial Monitoring Agreement, dated as of the date hereof, by and among the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent, and the Borrower, as amended, supplemented, or restated from time to time.

**"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 Funding Loan Agreement.

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

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

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

**"First Put Date"** shall mean the amount specified on the Schedule of Financial Terms.

**"Fiscal Agent"** shall have the meaning given to such term in the first paragraph of this Funding Loan Agreement.

**"Fiscal Agent Fee"** means the Fiscal Agent's initial acceptance fee of \$2,500, plus fees and expenses of its counsel in conjunction with the execution and delivery of the Governmental Note, payable on the Delivery Date, and the ongoing compensation and expenses payable to the Fiscal Agent as follows:

- (a) the annual administration fees of the Fiscal Agent, for the ordinary services of the Fiscal Agent rendered under this Funding Loan Agreement during each twelve-

month period shall be \$4,500 per annum, payable in arrears in semiannual installments of \$2,500 on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1 thereafter, commencing \_\_\_\_\_ 1, 2023;

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

(c) for purposes of the Borrower Loan Agreement, indemnification of the Fiscal Agent by the Borrower.

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

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

**"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.

**"Funding Lender"** shall have the meaning given to such term in the first paragraph of this Funding Loan Agreement.

**"Funding Loan"** shall have the meaning given to such term in the first paragraph of this Funding Loan Agreement.

**"Funding Loan Agreement"** shall have the meaning given to such term in the first paragraph hereof.

**"Funding Loan Documents"** means, collectively, the Governmental Note, this Funding Loan Agreement, the Borrower Loan Agreement, the Borrower Note, the Land Use Restriction

Agreement, the Tax Certificate, the Mortgage, the Environmental Indemnity, the Assignment of Management Agreement and Consent, the Governmental Lender Assignment, the Assignment of HAP Contract, the Replacement Reserve Agreement, the Assignment of Project Documents, the General Partner Pledge, the Developer Fee Pledge, the Assignment of Capital Contributions, the Subordination Agreement, the Guaranty of Recourse Obligations, the Guaranty of Debt Service and Stabilization and the Guaranty of Completion, the Governmental Lender Guarantor Documents, the Compliance Monitoring Agreement, the Financial Monitoring Agreement, the Mortgage Servicing Agreement, and all other agreements or instruments relating to, or executed in connection with the issuance and delivery of the Governmental Note, including all modifications, amendments, or supplements thereto.

**"Funding Loan Fund"** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"Funding Loan Proceeds Account"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

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

**"General Partner"** means ECG Ridge Road GP, LLC, a Florida limited liability company, the general partner of the Borrower, together with its successors and assigns, as permitted by the Controlling Person and the restrictions described in the definition of "Permitted Transfer" herein.

**"General Partner Pledge"** means the Limited Guaranty, Pledge of Partnership Interests and Security Agreement, dated the date hereof, by the General Partner, in favor of the Funding Lender.

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

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

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

**"Governmental Lender"** shall have the meaning set forth in the first paragraph of this Funding Loan Agreement.

**"Governmental Lender Assignment"** means that certain Assignment of First Mortgage and Funding Loan Documents, dated as of the date hereof, from the Governmental Lender to the Fiscal Agent and acknowledged by the Borrower, as the same may be amended, modified, or supplemented from time to time.

**"Governmental Lender Costs of Issuance"** means all fees, costs, and expenses (other than Borrower Costs of Issuance) incurred in connection with the issuance of the Governmental Note and the extension of the Funding Loan.

**"Governmental Lender Costs of Issuance Account"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"Governmental Lender Environmental Indemnity"** means the Environmental Indemnity Agreement, dated as of the date hereof, from the Governmental Lender Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.

**"Governmental Lender Fee"** means (a) a closing administration fee equal to the greater of \$20,000 or 25 basis points (0.25%) of the principal amount of the Funding Loan payable on the Closing Date (the "**Closing Administration Fee**"), (b) the ongoing program administration fee owed and payable to the Governmental Lender by the Borrower in an amount equal to the greater of \$20,000 or 20 basis points (0.20%) per annum of the outstanding principal amount of the Funding Loan (without regard to principal reductions on such date) payable in semi-annual installments in arrears on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing \_\_\_\_\_ 1, 2023 (the "**On-Going Administration Fee**"), and (c) the one time fee owed and payable to the Governmental Lender by the Borrower on the Stabilization Date in an amount equal to the greater of \$25,000 or (i) 28 basis points (0.28%) of the principal amount of the Funding Loan prepaid on or before the Stabilization Date, if the Stabilization Date occurs within 18 months following the Delivery Date, (ii) 20 basis points (0.20%) of the principal amount of the Funding Loan prepaid on or before the Stabilization Date, if the Stabilization Date occurs 18 months to 24 months following the Delivery Date, and (iii) 13 basis points (0.13%) of the principal amount of the Funding Loan prepaid on or before the Stabilization Date, if the Stabilization Date occurs 24 months to 36 months following the Delivery Date (the "**Short Term Principal Reduction Fee**"); provided, however, such fee does not include amounts due, if any, for extraordinary services and expenses of the Governmental Lender, or fees and expenses of the Fiscal Agent, the Governmental



Lender Servicer, Note Counsel, Governmental Lender Counsel, or Fiscal Agent's Counsel, all of which shall be paid directly by the Borrower in accordance with this Funding Loan Agreement and pursuant to the Borrower Loan Agreement.

**"Governmental Lender Guarantor Documents"** means, collectively, the Governmental Lender Environmental Indemnity, the Governmental Lender Guaranty of Completion, the Governmental Lender Guaranty of Recourse Obligations, and the Governmental Lender Operating Deficits Guaranty.

**"Governmental Lender Guarantors"** means, collectively, the Borrower; the General Partner; the Developer; Elmington Affordable, LLC; and Clayton Hunter Nelson, individually.

**"Governmental Lender Guaranty of Completion"** means the Absolute and Unconditional Guaranty of Completion, dated as of the date hereof, from the Governmental Lender Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.

**"Governmental Lender Guaranty of Recourse Obligations"** means the Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, dated as of the date hereof, from the Governmental Lender Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.

**"Governmental Lender Operating Deficits Guaranty"** means the Continuing, Absolute and Unconditional Guaranty of Operating Deficits Guaranty, dated as of the date hereof, from the Governmental Lender Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.

**"Governmental Lender Servicer"** means First Housing Development Corporation of Florida, a Florida corporation, its successors and assigns, or any other servicer appointed by Governmental Lender to service the Borrower Loan on behalf of the Governmental Lender and to monitor the Project Facilities.

**"Governmental Lender Servicer's Fee"** means any fees payable to the Governmental Lender Servicer as required by the Governmental Lender Servicer Documents

**"Governmental Note"** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**"Guarantor"** means, collectively, the Governmental Lender Guarantors and the Purchaser Guarantors.

**"Guaranty of Completion"** means the Guaranty of Completion, dated as of the date hereof made by the Purchaser Guarantor in favor of the Funding Lender.

**"Guaranty of Debt Service and Stabilization"** means the Guaranty of Debt Service and Stabilization dated as of the date hereof made by the Purchaser Guarantor in favor of the Funding Lender.

**"Guaranty of Recourse Obligations"** means the Guaranty of Recourse Obligations, dated as of the date hereof, made by the Purchaser Guarantor in favor of the Funding Lender.

**"HAP Contract"** means, collectively, that certain Agreement to Enter Housing Assistance Payments Contract between [HUD] and the Borrower and the Housing Assistance Payments Contract entered into pursuant thereto, providing for housing assistance payments to be made to the Borrower.

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

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

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

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

**"Indebtedness"** means, collectively, and includes all present and future indebtedness, liabilities and obligations of any kind or nature whatsoever of the Borrower to the Governmental Lender, the Controlling Person, the Fiscal Agent, or to the Noteowners from time to time, now existing and hereafter arising, under or in connection with this Funding Loan Agreement or any of the other Funding Loan Documents or any of the Subordinate Debt Documents, including future advances, principal, interest, indemnities, other fees, late charges, enforcement costs, and

other costs and expenses whether direct or contingent, matured or unmatured and all other obligations of the Borrower to the Controlling Person, the Fiscal Agent, the Governmental Lender, or the Noteowners from time to time of the Governmental Note.

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

**"Insurance and Condemnation Proceeds Account"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"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.

**"Investor Limited Partner"** means U.S. Bancorp Community Development Corporation, a Minnesota corporation, and its successors and assigns in such capacity pursuant to the Partnership Agreement.

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

**"Land Use Restriction Agreement"** means the Land Use Restriction Agreement, dated as of the date hereof, between the Governmental Lender, the Fiscal Agent, and the Borrower, as the same may be amended, modified, or supplemented from time to time.

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

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

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

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

**"Major Contract"** shall mean any subcontract for labor or materials, or both, in connection with the Improvements which is for an aggregate contract price equal to or greater than \$250,000,

whether pursuant to one contract or agreement or multiple contracts or agreements, after taking into account all change orders.

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

**"Managing Agent"** means Elmington Property Management, LLC, a Tennessee limited liability company, authorized to do business in the State, together with any successor manager of the Project Facilities approved by the Controlling Person and their respective successors and assigns.

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

**"Material Change Order"** means, with respect to the Project Facilities, a Change Order which (a) 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; (b) 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; (c) would reduce the number of apartment units in the Project Facilities; (d) would materially reduce the aggregate useable square footage of the apartment units or the parking areas in the Project Facilities; (e) would change the number of one, two and three bedroom apartments in the Project Facilities; (f) would alter the scope of the recreational facilities or ancillary facilities of the Project Facilities; (g) would alter the number of apartment units in the Project Facilities designated for occupancy by low and moderate income tenants; (h) makes a substitution for any material or product that is of lesser quality, in the Controlling Person's determination, than that specified in the Plans and Specifications relating to the Project Facilities; or (i) 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 (a) evidences, secures or governs any outstanding obligation of the Borrower of \$100,000 or more per annum, or (b) if canceled, breached or not renewed by any party thereto, would have a material adverse effect on the business operations, assets, condition (financial or otherwise) or prospects of the Borrower.

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

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

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

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

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

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

**"Monthly Tax and Insurance Amount"** means an amount equal to the sum of (a) one-twelfth (1/12th) of the annual Impositions, plus (b) one-twelfth (1/12th) of the annual insurance premiums for the insurance coverages for the Project Facilities required by Section 6.4 of the Borrower 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 Governmental Lender, and the Fiscal Agent.

**"Mortgage"** shall have the meaning given to such term in the recitals to this Funding Loan Agreement.

**"Mortgage Servicing Agreement"** means the Construction Loan and Mortgage Servicing Agreement, dated as of the date hereof, by and among the Governmental Lender, the Borrower, the Governmental Lender Servicer, and the Fiscal Agent.

**"MSRB"** means the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934.

**"Negative Arbitrage Deposit"** has the meaning set forth in the Contingency Draw-Down Agreement.

**"Noteowner"** or **"owner of the Governmental Note"** means the owner, or as applicable, collectively the owners, of the Governmental Note as shown on the registration books maintained by the Fiscal Agent pursuant to Section 2.6 of this Funding Loan Agreement.

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

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

**"Operating Reserve Amount"** shall mean the amount set forth on the Schedule of Financial Terms.

**"Operating Reserve Fund"** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

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

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

**"Partnership Agreement"** means the Amended and Restated Partnership Agreement of the Borrower, dated [as of the date hereof], as may be amended, modified, or supplemented from time to time.

**"Payment and Performance Bonds"** shall mean dual-obligee payment and performance bonds (or a letter of credit in lieu of such bonds) relating to the Contractor (or, if required by Controlling Person, each contractor that enters into a Major Contract with Borrower), issued by a surety company or companies authorized to do business in the State and acceptable to Controlling Person, and in form and content reasonably acceptable to Controlling Person, in each case in an amount not less than the full contract price; together with a dual obligee and modification rider naming the Funding Lender and the Controlling Person (or at the Controlling

Person's election, the Fiscal Agent) and in the form and substance acceptable to Controlling Person which shall be attached thereto.

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

"**Permitted Encumbrances**" means only:

- (a) the Land Use Restriction Agreement;
- (b) the Mortgage;
- (c) liens securing the Subordinate Debt;
- (d) 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;
- (e) statutory liens of landlords and liens of carriers, warehousemen, mechanics and materialmen incurred in the ordinary course of business for sums not yet due or being contested by appropriate proceedings promptly initiated and diligently conducted if (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 Project Facilities, and provided (ii) 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
- (f) the exceptions listed in the Title Policy and any other matters affecting title which are approved in writing by the Controlling Person.

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

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

(c) 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;

(d) 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;

(e) 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;

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

(g) Interests in any money market fund or trust, the investments of which are restricted to obligations described in clauses (a) through (f) 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 Fiscal Agent, an affiliate of the Fiscal Agent, serves as investment manager, administrator, shareholder servicing agent, and/or custodian or subcustodian; and

(h) Such other investments selected by the Borrower as may be authorized by applicable law and consented to by the Controlling Person.

**"Permitted Transfer"** means (a) 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, (b) 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, (c) a transfer of partnership interests in Borrower to the Investor Limited Partner, (d) a transfer of the limited partnership interest of the Investor Limited Partner in the Borrower to an Affiliate of such Investor Limited Partner, (e) a transfer of indirect shares or ownership interests in the Investor Limited Partner so long as the direct ownership interests in the Investor Limited Partner are owned or controlled by Investor Limited Partner, (f) a transfer of any shares or ownership interests in the Investor Limited Partner to any unaffiliated entity after the contributions by the owners of the Investor Limited Partner of all installments of capital contributions required to be made by the Investor Limited Partner under the Partnership Agreement, (g) 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, (h) the removal and replacement of the General Partner pursuant to the Partnership Agreement, (i) after the payment in full of all



capital contributions under the Partnership Agreement, any other transfer, assignment, pledge, hypothecation, or conveyance of limited partnership 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 (j) the extension, amendment, or replacement of commercial leases approved by the Controlling Person.

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

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

**"Pledged Revenues"** shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Note, consisting of the following: (a) all income, revenues, proceeds, and other amounts to which the Governmental Lender is entitled (other than amounts received by the Governmental Lender with respect to the Reserved Rights) derived from or in connection with the Funding Loan Documents, including all Borrower payments due under the Borrower Loan Agreement and the Borrower Note and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (b) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

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

**"Project Facilities"** means the 15.52 acres of land and the multifamily rental housing facilities to be constructed thereon, consisting of a total of 250 units and related personal property and equipment, located in Tallahassee, Leon County, Florida, the acquisition, construction, and equipping of which are being financed by the proceeds of the Funding Loan.

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

**"Project Fund"** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

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

**"Purchaser Guarantors"** means the Guarantor identified on the Schedule of Financial Terms hereto, together with their successors, including Guarantor's estate on death.

**"Qualified Project Costs"** means the actual costs incurred to acquire, construct and equip the Project Facilities which (a) are or were incurred after August 15, 2021, (b) are (i) chargeable to the Project Facilities' capital account or would be so chargeable either with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs, within the meaning of Treasury Regulation Section 1.103-8(a)(1), and if charged or chargeable to the Project Facilities' capital account are or would have been deducted only through an allowance for depreciation or (ii) made for the acquisition of land, to the extent allowed in Section 147(c) of the Code, and (c) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code.

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

**"Rebate Analyst"** shall have the meaning given to such term in Section 6.10(c) of the Borrower Loan Agreement and shall be reasonably acceptable to the Controlling Person and the Governmental Lender.

**"Rebate Fund"** means the fund of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

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

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

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

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

**"Replacement Reserve Agreement"** means the Replacement Reserve and Security Agreement, dated as of the date hereof, made by the Borrower in favor of the Funding Lender.

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

**"Requisition"** means a requisition in the form attached to the Borrower 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 Funding Loan pursuant to the terms of the Borrower Loan Agreement.

**"Reserved Rights"** means those certain rights of the Governmental Lender under the Funding Loan Documents to (a) indemnification and to payment or reimbursement of fees and expenses of the Governmental Lender, including the Governmental Lender Fee as well as the fees and expenses of counsel, assumption fees, and indemnity payments; (b) its right to give and receive notices and to enforce notice and reporting requirements and restrictions on transfer of ownership; (c) its right to inspect and audit the books, records, and premises of the Borrower and of the Project Facilities; (d) its right to collect legal fees and related expenses; (e) its right to specifically enforce the terms of the Land Use Restriction Agreement, including the Borrower's covenant to comply with applicable federal tax law and State law (including the Act and the rules and regulations of the Governmental Lender); (f) its rights to approve or not approve disbursements from the Replacement Reserve Fund and the Tax and Insurance Escrow Fund through the Governmental Lender Servicer; (g) its right to receive notices and reports under the Funding Loan Documents; and (h) its rights to give or withhold consent to amendments, changes, modifications, and alterations to this Funding Loan Agreement and the Funding Loan Documents and to such other matters where, under this Funding Loan Agreement or under the Funding Loan Documents, the Governmental Lender's consent or approval is required.

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

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

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

"**Schedule of Financial Terms**" shall mean Schedule A to this Funding Loan Agreement, as modified from time to time pursuant to Section 6.1 hereof.

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

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

"**Security**" shall have the meaning given to such term in Section 2.1 of this Funding Loan Agreement.

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

"**Stabilization**" means the point at which (a) the Improvements have met Minimum Occupancy by qualified tenants meeting the requirements of the Funding Loan Documents in each month of the Testing Period; (b) the ratio of Stabilized NOI in each month of the Testing Period to maximum principal, interest, Governmental Lender Fees and Fiscal Agent Fees payable in any month (other than the month in which the Maturity Date occurs) on the amount of the Borrower Note outstanding equals or exceeds the Minimum Coverage; (c) 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 Funding Loan Documents; (d) the Project Facilities shall have achieved Completion and satisfied each of the Construction Closeout Deliveries; (e) the Borrower Note has been repaid in an amount equal to the Mandatory Prepayment Amount; and (f) the Borrower shall have deposited an amount equal to the Operating Reserve Amount, or such other amount as approved by the Controlling Person, in the Operating Reserve Fund, all as determined or approved by the Controlling Person.

**"Stabilization Date"** means the earlier to occur of: (a) the date specified by the Controlling Person that all of the conditions to achievement of Stabilization have been satisfied; or (b) the Outside Stabilization Date, as the same may be extended pursuant to Section 6.37 of the Borrower Loan Agreement.

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

**"State"** means the State of Florida.

**"Subordinate Debt"** means, collectively, those certain loans in the maximum amounts set forth in the Schedule of Financial Terms from the Subordinate Lender to the Borrower, evidenced and secured by the Subordinate Debt Documents.

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

**"Subordinate Debt Proceeds Account"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"Subordinate Lender"** shall mean, collectively, the Subordinate Lenders specified on the Schedule of Financial Terms.

**"Subordination Agreement"** means, collectively, those certain Subordination Agreements, dated on or about the Closing Date, each among the Fiscal Agent, the Borrower, and the applicable Subordinate Lender, as each may be amended, modified, or supplemented from time to time.

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

**"Tax Counsel"** means (a) on the Closing Date, the law firm or law firms delivering the approving opinion(s) with respect to the Governmental Note, or (b) any other firm of attorneys selected by the Governmental Lender that is experienced in matters relating to the issuance of obligations by states and their political subdivisions that is listed as municipal bond attorneys in The Bond Buyer's Municipal Marketplace and is acceptable to the Controlling Person.

**"Tax and Insurance Escrow Fund"** means the account of that name created pursuant to Section 4.2 of this Funding Loan Agreement.

**"Tax Certificate"** means, collectively, (a) the Certificate as to Arbitrage and Certain other Tax Matters, dated the Closing Date, executed by the Governmental Lender, (b) the Arbitrage Rebate Agreement, dated the Closing Date, executed by the Governmental Lender, the Fiscal Agent, and the Borrower, and (c) the Borrower's Proceeds Certificate, dated the Closing Date, and executed and delivered by the Borrower, in each case including all exhibits and other attachments thereto and in each case as may be amended from time to time.

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

**"Third Party Costs"** means the ongoing fees of the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Rebate Analyst, or any other third party in connection with the Governmental Note.

**"Title Company"** means the title insurance company insuring the lien of the Mortgage on the Closing Date together with any successor title company approved by the Controlling Person.

**"Title Policy"** means the mortgagee's title insurance policy relating to the Project Facilities issued by the Title Company to the Fiscal Agent, 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.

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

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

**"Underwritten Expenses"** shall mean the amount set forth on the Schedule of Financial Terms.

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

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

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

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

(a) All terms defined in the Borrower Loan Agreement and not defined herein shall have the meaning given to such terms in the Borrower 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 Funding Loan Agreement 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 Funding Loan Agreement to particular Articles or Sections are references to Articles or Sections of this Funding Loan Agreement, unless otherwise indicated.

**ARTICLE II**  
**SOURCE OF PAYMENTS, GENERAL TERMS AND PROVISIONS OF THE**  
**GOVERNMENTAL NOTE**

**Section 2.1** **Security.** To secure the payment of the Funding Loan and the Governmental Note, to declare the terms and conditions on which the Funding Loan and the Governmental Note are secured, and in consideration of the terms and provisions of the funding of the Funding Loan by the Funding Lender, the Governmental Lender does hereby grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over, and confirm to the Fiscal Agent (except as limited herein) for the benefit of the Funding Lender, a lien on and security interest in the following described property (excepting, however, in each case, the Reserved Rights) (said property, rights, and privileges being herein collectively called, the "Security"):

(a) all right, title, and interest of the Governmental Lender in, to, and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues, and receipts derived by the Governmental Lender from the Borrower relating to the Project Facilities and including, without limitation, all Pledged Revenues, Borrower payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the

obligations of the Governmental Lender under the provisions of the Borrower Loan Agreement;

(b) all right, title, and interest of the Governmental Lender in, to, and under, together with all rights, remedies, privileges, and options pertaining to, the Funding Loan Documents, and all other payments, revenues, and receipts derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Funding Loan Documents;

(c) any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held by Fiscal Agent under this Funding Loan Agreement (except for the Costs of Issuance Fund, the Administrative Expense Fund, and the Rebate Fund), any amounts held at any time in the Funding Loan Proceeds Account, and any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

(d) any and all other real or personal property of every kind and nature or description, which may from time to time hereafter, by delivery or by writing of any kind, be subjected to the lien of this Funding Loan Agreement as additional security by the Governmental Lender or anyone on its part or with its consent, or which pursuant to any of the provisions hereof or of the Borrower Loan Agreement may come into the possession or control of the Fiscal Agent or a receiver appointed pursuant to this Funding Loan Agreement; and the Fiscal Agent is hereby authorized to receive any and all such property as and for additional security for the Funding Loan and the Governmental Note and to hold and apply all such property subject to the terms hereof.

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 2.1 for the payment of the principal of, premium, if any, and interest on the Governmental Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Note by the Governmental Lender. The Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract, or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

**Section 2.2 Delivery of Security.** To provide security for the payment of the Funding Loan and the Governmental Note, the Governmental Lender has pledged and assigned to secure payment of the Funding Loan and the Governmental Note its right, title, and interest in the Security to the Fiscal Agent for the benefit of the Funding Lender. In connection with such pledge,



assignment, transfer, and conveyance, the Governmental Lender shall deliver to the Fiscal Agent the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

- (a) the Borrower Note endorsed without recourse to the Fiscal Agent by the Governmental Lender;
- (b) the originally executed Borrower Loan Agreement and Land Use Restriction Agreement;
- (c) the originally executed Mortgage and an assignment for security of the Mortgage from the Governmental Lender to the Fiscal Agent, in recordable form;
- (d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Fiscal Agent's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the Project Facilities, in form suitable for filing; and

The Governmental Lender shall, at the expense of the Borrower, deliver and deposit with the Fiscal Agent such additional documents, financing statements, and instruments as the Fiscal Agent may reasonably require from time to time for the better perfecting and assuring to the Fiscal Agent of its lien and security interest in and to the Security including, at the request of the Funding Lender.

**Section 2.3 Source of Payment of Funding Loan and Other Obligations.** The Governmental Lender shall not be obligated to pay the principal of, prepayment premium, if any, or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to the Funding Loan Agreement. Any obligation or liability of the Governmental Lender created by or arising out of this Funding Loan Agreement (including, without limitation, any liability created by or arising out of the representations, warranties, or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Governmental Lender or a charge upon its general credit, but shall be payable solely out of the moneys due and to become due under the Funding Loan Documents (and not from any moneys due or to become due to the Governmental Lender pursuant to the Reserved Rights). Neither the issuance of the Funding Loan nor the delivery of this Funding Loan Agreement shall, directly, indirectly, or contingently, obligate the Governmental Lender to make any appropriation for payment of the Funding Loan. No agreements or provisions contained in this Funding Loan Agreement, the Borrower Loan Agreement, any other Funding Loan Document, nor any agreement, covenant, or undertaking by the Governmental Lender contained in any document executed by the Governmental Lender in connection with the Project Facilities or the issuance, sale, and delivery of the Governmental Note shall give rise to any pecuniary liability of the Governmental Lender or a charge against its general credit or taxing powers, or shall obligate the Governmental Lender financially in any way. Nothing in the Funding Loan or

this Funding Loan Agreement or the proceedings of the Governmental Lender authorizing the Funding Loan or in any other related document or in the Act shall be construed to authorize the Governmental Lender to create a debt of the Governmental Lender within the meaning of constitutional or statutory provision of the State. No covenant, agreement, or obligation contained in this Funding Loan Agreement shall be deemed to be a covenant, agreement, or obligation of any present or future director, officer, employee, or agent of the Governmental Lender in his or her individual capacity, and neither any employee or officer of the Governmental Lender nor any officer thereof executing the Governmental Note shall be liable personally on the Governmental Note or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee, or agent of the Governmental Lender shall incur any personal liability with respect to any other action taken by him or her pursuant to this Borrower Loan Agreement, this Funding Loan Agreement, the Act, or the law. No breach of any pledge, obligation, or agreement of the Governmental Lender hereunder may impose any pecuniary liability upon the Governmental Lender or any charge upon its general credit. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims, or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Funding Loan Agreement, the Funding Loan, or the Borrower Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Funding Loan Agreement.

The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to the Borrower Loan Agreement and the Borrower Note, together with investment income on certain funds and accounts held by the Fiscal Agent under this Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of, prepayment premium, if any, and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration, or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal of, prepayment premium, if any, or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance, or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender, or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender, or any such third party, as the case may be, therefor.

THE FUNDING LOAN IS ORIGINATED PURSUANT TO THE LAW AND IN ACCORDANCE WITH THE ACT AND IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER. NONE OF THE GOVERNMENTAL LENDER, ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER, OR ANY PERSON EXECUTING THE GOVERNMENTAL NOTE, SHALL BE LIABLE PERSONALLY ON THE FUNDING LOAN OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE FUNDING LOAN, THE GOVERNMENTAL NOTE, AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE

ONLY FROM THE SOURCES DESCRIBED IN THE FUNDING LOAN AGREEMENT. NONE OF THE GOVERNMENTAL LENDER, THE STATE, OR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH FUNDING LOAN, THE GOVERNMENTAL NOTE, OR THE INTEREST THEREON OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. THE FUNDING LOAN, THE GOVERNMENTAL NOTE, AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, THE STATE, OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE GOVERNMENTAL LENDER, THE STATE, NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF OR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREPAYMENT PREMIUM, IF ANY, OR INTEREST ON THE FUNDING LOAN, THE GOVERNMENTAL NOTE, OR OTHER COSTS INCIDENT THERETO. THE FUNDING LOAN AND GOVERNMENTAL NOTE ARE NOT DEBTS OF THE UNITED STATES OF AMERICA. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

**Section 2.4 Form of Governmental Note.** As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Note. The Governmental Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions, and other variations as are required or permitted by this Funding Loan Agreement.

**Section 2.5 Execution and Delivery of Governmental Note; Conditions to Closing.**

(a) The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Chair or Vice-Chair of the Governmental Lender and attested by the manual or facsimile signature of the Secretary or an Assistant Secretary of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. The manual or facsimile signatures of individuals who were the proper officers of the Governmental Lender at the time of execution shall bind the Governmental Lender, notwithstanding that such individuals or any of them shall have ceased to hold such offices prior to the execution and delivery of the Governmental Note or shall not have held such offices at the date of the Governmental Note. Following execution by the Governmental Lender, the Governmental Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Funding Loan Agreement unless and until a certificate of authentication on such Governmental Note substantially in the form contained on Exhibit A attached hereto shall have been duly executed by the Fiscal Agent. The certificate of authentication appearing on the Governmental Note shall be deemed to have been duly executed by the Fiscal Agent if manually signed by an

authorized officer or employee of the Fiscal Agent. Such authentication certificate of the Fiscal Agent shall be conclusive evidence that the Governmental Note so registered or authenticated has been duly executed, registered, or authenticated and delivered.

(b) Prior to the delivery by the Fiscal Agent of the Governmental Note and as a condition to closing of the Funding Loan, there shall be filed with and/or delivered to the Fiscal Agent:

(i) all items required to be delivered under Section 2.2 above;

(ii) a certified copy of all resolutions adopted and proceedings had by the Governmental Lender authorizing execution of this Funding Loan Agreement, the Borrower Loan Agreement, and the other Funding Loan Documents to which the Governmental Lender is a party and the issuance of the Governmental Note;

(iii) an original executed counterpart of the Funding Loan Documents;

(iv) copies of the Financing Statements prepared by the Funding Lender to perfect the security interests in the Security or under Section 3.2 of the Borrower Loan Agreement;

(v) a copy of completed IRS Form 8038 to be filed by or on behalf of the Governmental Lender pursuant to Section 149(e) of the Code;

(vi) an original executed counterpart of the Tax Certificate;

(vii) an opinion of Counsel to the Governmental Lender to the effect that this Funding Loan Agreement, the Borrower Loan Agreement, and any other documents executed by the Governmental Lender have been duly authorized, executed and delivered by the Governmental Lender and are legal, valid and binding agreements of the Governmental Lender; and

(viii) an Approving Opinion of Tax Counsel that (1) the Governmental Note has been duly authorized, executed, and issued by Governmental Lender in accordance with the laws of the State, including the Act, and is a valid and binding limited obligation of the Governmental Lender, enforceable in accordance with its terms and the terms of the Funding Loan Agreement, (2) under existing statutes, regulations, rulings, and judicial decisions, interest on the Governmental Note is excludable from gross income for federal income tax purposes of the owners of the Governmental Note, except that such exclusion shall not apply to interest on the Governmental Note for any period during which the Governmental Note is held

by a person who is a "substantial user" of the Project or a "related person" within the meaning of Section 147(a) of the Code; (3) additionally, interest on the Governmental Note is not an item of tax preference for purposes of the federal alternative minimum tax; and (4) the Governmental Note is exempt from registration under the Securities Act of 1933, as amended, and the Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

(ix) an opinion of Counsel for the Borrower to the effect that the Funding Loan 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 reasonably requested by the Controlling Person or the Funding Lender;

(x) a pro forma title insurance policy reasonably acceptable to the Controlling Person; and

(xi) reliance letters for, or address of the opinions to, the Controlling Person and Funding Lender of each of the opinions filed with the Fiscal Agent;

(xii) a letter of the Governmental Lender Servicer acknowledging that all contingencies listed in the Final Credit Underwriting Report and the Governmental Lender Loan Commitment have been satisfied; and

(xiii) such other documents as may be required by the Governmental Lender, the Fiscal Agent, the Funding Lender, Tax Counsel, or the Controlling Person.

**Section 2.6 Registration; Required Transferee Representations; Participations; Sale and Assignment.**

(a) The Governmental Note shall be fully registered as to principal and interest in the manner and with any additional designation as the Fiscal Agent deems necessary for the purpose of identifying the registered owner thereof. The Funding Loan shall be transferable only on the registration books of the Fiscal Agent. The Fiscal Agent shall maintain books or other records showing the name and date of registration, address, and employer identification number of the registered owner of the Funding Loan, and any transfers of the Funding Loan as provided herein. The Funding Loan shall initially be registered to the Funding Lender.

(b) The Funding Lender shall deliver to the Governmental Lender and Fiscal Agent an Investor Letter on the Closing Date.

(c) The Governmental Note and any participation interest therein may only be transferred in accordance with this Section 2.6(c). The Funding Lender shall have the right to sell (i) the Governmental Note and the Funding Loan in whole, or (ii) any portion of or a participation interest in the Governmental Note and the Funding Loan in minimum denominations of \$250,000 each and multiples of \$5,000 in excess of such minimum denomination, provided that such sale shall be only to Approved Transferees that execute and deliver to the Funding Lender, with a copy to the Governmental Lender and the Fiscal Agent, an Investor Letter in substantially the form attached hereto as Exhibit B. Any such holder desiring to effect such transfer shall agree to indemnify the Governmental Lender and the Fiscal Agent from and against any and all liability, cost, or expense (including attorneys' fees) that may result if the transfer is not so exempt, does not comply with the terms and conditions of this Funding Loan Agreement, including, without limitation, this Section 2.6, or is not made in accordance with such federal and State laws. Notwithstanding anything to the contrary herein, the Noteowner shall not transfer or sell the Governmental Note and the Funding Loan or any interest therein to a party related to or affiliated with the Borrower or any general partner, limited partner, or partner of the Borrower without the prior written consent of the Governmental Lender.

(d) No service charge shall be made for any sale or assignment of any portion of the Governmental Note, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any such sale or assignment. Such sums shall be paid in every instance by the Funding Lender or assignee of the Funding Loan or portion thereof.

(e) The Governmental Note shall not be transferred through the services of the Depository Trust Company or any other third party registrar.

(f) The parties agree that no rating shall be sought from a rating agency with respect to the Funding Loan or the Governmental Note.

**Section 2.7 Mutilated, Lost, Stolen, or Destroyed Governmental Note.** In the event the Governmental Note is mutilated, lost, stolen, or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in Exhibit A in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen, or destroyed Governmental Note, upon payment by the Noteholder of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen, or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen, or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.8 Authority.** The Governmental Lender represents that it is duly authorized under the laws of the State to issue the Governmental Note, and to execute, deliver, and perform the terms of the Borrower Loan Agreement and this Funding Loan Agreement.

**Section 2.9 [Reserved].**

**Section 2.10 Further Assurances.** The Governmental Lender covenants that it will cooperate to the extent necessary with the Borrower, the Fiscal Agent, and the Funding Lender 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 Governmental Lender in connection therewith, will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered such Funding Loan Agreement supplemental hereto and such further acts, instruments and transfers as the Fiscal Agent 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 Governmental Lender shall not cause or permit to exist any amendment, modification, supplement, waiver, or consent with respect to the Borrower Loan Agreement without the prior written consent of the Funding Lender and the Fiscal Agent, which consent shall be governed by Article VI hereof.

**Section 2.11 No Other Encumbrances; No Dissolution.** The Governmental Lender covenants that, (a) except as otherwise provided herein and in the Borrower Loan Agreement, it will not sell, convey, mortgage, encumber, or otherwise dispose of any portion of the Security, and (b) to the extent within its control, for so long as the Governmental Note is outstanding, it will not dissolve, terminate, or permit itself to be dissolved or terminated without a successor to its obligations hereunder and under the Governmental Note having assumed its obligations hereunder and under the Governmental Note.

**Section 2.12 No Personal Liability.** No recourse shall be had for the enforcement of any obligation, promise, or agreement of the Governmental Lender contained herein or in the Governmental Note or the other Funding Loan Documents to which the Governmental Lender 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 or her individual capacity, past, present, or future, of the Governmental Lender or of any successor entity, either directly or through the Governmental Lender 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 Governmental Lender or of any successor entity, either directly or through the Governmental Lender or any successor entity, under or by reason of any of the obligations, promises, or agreements entered into in the Governmental Note or between the Governmental Lender and the Fiscal Agent, whether herein contained or to be implied herefrom as being supplemental hereto; and all personal liability of that character against every such director, member, officer, agent,

attorney, and employee is, by the execution of this Funding Loan Agreement and as a condition of, and as part of the consideration for, the execution of this Funding Loan Agreement, expressly waived and released.

**ARTICLE III**  
**INTEREST RATE, PAYMENT, AND PREPAYMENT OF GOVERNMENTAL NOTE**

**Section 3.1 Origination, Maturity Date, and Authorized Amount of Governmental Note.** The Funding Loan shall be originated on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable. The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.

**Section 3.2 Principal and Interest Payments.**

(a) Interest shall be paid on the outstanding principal amount of the Governmental Note at the rate or rates set forth in the Borrower Note and otherwise as set forth in the Borrower Loan Agreement.

(b) The outstanding principal amount of the Governmental Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to Fiscal Agent for the account of the Governmental Lender to fund corresponding advances under the Borrower Loan Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Note previously received upon payment of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The Fiscal Agent shall keep a record of all principal advances and principal repayments made under the Governmental Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of the Governmental Note and the Funding Loan.

(c) The payment or prepayment of principal, premium, if any, and interest due on the Funding Loan and the Governmental Note shall be identical with and shall be made on the same dates, terms, and conditions, as the principal, interest, premiums, late payment fees, and other amounts due on the Borrower Note. Any payment or prepayment made by the Borrower of principal, premium, if any, and interest due on the Borrower Note shall be deemed to be like payments or prepayments of principal, premium, if any, and interest due on the Funding Loan and the Governmental Note.

(d) All payments on the Governmental Note shall be payable in lawful currency of the United States. Payments shall be made to the owner shown on the registration books maintained by the Fiscal Agent as of the close of business on the Business Day preceding the applicable payment date.



**Section 3.3 Draw-Down Funding.** The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Fiscal Agent for the account of the Governmental Lender on the dates and in the amounts specified on the Schedule of Financial Terms attached hereto for subsequent disbursement to the Borrower as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement. Upon each advance of the Funding Loan, a like amount of principal under the Borrower Note shall be deemed concurrently and simultaneously advanced under the Borrower Note, including the initial advance of \$\_\_\_\_\_; regardless, if such amounts are disbursed to Borrower under the Borrower Loan Agreement. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after \_\_\_\_\_, 2026; provided, however, that upon the delivery of a Favorable Opinion of Tax Counsel to the Governmental Lender, the Fiscal Agent, and the Funding Lender such date may be changed to a later date as specified in such Favorable Opinion of Tax Counsel. The Governmental Lender has reviewed and approved the form of Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

**Section 3.4 Prepayment of Governmental Note.** The Governmental Note is subject to voluntary and mandatory prepayment as follows:

(a) The Governmental Note shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds of the Governmental Lender received by the Governmental Lender or the Fiscal Agent to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any acceleration premium or other amounts payable under the Borrower Note or the Borrower Loan Agreement through the date of prepayment. The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Note to be prepaid, except as specifically permitted in the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

(b) The Governmental Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Note in accordance with the terms of the Borrower Note at a prepayment price equal to the outstanding principal balance of the Borrower Note prepaid, plus accrued interest plus acceleration premium or any other amounts payable under the Borrower Note or the Borrower Loan Agreement.

**Section 3.5 Notice of Prepayment.** Notice of prepayment of the Governmental Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to the Governmental Lender, the Funding Lender, and the Fiscal Agent in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Note is required to be given.

#### ARTICLE IV FUNDS AND ACCOUNTS

**Section 4.1 Authorization to Create Funds and Accounts.** Except as provided herein and in the Borrower Loan Agreement, no funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Governmental Lender, the Fiscal Agent, and the Controlling Person, and any designee of the Governmental Lender, the Fiscal Agent, or the Controlling Person, are authorized to establish and create, or direct the Fiscal Agent to establish and create, from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Fiscal Agent, or the Controlling Person pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

**Section 4.2 Establishment of Funds and Accounts; Applications of Proceeds of the Funding Loan and Other Amounts.**

- (a) The following are hereby created and established as special trust funds:
  - (i) the Project Fund, consisting of:
    - (1) the Funding Loan Proceeds Account;
    - (2) the Equity Account;
    - (3) the Capitalized Interest Account (containing a Funding Loan Proceeds Subaccount and an Equity Subaccount);
    - (4) the Insurance and Condemnation Proceeds Account; and
    - (5) the Subordinate Debt Proceeds Account;
  - (ii) the Funding Loan Fund;
  - (iii) the Replacement Reserve Fund;

(iv) the Rebate Fund;

(v) the Tax and Insurance Escrow Fund;

(vi) the Operating Reserve Fund;

(vii) the Costs of Issuance Fund (containing a Governmental Lender Costs of Issuance Account and a Borrower Costs of Issuance Account and, if necessary, a Bond Proceeds Subaccount therein); and

(viii) the Administrative Expense Fund.

(b) All the accounts created by subsection (a) of this Section 4.2 shall be held by the Fiscal Agent in trust for application only in accordance with the provisions of this Funding Loan Agreement.

(c) The initial advance of the Funding Loan will be applied in accordance with the Closing Memorandum. Following the disbursements set forth in the Closing Memorandum, the Fiscal Agent shall receive and deposit into the respective funds and accounts the specified amounts, if any, provided in the Closing Memorandum.

**Section 4.3 Funding Loan Fund.**

(a) There is hereby separately created and established with the Fiscal Agent the Funding Loan Fund. There shall be deposited in the Funding Loan Fund (i) all payments by the Borrower pursuant to the Borrower Note or the Borrower Loan Agreement, including all proceeds resulting from the enforcement of the Security or its realization as collateral, and (ii) all other moneys received by the Fiscal Agent under the Borrower Loan Agreement.

(b) Moneys in the Funding Loan Fund shall be held in trust for the Noteowners and, except as otherwise expressly provided herein, shall be used solely for the payment of the regularly scheduled principal of and interest on the Funding Loan, for the payment of principal and interest upon maturity, whether stated or accelerated, or upon mandatory or optional prepayment prior to the Maturity Date, and for the payment of the acceleration premium set forth in the Borrower Loan Agreement.

(c) After final payment in full of the Governmental Notes 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 Borrower Loan Agreement, any amounts remaining in the Funding Loan Fund shall be paid to the Borrower.

#### **Section 4.4 Project Fund.**

(a) The Fiscal Agent shall deposit all amounts specified in the Closing Memorandum into the specified accounts and subaccounts of the Project Fund. The Fiscal Agent will receive and deposit installments of the Funding Loan into the Funding Loan Proceeds Account of the Project Fund. The Fiscal Agent will receive and deposit into the Equity Account amounts received as future installments of the Required Equity Funds from the Investor Limited Partner and the General Partner, in accordance with the provisions of the Partnership Agreement and the Assignment of Capital Contributions. The Fiscal Agent will receive and deposit into the Subordinate Debt Proceeds Account amounts received as future installments of the Subordinate Debt from the Subordinate Lender, in accordance with the provisions of the Subordinate Debt Documents. The Fiscal Agent shall deposit any other amounts received, to the extent not otherwise directed herein, in such funds and accounts as directed by the Controlling Person.

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

(c) The Fiscal Agent shall and is hereby authorized to transfer funds from the Capitalized Interest Account to the Funding Loan Fund to pay interest on the Funding Loan accruing up to and including: (i) the Completion Date with respect to amounts in the Funding Loan Proceeds Subaccount; and (ii) the Stabilization Date with respect to the Equity Subaccount without submission of any Requisition. The Fiscal Agent shall transfer funds from the Funding Loan Proceeds Subaccount prior to transferring any funds from the Equity Subaccount. The Fiscal Agent shall and is hereby further authorized to transfer

funds from any other Account of the Project Fund to the Capitalized Interest Account to pay interest on the Governmental Note accruing up to achievement of Stabilization at the written direction (including e-mail) of the Controlling Person and the Governmental Lender Servicer.

(d) 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 Fiscal Agent to the Governmental Lender Servicer, and the Controlling Person. To the extent there has been a determination pursuant to the Funding Loan 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 Funding Loan Documents. In the event there is a determination pursuant to the Funding Loan Documents not to restore the Project Facilities, such Condemnation Award or Insurance Proceeds shall be either (i) applied to the prepayment of the Governmental Note in accordance with Section 3.4 hereof, or (ii) released to the Borrower if the Borrower obtains a Favorable Opinion of Tax Counsel with respect to the Governmental Note, all in accordance with direction of the Controlling Person to the Fiscal Agent and subject to the provisions of the Funding Loan Documents.

**Section 4.5 Tax and Insurance Escrow Fund.** There shall be deposited in the Tax and Insurance Escrow Fund all moneys received for such purpose by the Fiscal Agent from the Borrower pursuant to Section 8.2 of the Borrower 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 and the Governmental Lender Servicer; provided, however, that upon the occurrence and continuation of an Event of Default hereunder, all money and investments held in the Tax and Insurance Escrow Fund may be disbursed at the direction of the Controlling Person and the Governmental Lender Servicer to pay costs and expenses of the Project Facilities, to pay costs of enforcement of the Funding Loan Documents and to pay any and all amounts owed by the Borrower under any of the Funding Loan Documents, in whatever amounts and in whatever order the Controlling Person and the Governmental Lender Servicer may determine. Upon the payment in full of the Governmental Note and the fees and expenses of the Governmental Lender and the Fiscal Agent and upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Borrower Loan Agreement, any amounts remaining in the Tax and Insurance Escrow Fund shall be paid to the Borrower. If the Controlling Person and the Governmental Lender Servicer determine that the Tax and Insurance Escrow is over-funded for any reason, the Controlling Person and the Governmental Lender Servicer may direct the Fiscal Agent to return all or a portion of the moneys in the Tax and Insurance Escrow Fund to the Borrower.

**Section 4.6 Replacement Reserve Fund.** There shall be deposited in the Replacement Reserve Fund all moneys received for such purpose by the Fiscal Agent from the Borrower pursuant to the Replacement Reserve Agreement and the Mortgage Servicing Agreement. Moneys in the Replacement Reserve Fund shall be disbursed by the Fiscal Agent upon receipt of

a written request therefor executed by the Borrower and approved in writing by the Controlling Person and the Governmental Lender Servicer, in accordance with the terms of the Replacement Reserve Agreement and the Mortgage Servicing 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 and the Governmental Lender Servicer to pay any costs and expenses of the Project Facilities, to pay costs of enforcement of the Funding Loan Documents and to pay any and all amounts owed by the Borrower under the Funding Loan Documents, in whatever amounts and whatever order the Controlling Person and the Governmental Lender Servicer may determine. Upon the payment in full of the Governmental Note upon payment of amounts payable to the United States pursuant to any rebate requirement and any other amounts owing hereunder and under the Loan Agreement, any amounts remaining in the Replacement Reserve Fund shall be paid to the Borrower as soon as practicable. If the Controlling Person and the Governmental Lender Servicer determine that the Replacement Reserve Fund is over-funded for any reason, the Controlling Person and the Governmental Lender Servicer may direct the Fiscal Agent to return all or a portion of the moneys in the Replacement Reserve Fund to the Borrower. If the Controlling Person determines that the Replacement Reserve Fund is over-funded for any reason, the Controlling Person may, with the consent of the Governmental Lender Servicer, direct the Fiscal Agent to return all or a portion of the moneys in the Replacement Reserve Fund to the Borrower.

**Section 4.7 Operating Reserve Fund.** There shall be deposited in the Operating Reserve Fund all moneys received for such purpose pursuant to Section 8.4 of the Borrower 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. Copies of all disbursement requests shall be sent to the Governmental Lender Servicer. Upon receipt by the Fiscal Agent 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 Fiscal Agent 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 Funding Loan Documents, and to pay any and all amounts owed by the Borrower under the Funding Loan Documents, in whatever amounts and whatever order the Controlling Person may determine. Any Investment Income on amounts on deposit in the Operating Reserve Fund shall be retained in the Operating Reserve Fund. Upon payment in full of the Governmental Note and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the Borrower Loan Agreement, any amounts remaining in the Operating Reserve Fund shall be paid towards any outstanding balance of the Subordinate Debt on the Project Facilities or other loan debt administered by the Governmental Lender on the Project Facilities, then to the Governmental Lender fees related to the Funding Loan, and then any remaining balance shall be

deposited into a replacement reserve account for the Project Facilities. In no event shall the payment of any amounts to the Borrower or the Developer from the Operating Reserve Fund cause the Developer Fee or Contractor Fee to exceed the applicable percentage limitations provided for in Rule Chapter 67-21, Florida Administrative Code. This Section 4.7 shall survive the repayment of the Funding Loan, if paid prior to the expiration of the Qualified Project Period (as defined in the Land Use Restriction Agreement).

**Section 4.8 Costs of Issuance Fund.** The Costs of Issuance shall be paid by or on behalf of the Borrower to the Fiscal Agent on or prior to the Closing Date and shall be deposited by the Fiscal Agent in either the Governmental Lender Costs of Issuance Account or the Borrower Costs of Issuance Account of the Costs of Issuance Fund to pay the Costs of Issuance, as provided in the Closing Memorandum. Except as otherwise provided in this Section 4.8, the amounts deposited in the Governmental Lender Costs of Issuance Account or the Borrower Costs of Issuance Account shall be expended for Costs of Issuance and for no other purpose. On the Closing Date, the Governmental Lender shall deliver to the Fiscal Agent the Closing Memorandum and, thereafter, a Requisition executed by the Governmental Lender specifying in detail the amount which constitutes Governmental Lender Costs of Issuance to be paid or reserved to be paid under this Section 4.8, and the respective firms or persons to whom such payments are to be made. On the Closing Date, the Borrower shall deliver to the Fiscal Agent the Closing Memorandum and, thereafter, a Requisition executed by the Borrower and approved by the Governmental Lender Servicer and the Controlling Person specifying in detail the Borrower Costs of Issuance to be paid or reserved to be paid under this Section 4.8, and the respective firms or persons to whom such payments are to be made. The Fiscal Agent shall make the payments specified therein concurrently with or as soon as may be practicable after the delivery of the Governmental Note. Any moneys remaining in the Governmental Lender Costs of Issuance Account twelve (12) months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower, but only after approval by the Governmental Lender, which approval shall not be unreasonably withheld or delayed. Any moneys remaining in the Borrower Costs of Issuance Account six (6) months after the Closing Date and not needed to pay still unpaid Costs of Issuance will be returned to the Borrower. Upon final disbursement, the Fiscal Agent shall close the Borrower Costs of Issuance Account and the Governmental Lender Costs of Issuance Account, as applicable. Fees and expenses of Tax Counsel not identified in the Closing Memorandum shall be timely funded by additional deposits into the Governmental Lender Costs of Issuance Account of moneys from the Borrower not derived from the proceeds of the Project Loan.

**Section 4.9 Administrative Expense Fund.**

(a) The Fiscal Agent shall deposit into the Administrative Expense Fund, promptly upon receipt thereof, all amounts received from the Borrower designated for deposit into such fund. Amounts in the Administrative Expense Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used: **FIRST**, to pay to the Fiscal Agent when due the Fiscal Agent Fees; **SECOND**, to pay to the Governmental Lender

when due the Governmental Lender Fee; **THIRD**, to pay to the Governmental Lender Servicer when due the Governmental Lender Servicer's Fee (if not otherwise paid directly to the Governmental Lender Servicer); **FOURTH**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Borrower Loan Agreement, upon receipt of an invoice from the Rebate Analyst; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Funding Loan or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent; and **SIXTH**, to transfer any remaining balance after application as aforesaid to the Funding Loan Fund.

(b) In the event that the amounts on deposit in the Administrative Expense Fund are not equal to the amounts payable from the Administrative Expense Fund as provided in the preceding paragraph on any date on which such amounts are due and payable, the Fiscal Agent shall give notice to the Borrower, the Governmental Lender Servicer, and the Controlling Person of such deficiency and of the amount of such deficiency and request payment within two (2) Business Days to the Fiscal Agent of the amount of such deficiency. Upon payment by the Borrower of such deficiency, the amounts for which such deficiency was requested shall be paid by the Fiscal Agent.

(c) Amounts on deposit in the Administrative Expense Fund shall be invested at the written direction of the Governmental Lender. On or before each Loan Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Funding Loan Fund.

#### **Section 4.10 Rebate Fund; Compliance with Tax Certificate.**

(a) The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.10. On any date on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower, nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.10 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Tax Counsel, or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the



absence of written instructions from the Governmental Lender, Tax Counsel or the Rebate Analyst.

(b) Within fifty-five (55) days of the end of each fifth Rebate Year, the Governmental Lender shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "Rebatable Arbitrage"). The Governmental Lender shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Borrower. In the event that the Governmental Lender fails to provide such information to the Fiscal Agent and the Borrower within fifty-five (55) days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Governmental Lender, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

(c) Within fifty-five (55) days of the end of each fifth Rebate Year, upon the written direction of the Governmental Lender, Tax Counsel, or the Rebate Analyst, an amount shall be deposited to the Rebate Fund by the Fiscal Agent from amounts provided by the Borrower, if and to the extent required so that the balance in the Rebate Fund shall equal the amount of Rebatable Arbitrage so calculated in accordance with the preceding paragraph.

(d) The Fiscal Agent shall pay, as directed by the Governmental Lender, Tax Counsel, or the Rebate Analyst, to the United States Department of the Treasury, out of amounts in the Rebate Fund:

(i) Not later than sixty (60) days after the end of (1) the fifth Rebate Year, and (2) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and

(ii) Not later than sixty (60) days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

(e) Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be

accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

(f) Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

(g) Any funds remaining in the Rebate Fund after payment in full of the Funding Loan and payment and satisfaction of any Rebate Requirement, or provision made therefor satisfactory to the Fiscal Agent, shall be withdrawn and remitted to the Borrower.

(h) The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.10 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.10. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Governmental Lender in order to enable the Governmental Lender to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

(i) Notwithstanding the foregoing, the computations and payments of Rebatable Arbitrage need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on an opinion of Tax Counsel to the effect that such failure will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, a copy of which shall be provided to the Fiscal Agent and the Funding Lender, at the expense of the Borrower.

**Section 4.11 Transfers Between Funds and Accounts; Use of Amounts in Funds and Accounts.** The Fiscal Agent shall transfer moneys between accounts as directed in writing by the Controlling Person and consented to by the Borrower, provided that no consent shall be required with respect to a transfer pursuant to Section 4.4(c) above or following the occurrence and during the continuance of a Default or Event of Default hereunder. Notwithstanding the foregoing, transfers of moneys in the Governmental Lender Costs of Issuance Account and the Administrative Expense Fund shall require the consent of the Governmental Lender. 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 Funding Loan Documents and to pay any and all amounts owed by the Borrower under the Funding Loan Documents, in

whatever amounts and whatever order the Controlling Person may determine. Notwithstanding anything to the contrary herein, if the remaining amount in any fund or account (other than the Governmental Lender Costs of Issuance Account and the Administrative Expense Fund) is less than \$1,000, the Fiscal Agent shall, at the direction of the Controlling Person, transfer such remaining amounts to the Funding Loan Fund to pay principal of and interest on the Governmental Note.

**Section 4.12 Records.**

(a) The Fiscal Agent shall keep and maintain adequate records pertaining to any funds and accounts established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein. The Fiscal Agent shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest, and premium paid on the Funding Loan, subject to the inspection of the Governmental Lender or the Funding Lender and its representatives at all reasonable times and upon reasonable prior notice. The Fiscal Agent shall furnish to the Borrower, the Governmental Lender, the Governmental Lender Servicer, and the Controlling Person monthly statements of the activity and assets held in each of the funds and accounts maintained by the Fiscal Agent hereunder.

(b) The Governmental Lender will at any and all times, upon the reasonable request of the Controlling Person, the Borrower, or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports, and other papers of the Governmental Lender relating to the Project Facilities and the Funding Loan, if any, and to make copies thereof.

(c) The Fiscal Agent acknowledges that, pursuant to Section 119.0701(2), Florida Statutes, the Fiscal Agent is required to comply with public records laws, specifically to:

(i) Keep and maintain public records (as defined in Section 119.011 Florida Statutes) required by the Governmental Lender to perform its services pursuant to this Funding Loan Agreement and the Funding Loan Documents.

(ii) Upon request from the Governmental Lender's custodian of public records, provide the Governmental Lender with a copy of the requested records or allow the records to be inspected or copied within a reasonable time at a cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as

authorized by law until the discharge of this Funding Loan Agreement and following such discharge if the Fiscal Agent does not transfer the records to the Governmental Lender.

(iv) Upon the discharge of this Funding Loan Agreement, transfer, at no cost to the Governmental Lender, all public records in possession of the Fiscal Agent or keep and maintain public records required by the Governmental Lender to perform the service. If the Fiscal Agent transfers all public records to the Governmental Lender upon discharge of this Funding Loan Agreement, the Fiscal Agent shall destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. If the Fiscal Agent keeps and maintains public records upon the discharge of this Funding Loan Agreement, the Fiscal Agent shall meet all applicable requirements for retaining public records, in a format that is compatible with the information technology systems of the Governmental Lender.

(d) A request to inspect or copy public records relating to this Funding Loan Agreement must be made directly to the Governmental Lender. If the Governmental Lender does not possess the requested records, the Governmental Lender shall immediately notify the Fiscal Agent of the request, and the Fiscal Agent must provide the records to the Governmental Lender or allow the records to be inspected or copied within a reasonable time.

(e) IF THE FISCAL AGENT HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE FISCAL AGENT'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS FUNDING LOAN AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 606-1900  
Email: HFA@leoncountyfl.gov  
Address: 615 Paul Russell Road  
Tallahassee, Florida 32301

**Section 4.13 Investment of Funds.** Subject to the provisions of the Tax Certificate, moneys held as part of all funds and accounts hereunder shall be invested and reinvested in Permitted Investments as directed in writing by the Borrower with the prior written consent of the Controlling Person; provided, however, that any moneys held by the Fiscal Agent to pay the principal of or interest or acceleration premium that has become payable with respect to the Governmental Note shall not be invested. Written direction may include electronic direction. The

Fiscal Agent shall have no discretion for investing funds or advising any parties on investing funds. The Fiscal Agent may invest funds or direct funds to be invested in its own proprietary money market funds or deposit products. Absent written direction, the Fiscal Agent shall invest funds, or direct the investment of funds, in First American Treasury Obligations Fund Class Y Shares as standing instructions. The Fiscal Agent shall not be liable for any losses (including specifically depreciation of value) resulting from investing funds in such Permitted Investments. All Permitted Investments shall be held by or under the control of the Fiscal Agent and shall be deemed at all times to be a part of the fund and account which was used to purchase the same. The Fiscal Agent 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, except as expressly set forth herein. The Fiscal Agent 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 Fiscal Agent 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 Fiscal Agent performs its obligations hereunder in accordance with the terms of this Funding Loan Agreement. The Governmental Lender and the Borrower acknowledge that regulations of the Comptroller of the Currency grant the Governmental Lender and the Borrower the right to receive brokerage confirmations of security transactions as they occur. The Governmental Lender and the Borrower specifically waive such right to notification to the extent permitted by law and acknowledge that they will receive periodic transaction statements that will detail all investment transactions.

## ARTICLE V

### DEFAULT PROVISIONS AND REMEDIES OF FISCAL AGENT AND FUNDING LENDER

**Section 5.1** **Events of Default.** Any one of the following shall constitute an Event of Default hereunder:

- (a) failure to pay interest on the Governmental Note when and as the same shall have become due;
- (b) failure to pay the principal of or any premium on the Governmental Note when and as the same shall become due, whether at the stated maturity or prepayment date thereof or by acceleration;
- (c) failure to observe or perform any other of the covenants, agreements, or conditions on the part of the Governmental Lender included in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days after written notice to the Governmental Lender and the Borrower has been

given by the Fiscal Agent, the Funding Lender, or by the Controlling Person (with a copy to the Fiscal Agent, the Funding Lender, or the Controlling Person, as applicable); or

(d) the occurrence of an Event of Default under the Borrower Loan Agreement or the failure by the Borrower to perform or comply with any of the other terms or conditions contained in any other Funding Loan Documents to which the Borrower is a party and continuation of such failure beyond the expiration of any notice, grace or cure period provided in the Borrower Loan Agreement or the Funding Loan Documents (as applicable).

**Section 5.2 Acceleration.** Upon the occurrence of an Event of Default under Section 5.1 hereof, the Fiscal Agent shall, upon the written direction of the Funding Lender, by notice in writing sent to the Governmental Lender, the Borrower, and the Controlling Person, declare the principal of the Governmental Note (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 Fiscal Agent may exercise such rights as it may have under the Borrower Loan Agreement and the Borrower Note to declare all amounts thereunder to be immediately due and payable. In such event, there shall be due and payable on the Governmental Note an amount equal to the total principal amount of all such Governmental Note, 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 Governmental Note on the date of payment, and acceleration premium (if applicable).

**Section 5.3 Other Remedies; Rights of Noteowners.**

(a) Upon the occurrence and during the continuance of an Event of Default, the Fiscal Agent in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the Funding Lender, may proceed to protect and enforce any rights of the Fiscal Agent and, to the full extent that the Funding Lender itself might do, the rights of the Funding Lender under the laws of the State or under this Funding Loan Agreement by such of the following remedies as the Fiscal Agent shall deem most effectual to protect and enforce such rights; provided that, the Fiscal Agent may undertake any such remedy only upon the receipt of the prior written consent of the Funding Lender (which consent may be given or withheld in the sole discretion of the Funding Lender):

(i) by mandamus or other suit, action, or proceeding at law or in equity, to enforce the payment of the principal of, prepayment premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Borrower Loan Agreement, or the Land Use Restriction Agreement (as applicable) to the extent permitted under the applicable provisions thereof;

(ii) by pursuing any available remedies under the Borrower Loan Agreement, the Land Use Restriction Agreement, or any other Funding Loan Document;

(iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

(iv) by action or suit in equity to enjoin any acts or things that may be unlawful or in violation of the rights of the Funding Lender and execute any other papers and documents and do and perform any and all such acts and things as may be necessary or advisable in the opinion of the Fiscal Agent in order to have the claim of the Funding Lender against the Governmental Lender allowed in any bankruptcy or other proceeding.

(b) No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Borrower Loan Agreement, the Land Use Restriction Agreement, or any other Funding Loan Document, as applicable, or now or hereafter existing at law or in equity or by statute.

(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 Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

**Section 5.4 Right of Controlling Person to Direct Proceedings.**

(a) If an Event of Default has occurred and is continuing, the Controlling Person, on behalf of the Funding Lender, shall have the sole and exclusive right at any time to direct the time, method, and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, except as provided in the following paragraph, the Controlling Person, on behalf of the Funding Lender, shall have the sole and exclusive right at any time to directly enforce all

rights and remedies hereunder and under the other Funding Loan Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall, at the request or direction of the Controlling Person, on behalf of the Funding Lender, transfer or assign to the Funding Lender all of its interest in the Security at the request of the Funding Lender). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Controlling Person, on behalf of the Funding Lender.

(b) Notwithstanding the foregoing, or anything to the contrary herein, the Governmental Lender and the Fiscal Agent shall retain the ability to enforce all rights and remedies associated with the Reserved Rights.

**Section 5.5 Discontinuance of Default Proceedings.** In case the Fiscal Agent shall have proceeded to enforce any right under this Funding Loan Agreement 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 Governmental Lender and the Fiscal Agent shall be restored to their former positions and rights hereunder and all rights, remedies and powers of the Governmental Lender and the Fiscal Agent shall continue as if no such proceedings had been taken subject to the limits of any adverse determination.

**Section 5.6 Waiver.** The Fiscal Agent, with the consent of the Funding Lender may, and shall upon the written direction of the Funding Lender, waive any Default or Event of Default hereunder and its consequences and rescind any declaration of acceleration of maturity of principal; provided, however, that there shall be no such waiver or rescission unless all principal of, acceleration premium, if any, and interest on the Governmental Note in arrears, together with interest thereon (to the extent permitted by law) at the applicable rate of interest borne by the Governmental Note and all fees and expenses of the Fiscal Agent and the Governmental Lender shall have been paid or provided for.

**Section 5.7 Application of Moneys.** All moneys received by the Fiscal Agent pursuant to any right given or action taken under the provisions of this Article shall be deposited in the Funding Loan Fund and, after payment (out of moneys derived from a source other than moneys held for the payment of the Governmental Note) of the fees, costs, and expenses of the proceedings resulting in the collection of such moneys and of the fees, costs and expenses, liabilities and advances owing to or incurred or made by the Fiscal Agent, the Governmental Lender, the Governmental Lender Servicer, and the Funding Lender (including reasonable attorneys' fees, and all other fees, costs, and expenses of the Fiscal Agent, the Governmental Lender, the Governmental Lender Servicer, and the Funding Lender), and any sums due to the Governmental Lender under the Borrower Loan Agreement, such moneys shall be applied in the order set forth below:

(a) Unless the entire principal of the Governmental Note 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 Governmental Note in order of priority first to installments past due for the greatest period and, if the amount available shall not be sufficient to pay in full any particular installment, then to the ratable payment of the amounts due on such installment.

**Second:** to the payment of the unpaid principal of and acceleration premium, if any, of the Governmental Note which shall have become due, with interest on such Governmental Note from the respective dates upon which they became due (at the rate borne by the Governmental Note, to the extent permitted by law) and, if the amount available shall not be sufficient to pay in full Governmental Note due on any particular date, together with such acceleration premium, then to the ratable payment of the amounts due on such date.

**Third:** to the payment of the amounts required to reimburse the Governmental Lender and the Owners of the Governmental Note for any legal or other out-of-pocket costs incurred by them in connection with exercising their remedies hereunder.

**Fourth:** the balance shall be paid to the Borrower after the deposit of any required Rebate Amount to the Rebate Fund.

(b) If the principal of all the Governmental Note 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 Governmental Note, without preference or priority as between principal, premium, interest, installments of interest of the Governmental Note, ratably according to the amounts due respectively for principal, premium, and interest to the persons entitled thereto.

(c) If the principal on the Governmental Note 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 5.7 in the event that the principal of the Governmental Note shall again become or be declared due and payable, the moneys shall be applied in accordance with subsection (a) of this Section 5.7.

(d) Notwithstanding anything contained herein to the contrary, the Funding Lender may, by written notice to the Fiscal Agent, direct the application of funds other than in the manner set forth in Section 5.7(a) above, including, without limitation, the application of funds between the principal or acceleration premium of or interest on the Governmental Note.

**ARTICLE VI**  
**AMENDMENTS TO FUNDING LOAN AGREEMENT AND BORROWER LOAN**  
**AGREEMENT**

**Section 6.1 Amendments to Funding Loan Agreement.** Any of the terms of this Funding Loan Agreement, including the terms specified on the Schedule of Financial Terms and the Governmental Note, may be amended or waived only by an instrument signed by the Governmental Lender, the Fiscal Agent, the Funding Lender, the Controlling Person, and the Borrower.

**Section 6.2 Amendments to the Borrower Loan Agreement, the Borrower Note, or the Mortgage.**

(a) Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change, or modification of the Borrower Loan Agreement, the Borrower Note, or the Mortgage without the prior written consent of the Funding Lender, the Borrower, and the Controlling Person.

(b) An amendment or other document described under this Section 6.2 that materially 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 amendment or other document (provided that no such consent shall be required if the Borrower is in default under any Funding Loan Document).

**Section 6.3 Favorable Opinion of Tax Counsel.** No amendment to this Funding Loan Agreement, the Governmental Note, the Borrower Loan Agreement, the Borrower Note, the Mortgage, or the Land Use Restriction Agreement shall become effective unless and until (a) the Funding Lender shall have consented to the same in writing in its sole discretion and (b) the Funding Lender, the Governmental Lender, and the Fiscal Agent shall have received, at the expense of the Borrower, a Favorable Opinion of Tax Counsel.

**ARTICLE VII**  
**THE FISCAL AGENT**

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

(a) The Fiscal Agent may execute any of its trusts or powers hereunder and perform any of its duties by or through attorneys, agents, receivers, or employees. The Fiscal Agent shall be entitled to advice of Counsel concerning all matters hereunder, and

may in all cases pay such reasonable compensation to all such attorneys, agents, receivers, and employees. The Fiscal Agent may act upon the opinion or advice of Counsel, accountants, engineers, or surveyors selected by it in the exercise of reasonable care or, if the same are selected by the Governmental Lender, approved by the Fiscal Agent in the exercise of reasonable care. The Fiscal Agent shall not be responsible for any loss or damage resulting from any action or non-action in good faith in reliance upon such opinion or advice.

(b) Except as otherwise provided herein, the Fiscal Agent shall not be responsible for any recital herein or in the Funding Loan, or for the recording, re-recording, filing, or re-filing of this Funding Loan Agreement, of any Financing Statements or continuation statements, except as provided in Section 3.12 of the Borrower Loan Agreement, or for insuring the Security or the Project Facilities or collecting any insurance moneys, or for the validity of this Funding Loan Agreement or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Funding Loan issued hereunder or intended to be secured hereby, or for the value of or title to the Project Facilities or otherwise as to the maintenance of the Security. The Fiscal Agent shall not be liable to the Borrower, any Noteowner, any Beneficial Owner or any other Person for any loss suffered in connection with any investment of funds made by it in accordance with Section 4.7 hereof in good faith as instructed by the Borrower in accordance with the provisions of this Funding Loan Agreement, and with the prior written consent of the Controlling Person, as applicable. The Fiscal Agent shall have no duty or responsibility to examine or review and shall have no liability for the contents of any documents submitted to or delivered to any Noteowner in the nature of a preliminary or final placement memorandum, official statement, offering circular or similar disclosure document.

(c) The Fiscal Agent shall not be accountable for the use of any Governmental Note authenticated or delivered hereunder after such Funding Loan shall have been delivered in accordance with instructions of the Governmental Lender or for the use by the Borrower of the proceeds of the Funding Loan advanced to the Borrower as provided in the Borrower Loan Agreement. The Fiscal Agent may become the owner of Governmental Note secured hereby with the same rights as any other Noteowner.

(d) The Fiscal Agent shall be protected in acting upon opinions of Counsel and upon any notice, request, consent, certificate, written direction, order, affidavit, letter, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any notices, directions, consents, approvals or requests provided to the Fiscal Agent pursuant to the terms of this Funding Loan Agreement or any of the Funding Loan Documents shall not be effective until provided in writing. Any action taken by the Fiscal Agent pursuant to this Funding Loan Agreement 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 Noteowner of the

Governmental Note shall be conclusive and binding upon all future Noteowners of the same Governmental Note and upon the Governmental Note issued in exchange therefor or in place thereof.

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

(f) The Fiscal Agent 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 Fiscal Agent shall not be required to give any bond or surety in respect of the execution of said trust and powers or otherwise in respect of this Funding Loan Agreement.

(h) Before taking any action requested hereunder by the Noteowners which may require it to expend its own funds, the Fiscal Agent 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 Fiscal Agent shall not be entitled to indemnification as a precondition to giving notices of default or taking other actions at the direction of the Funding Lender or the Controlling Person which do not require the Fiscal Agent to expend its own funds or for which funds have been advanced by the Funding Lender or the Controlling Person to the Fiscal Agent in advance of its taking such action.

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

(j) The Fiscal Agent shall not be bound to ascertain or inquire as to the performance of the obligations of the Borrower or the Governmental Lender under the Borrower Loan Agreement or this Funding Loan Agreement, and shall not be deemed to have, or be required to take, notice of default under this Funding Loan Agreement (other than under Section 5.1(a) or (b), or Section 5.1(c) hereof if written notice thereof has been received by the Fiscal Agent) or the occurrence of a Determination of Taxability, except (i) in the event the Borrower fails to pay any payment when due, (ii) in the event of an insufficient amount in the Funding Loan Fund (or any account therein) to make a

principal or interest payment on the Governmental Notes, (iii) in the event of written notification of a Determination of Taxability an owner of the Governmental Note, (iv) in the event of written notification of such Default by the Controlling Person, the Funding Lender, or two or more Noteowners with combined holdings of not less than twenty-five percent (25%) of the principal amount of outstanding Funding Loan, or (v) in the event of receipt of an Opinion of Tax Counsel concluding that a Determination of Taxability has occurred, and in the absence of such notice the Fiscal Agent may conclusively presume there is no Determination of Taxability and no default except as aforesaid. The Fiscal Agent may nevertheless require the Governmental Lender and the Borrower to furnish information regarding performance of their obligations under the Borrower Loan Agreement and this Funding Loan Agreement, but is not obligated to do so.

(k) The Fiscal Agent 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 Fiscal Agent as are specifically set forth in this Funding Loan Agreement. The Fiscal Agent 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 Funding Loan Agreement and use the same degree of care and skill in their exercise as a prudent person would exercise or use under the circumstances in the conduct of his/her own affairs.

(l) In addition to the Fiscal Agent's other duties hereunder, the Fiscal Agent shall authenticate and cancel the Governmental Note 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 Governmental Lender and the Borrower at all reasonable times. The Governmental Note shall be made available for authentication, exchange, and registration of transfer at the principal office of the Fiscal Agent.

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

(n) Without limiting the duties of the Fiscal Agent expressly set forth herein or in the Tax Certificate, the Fiscal Agent shall have no obligation or responsibility whatsoever in connection with (i) any federal or state tax-exempt status of the Funding Loan or the interest thereon; (ii) the consequences of the investment or non-investment of any funds or accounts relating to the Funding Loan 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 Funding Loan Agreement, the Borrower Loan Agreement, or the Funding Loan shall require the Fiscal Agent to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

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

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

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

(s) The Fiscal Agent, in its commercial banking or in any other capacity, may in good faith buy, sell, own, hold, or deal in any of the Funding Loan and may join in any action that any Noteowner may be entitled to take with like effect as if it were not the Fiscal Agent. The Fiscal Agent, 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, Fiscal Agent, or agent for any committee of Noteowners secured hereby or other obligations of the Borrower, as freely as if it were not the Fiscal Agent hereunder. The provisions of this paragraph shall extend to the affiliates of the Fiscal Agent.

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

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

(a) The Borrower Loan Agreement provides that the Borrower will pay the reasonable fees and expenses of the Fiscal Agent under this Funding Loan Agreement and all other amounts which may be payable to the Fiscal Agent under this Section 7.2, such

fees and expenses to be paid when due and payable by the Borrower directly to the Fiscal Agent for its own account. Except as set forth in Section 6.7, the Fiscal Agent 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 Fiscal Agent from time to time, and the Fiscal Agent shall be entitled to, reasonable compensation (which shall not be limited by any provision of law in regard to the compensation of a Fiscal Agent of an express trust), (ii) pay or reimburse the Fiscal Agent upon request for all reasonable expenses, disbursements, and advances incurred or made, in accordance with any of the provisions of this Funding Loan Agreement and the Borrower 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 negligence, willful misconduct, or bad faith, and (iii) indemnify the Fiscal Agent for, and hold it harmless against, any loss, liability, or expense incurred by it, arising out of or in connection with the acceptance or administration of this Funding Loan Agreement or the trusts hereunder or the performance of its duties hereunder or under the Borrower 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. "Fiscal Agent," for purposes of this Section shall include any predecessor Fiscal Agent, but the gross negligence, willful misconduct or bad faith of any Fiscal Agent, shall not affect the indemnification of any other Person. The obligations of the Borrower under this Section shall survive the termination of this Funding Loan Agreement.

**Section 7.3 Intervention in Litigation.** In any judicial proceedings to which the Governmental Lender is a party, the Fiscal Agent may intervene on behalf of Noteowners, and shall intervene if requested in writing by the Controlling Person, the Funding Lender or the Noteowners of at least twenty-five percent (25%) in aggregate principal amount of Funding Loan then outstanding.

**Section 7.4 Resignation; Successor Fiscal Agents.**

(a) The Fiscal Agent and any successor Fiscal Agent may resign only upon giving sixty (60) days prior written notice to the Governmental Lender, the Borrower, the Controlling Person, and each Noteowner of Funding Loan then outstanding as shown on the Register. Such resignation shall take effect only upon the appointment of a successor Fiscal Agent by the Governmental Lender with the consent of the Controlling Person and the acceptance of such appointment by the successor Fiscal Agent. If no successor is appointed within sixty (60) days after the notice of resignation, the Controlling Person may appoint a Fiscal Agent or the resigning Fiscal Agent may appoint a successor or petition any court of competent jurisdiction to appoint a successor. Upon appointment of

a successor Fiscal Agent, the resigning Fiscal Agent shall assign all of its right, title, and interest in this Funding Loan Agreement and the Security to the successor Fiscal Agent. The successor Fiscal Agent 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 Fiscal Agent shall accept in writing its duties and responsibilities hereunder and such writing shall be filed with the Governmental Lender, the Controlling Person and the Borrower.

(b) Any corporation into which the Fiscal Agent 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 Fiscal Agent shall be a party, or any corporation succeeding to all or any material part of the corporate trust business of the Fiscal Agent that includes this Funding Loan Agreement, shall be the successor of the Fiscal Agent 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 Fiscal Agent shall be eligible to serve as Fiscal Agent under the provisions of this Funding Loan Agreement. If the Fiscal Agent is not the successor corporation in any such merger or consolidation, the Fiscal Agent 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 Funding Loan Agreement to such successor corporation.

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

## ARTICLE VIII CONTROLLING PERSON; SERVICING

**Section 8.1 Funding Lender to Appoint Controlling Person.** The Funding Lender may engage a Person, collaterally assign some or all of its rights hereunder to a Person, or otherwise provide for a Person, at the Funding Lender's sole cost and expense, to act on behalf of the Funding Lender under the Funding Loan Documents as the "Controlling Person." The Funding Lender may at any time and from time to time terminate or remove and replace any



such Controlling Person. The Funding Lender shall give written notice to the Governmental Lender, the Fiscal Agent, and the Borrower of its appointment, termination, removal, or replacement of any Controlling Person, and the parties may rely on any such notice until any subsequent notice is given. Subject to any written agreement between the Controlling Person and the Funding Lender, the Controlling Person may resign at any time by written notice to the Funding Lender, the Fiscal Agent, the Governmental Lender, and the Borrower. Initially, the Funding Lender has engaged R4 Servicer LLC to act as the "Controlling Person" hereunder and R4 Servicer LLC has accepted such engagement. The Funding Lender is under no obligation to appoint a Controlling Person; if at any time a Controlling Person has not been designated by the Funding Lender, all references to the "Controlling Person" herein and in the other Funding Loan Documents shall refer to the Funding Lender. Any opinion or certificate provided for herein, in the Borrower Loan Agreement, or in any other Funding Loan Document that is directed to the Controlling Person shall also be directed to, and may be relied upon by, the Funding Lender. The Funding Lender will have no liability to the Governmental Lender, the Fiscal Agent, the Borrower, the Funding Lender, or any other Person for any act or omission of the Controlling Person unless the Controlling Person is the Funding Lender or such act or omission was expressly approved by the Funding Lender in each particular case.

#### **Section 8.2    Servicing.**

(a)    The Funding Lender has appointed the Controlling Person to be the servicer of the Funding Loan and the Borrower 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 and the Funding Lender 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 Funding Loan Agreement or the Funding Loan Documents; provided, however, to the extent permitted under the Funding Loan 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 Funding Lender.

(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 Funding Loan Documents and this Funding Loan Agreement, including approval of Requisitions and Advances.

(ii) The Controlling Person shall prepare monthly bills to the Borrower (with a copy to the Fiscal Agent) in accordance with the Funding Loan Documents for payments to the Fiscal Agent of principal and interest under the Borrower Loan and for deposits into the Tax and Insurance Escrow Fund and the Replacement Reserve Fund. The Controlling Person shall notify the Borrower of the amount payable by the Borrower to the Fiscal Agent. 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 Funding Loan Agreement and the Funding Loan Documents:

- (1) the principal and interest due and payable on the Borrower Note;
- (2) the Governmental Lender's Fee and Fiscal Agent Fee, 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 the Funding Loan Documents;
- (6) any assumption or transfer fee required by this Funding Loan Agreement or Funding Loan Documents; and
- (7) any acceleration premium.

(c) All payments received under this Funding Loan Agreement or Funding Loan Documents shall be applied in the following order unless otherwise instructed by the Funding Lender or expressly set forth in this Funding Loan Agreement or the Funding Loan Documents:

- (i) to the Governmental Lender's Fee and the Fiscal Agent's Fee, as applicable;
- (ii) to the principal and interest due and payable on the Borrower Note;
- (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 Funding Loan Agreement or the other Funding Loan Documents;

(vii) to Default Interest and any late fees; and

(viii) to other amounts due under the Funding Loan Documents.

(d) Any payment received by the Controlling Person from or on behalf of the Borrower under this Funding Loan Agreement or the Funding Loan Documents shall be remitted by the Controlling Person to the Fiscal Agent no later than the second (2nd) Business Day after receipt by the Controlling Person, or sooner if so required under this Funding Loan Agreement or the Funding Loan Documents. The Controlling Person shall make any remittance to the Fiscal Agent by wire transfer in accordance with the instructions received from the Fiscal Agent.

(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 invoices and payment in accordance with terms of Funding Loan Documents. The Controlling Person shall notify the Fiscal Agent and the Governmental Lender Servicer of such adjustment.

(f) Upon request of the Funding Lender, the Controlling Person shall furnish to the Funding Lender monthly account statements received from the Fiscal Agent with respect to the any accounts established pursuant to this Funding Loan Agreement, including disbursements from such accounts, loan history schedules, outstanding loan balances, and escrow balances.

(g) The Controlling Person shall provide immediate written notice to the Funding Lender and the Fiscal Agent 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 Fiscal Agent all Borrower requests for a quote of a payoff amount for the Borrower Loan and shall request a copy of any such quote from the Funding Lender and the Fiscal Agent. The Controlling Person shall prepare payoff letters and delinquency and default notices when necessary, as required by the Funding Loan Documents or this Funding Loan Agreement or otherwise as directed by the Funding Lender.

(i) The Controlling Person shall obtain, and shall provide to the Funding Lender a copy of the Borrower's certificates of compliance with the Land Use Restriction

Agreement or other evidence of such compliance submitted by the Borrower to the Governmental Lender or the Governmental Lender Servicer within thirty (30) days after the later of (i) the date it is required to be submitted to the Governmental Lender or the Governmental Lender Servicer, or (ii) the date it is actually so submitted.

(j) The Controlling Person may perform additional duties with respect to the Funding Loan and Borrower Loan during construction of the Project Facilities or during the period following an Event of Default at the request of the Funding Lender.

(k) Notwithstanding anything in this Funding Loan Agreement to the contrary, the Funding Lender and the Controlling Person acknowledge the Funding Loan and the Borrower Loan shall be serviced by the Governmental Lender Servicer, on behalf of the Governmental Lender, for compliance and other monitoring duties pursuant to the Land Use Restriction Agreement, the Mortgage, the Mortgage Servicing Agreement, the Financial Monitoring Agreement, and the Compliance Monitoring Agreement. The Funding Lender and the Controlling Person shall cooperate with the requests of the Governmental Lender Servicer made on behalf of the Governmental Lender.

## ARTICLE IX MISCELLANEOUS

**Section 9.1 Right of Funding Lender 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 Fiscal Agent 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 Fiscal Agent hereunder arising in consequence of such failure; and any amount at any time so paid under this Section 9.1, with interest thereon from the date of payment until paid at the greater of the rate of interest borne by the Governmental Note or the per annum rate of interest announced from time to time by the bank serving as Fiscal Agent as its "prime rate" shall become so much additional indebtedness secured by this Funding Loan Agreement, shall be given a preference in payment over the Governmental Note, and shall be paid out of the Security.

**Section 9.2 Limitation of Rights.** With the exception of rights herein expressly conferred, nothing expressed or mentioned in or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the parties hereto, the Noteowners, the Controlling Person, and the Borrower, any legal or equitable right, remedy, or claim under or in respect to this Funding Loan Agreement or any covenants, conditions, and provisions herein contained; this Funding Loan Agreement 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 Noteowners, the Controlling Person, and the Borrower as herein provided.

**Section 9.3 Severability.** If any provision of this Funding Loan Agreement 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 Funding Loan Agreement, shall not affect the remaining portions of this Funding Loan Agreement or any part thereof.

**Section 9.4 Notices.** Except as otherwise provided herein, all notices, approvals, consents, requests, and other communications hereunder shall be in writing and shall be deemed to have been given when the writing is delivered if given or delivered by hand, overnight delivery service, or electronic mail (with confirmed receipt) to the address or e-mail address set forth below and shall be deemed to have been given on the date deposited in the mail, if mailed, by first-class, registered or certified mail, postage prepaid, addressed as set forth below. Where required herein, notice shall be given by telephone, and promptly confirmed in writing, and shall be deemed given when given by telephone to the telephone numbers set forth below. The Governmental Lender, the Borrower, the Fiscal Agent, the Funding Lender, the Controlling Person, and the Investor Limited Partner may, by written notice given hereunder, designate any different addresses, phone numbers and e-mail address to which subsequent notices, certificates, approvals, consents, requests, or other communications shall be sent.

**To the Governmental Lender:** Housing Finance Authority of Leon  
County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair  
Telephone: (850) 606-1900

**With a copy to:** Nabors Giblin & Nickerson P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Attention: Mark Mustian, Esq.  
Email: mmustian@ngnlaw.com  
Telephone: (850) 224-4070

**To the Fiscal Agent:** U.S. Bank Trust Company, National  
Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar  
Telephone: (954) 938-2475  
Email: amanda.kumar@usbank.com

**With a copy to:** Liebler, Gonzalez & Portuondo, P.A.  
Courthouse Tower  
25th Floor  
44 West Flagler Street  
Miami, Florida 33130  
Attention: Bernardo Portuondo, Esq.  
Telephone: (305) 379-0400  
Email: bap@lgplaw.com

**To the Borrower:** ECG Ridge Road, LP  
c/o Elmington Capital  
118 16th Avenue South, Suite 200  
Nashville, Tennessee 37203  
Telephone: (615) 922-2218  
Attention: John Shepard  
Email: jshepard@elmingtoncapital.com

**With a copy to:** Reno & Cavanaugh PLLC  
424 Church Street, Suite 2910  
Nashville, Tennessee 37219  
Attention: Dwayne Barrett, Esq.  
Telephone: (615) 866-3224  
Email: dbarrett@renocavanaugh.com

**With a copy to:** Stearns Weaver Miller Weissler Alhadeff &  
Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Attention: Brian McDonough, Esq.  
Telephone: (305) 789-3350  
Email: bmcdonough@stearnsweaver.com

**To the Funding Lender:** Allianz Life Insurance Company Of North  
America  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, NY 10017  
Attention: Tara Nussbaum  
E-mail: TNussbaum@r4cap.com

**To the Controlling Person**

R4 Servicer LLC  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble  
E-mail: gdoble@r4cap.com

**With a copy to**

Kutak Rock LLP  
Two Logan Square  
100 North 18th, Suite 1920  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire  
Email: Andrew.Schmutz@kutakrock.com

**If to Investor Limited Partner:**

U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, Missouri 63103  
Attention: Director of LIHTC Asset Management  
Email: curt.ridge@usbank.com

**With a copy to:**

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Jill Goldstein, Esq.  
Email: jill.goldstein@kutakrock.com

**If to the Governmental Lender Servicer:**

First Housing Development Corporation of Florida  
107 South Willow Avenue  
Tampa, Florida 33606  
Attention: Ed Busansky  
Phone: (813) 283-1043  
Email: ebusansky@firsthousingfl.com

**Section 9.5 Binding Effect.** This instrument shall inure to the benefit of and shall be binding upon the Governmental Lender, the Fiscal Agent, and the Funding Lender and their respective successors and assigns, subject, however, to the limitations contained in this Funding Loan Agreement.

**Section 9.6 Captions.** The captions or headings in this Funding Loan Agreement are for convenience only and in no way define, limit or describe the scope or intent of any provisions or sections of this Funding Loan Agreement.

**Section 9.7 Governing Law.** This Funding Loan Agreement shall be governed by and interpreted in accordance with the laws of the State, without regard to conflict of laws principles.

**Section 9.8 Limited Liability of Governmental Lender.** Notwithstanding anything to the contrary, any liability for payment of money and any other liability or obligation which the Governmental Lender may incur under the Governmental Note, this Funding Loan Agreement, the Borrower Loan Agreement, or any other Funding Loan Document shall not constitute a general obligation of the Governmental Lender but shall constitute limited obligations of the Governmental Lender payable solely from and enforced only against the Security.

**Section 9.9 Incorporation by Reference.** The representations, covenants, and agreements of the Governmental Lender set forth in the Funding Loan Documents are incorporated by reference herein for the benefit of the Funding Lender.

**Section 9.10 Execution in Counterparts; Electronic Signatures.** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument. To the fullest extent permitted by applicable law and except for the certificate of authentication on the Governmental Note (which must be manually signed by an authorized representative of the Fiscal Agent) and instruments of transfer of the Governmental Note, facsimile, or electronically transmitted signatures shall constitute original signatures for all purposes under this Funding Loan Agreement to the fullest extent permitted by applicable law.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, each of the Governmental Lender, Fiscal Agent, and Funding Lender has caused this Funding Loan Agreement to be executed in its name and on its behalf by its authorized official all as of the day and year first above written.

**HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**, as Governmental Lender

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Vice President

**ALLIANZ LIFE INSURANCE COMPANY OF  
NORTH AMERICA, as Funding Lender**

By: R4 Capital Funding LLC, a Delaware limited  
liability company, its attorney in fact

By: \_\_\_\_\_  
James D. Spound  
President

EXHIBIT A

FORM OF GOVERNMENTAL NOTE

THIS GOVERNMENTAL NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "SECURITIES ACT"), OR THE SECURITIES LAWS OF ANY STATE OR OTHER JURISDICTION.

THIS GOVERNMENTAL NOTE IS SUBJECT TO A SIGNIFICANT DEGREE OF RISK AND IS SUITABLE FOR CONSIDERATION SOLELY FOR APPROVED TRANSFEREES WHO ARE EXPERIENCED IN THE FIELD OF UNRATED MULTIFAMILY HOUSING BONDS. NO RATING FOR THIS GOVERNMENTAL NOTE HAS BEEN APPLIED FOR AND THERE IS NO ASSURANCE GIVEN THAT ANY RATING WOULD BE RECEIVED IF AN APPLICATION FOR A RATING HAD BEEN MADE. BY THE ACQUISITION OF THIS GOVERNMENTAL NOTE, THE HOLDER IS AVOWING THAT SUCH HOLDER: (A) IS AN APPROVED TRANSFEREE; (B) IS ACQUIRING THIS GOVERNMENTAL NOTE SOLELY FOR ITS OWN ACCOUNT; (C) CAN BEAR THE ECONOMIC RISK OF ITS INVESTMENT IN THIS GOVERNMENTAL NOTE; (D) HAS SUCH KNOWLEDGE AND EXPERIENCE IN FINANCIAL AND BUSINESS MATTERS IN GENERAL AND TAX-EXEMPT OBLIGATIONS, IN PARTICULAR, THAT IT IS CAPABLE OF EVALUATING THE MERITS AND RISKS OF ACQUIRING THIS GOVERNMENTAL NOTE; AND (E) HAS MADE THE DECISION TO ACQUIRE THIS GOVERNMENTAL NOTE BASED ON ITS OWN INDEPENDENT INVESTIGATION REGARDING THIS GOVERNMENTAL NOTE AND HAS RECEIVED THE INFORMATION IT CONSIDERS NECESSARY TO MAKE AN INFORMED DECISION TO INVEST IN THIS GOVERNMENTAL NOTE, CONSISTENT WITH QUALIFICATION AS AN APPROVED TRANSFEREE. THE GOVERNMENTAL LENDER AND FISCAL AGENT SHALL HAVE NO LIABILITY OR RESPONSIBILITY FOR DETERMINING THE SUITABILITY OF ANY PURCHASER OR TRANSFEREE OF THIS GOVERNMENTAL NOTE, NOR SHALL ANY DOCUMENTATION THEREFOR BE REQUIRED. THIS GOVERNMENTAL NOTE IS UNRATED. BY THE ACQUISITION AND ACCEPTANCE OF THIS GOVERNMENTAL NOTE THE HOLDER ACKNOWLEDGES AND AGREES THAT THIS GOVERNMENTAL NOTE SHALL NOT BE OFFERED, SOLD, ASSIGNED, PLEDGED, OR OTHERWISE TRANSFERRED EXCEPT AS PROVIDED HEREIN AND IN THE FUNDING LOAN AGREEMENT (AS DEFINED HEREIN) AND THAT IT WILL GIVE TO EACH PERSON TO WHOM THIS GOVERNMENTAL NOTE IS TRANSFERRED A NOTICE SUBSTANTIALLY TO THE EFFECT OF THIS LEGEND.

THIS GOVERNMENTAL NOTE IS NOT A GENERAL OR SPECIAL OBLIGATION OF THE GOVERNMENTAL LENDER BUT IS A LIMITED OBLIGATION PAYABLE, BOTH AS TO PRINCIPAL AND INTEREST, SOLELY FROM THE MONEYS AND PROPERTIES PLEDGED FOR PAYMENT THEREOF UNDER THE FUNDING LOAN DOCUMENTS. THE GOVERNMENTAL NOTE DOES NOT CONSTITUTE AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE STATE OR ANY LOCAL GOVERNMENT OF THE STATE

WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF THIS GOVERNMENTAL NOTE OR THE INTEREST HEREON. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA  
MULTIFAMILY MORTGAGE REVENUE NOTE  
(RIDGE ROAD),  
SERIES 2023

\$51,000,000

\_\_\_\_\_, 2023

FOR VALUE RECEIVED, the undersigned HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA ("**Obligor**") promises to pay to the order of ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA ("**Noteowner**") the maximum principal sum of FIFTY ONE MILLION DOLLARS (\$51,000,000), on \_\_\_\_\_ 1, 2063, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Noteowner on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (as the same may be modified, amended, or supplemented from time to time, the "**Funding Loan Agreement**"), between Obligor, Noteowner, and U.S. Bank Trust Company, National Association ("**Fiscal Agent**"), an amount in immediately available funds sufficient to pay the principal amount of and prepayment premium, if any, on the Funding Loan then due and payable, whether by maturity, acceleration, prepayment, or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds, or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid.

Obligor shall pay to the Noteowner on or before each date on which interest on the Funding Loan is payable interest on the unpaid balance hereof in an amount in immediately available funds sufficient to pay the interest on the Funding Loan then due and payable in the amounts and at the rate or rates set forth in the Funding Loan Agreement.

The Funding Loan and this Governmental Note are pass-through obligations relating to a construction and permanent loan (the "**Borrower Loan**") made by Obligor from proceeds of the Funding Loan to ECG RIDGE ROAD, LP, a Florida limited partnership, as borrower (the "**Borrower**"), under that certain Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (as the same may be modified, amended, or supplemented from time to time, the "**Borrower Loan Agreement**"), between the Obligor and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement

and to the Borrower Note for complete payment and prepayment terms of the Borrower Note, payments on which are passed-through under the Governmental Note.

THIS GOVERNMENTAL NOTE IS NOT A DEBT OR AN OBLIGATION, EITHER GENERAL OR SPECIAL, OF THE OBLIGOR, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE OBLIGOR, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON. NEITHER THE FAITH, REVENUES, CREDIT, NOR TAXING POWER OF THE OBLIGOR, THE STATE, OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF, PREMIUM (IF ANY), OR INTEREST ON THIS GOVERNMENTAL NOTE. THIS GOVERNMENTAL NOTE IS PAYABLE, AS TO PRINCIPAL, PREMIUM (IF ANY), AND INTEREST, SOLELY OUT OF THE PLEDGED REVENUES AND THE SECURITY WHICH IS THE SOLE ASSET OF THE OBLIGOR PLEDGED THEREFOR, AND THEN ONLY TO THE EXTENT PROVIDED IN THE FUNDING LOAN AGREEMENT. NEITHER THE MEMBERS OF THE OBLIGOR NOR ANY PERSONS EXECUTING THIS GOVERNMENTAL NOTE SHALL BE LIABLE PERSONALLY ON THIS NOTE BY REASON OF THE EXECUTION, DELIVERY AND PLACEMENT HEREOF. THE OBLIGOR HAS NO TAXING POWER.

NO MEMBER, OFFICER, AGENT, EMPLOYEE, OR ATTORNEY OF THE OBLIGOR, INCLUDING ANY INDIVIDUAL EXECUTING THE FUNDING LOAN AGREEMENT OR THIS GOVERNMENTAL NOTE, SHALL BE LIABLE PERSONALLY ON THIS GOVERNMENTAL NOTE OR FOR ANY REASON RELATING TO THE EXECUTION, DELIVERY, AND PLACEMENT OF THIS GOVERNMENTAL NOTE. NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF OR THE INTEREST ON THIS GOVERNMENTAL NOTE, OR FOR ANY CLAIM BASED ON THIS GOVERNMENTAL NOTE, OR OTHERWISE IN RESPECT OF THIS GOVERNMENTAL NOTE, OR BASED ON OR IN RESPECT OF THE FUNDING LOAN AGREEMENT OR ANY SUPPLEMENT THERETO, AGAINST ANY MEMBER, OFFICER, EMPLOYEE, OR AGENT, AS SUCH, OF THE OBLIGOR OR ANY SUCCESSOR, WHETHER BY VIRTUE OF ANY CONSTITUTION, STATUTE, OR RULE OF LAW, OR BY THE ENFORCEMENT OF ANY ASSESSMENT OR PENALTY OR OTHERWISE, ALL SUCH LIABILITY BEING, BY THE ACCEPTANCE OF THIS NOTE AND AS PART OF THE CONSIDERATION FOR THE EXECUTION AND DELIVERY OF THIS GOVERNMENTAL NOTE, EXPRESSLY WAIVED AND RELEASED.

All capitalized terms used but not defined herein shall have the meanings ascribed to them in the Funding Loan Agreement or in the Borrower Loan Agreement.

This Governmental Note is subject to the express condition that at no time shall interest be payable on this Governmental Note or the Funding Loan at a rate in excess of that allowed by law; and Obligor shall not be obligated or required to pay, nor shall the Noteowner be permitted to charge or collect, interest at a rate in excess of such maximum rate. If by the terms of this Governmental Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such maximum rate, the rate of interest hereunder or thereunder shall be deemed

to be reduced immediately and automatically to such maximum rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

Amounts payable hereunder representing late payments, penalty payments, or the like shall be payable to the extent allowed by law.

This Governmental Note is subject to all of the terms, conditions, and provisions of the Funding Loan Agreement, including those respecting prepayment and the acceleration of maturity.

If there is an Event of Default under the Funding Loan Documents, then in any such event and subject to the requirements set forth in the Funding Loan Agreement, the Noteowner may declare the entire unpaid principal balance of this Governmental Note and accrued interest, if any, due and payable at once. All of the covenants, conditions, and agreements contained in the Funding Loan Documents are hereby made part of this Governmental Note.

No delay or omission on the part of the Noteowner in exercising any remedy, right, or option under this Governmental Note or the Funding Loan Documents shall operate as a waiver of such remedy, right, or option. In any event a waiver on any one occasion shall not be construed as a waiver or bar to any such remedy, right, or option on a future occasion. The rights, remedies, and options of the Noteowner under this Governmental Note and the Funding Loan Documents are and shall be cumulative and are in addition to all of the rights, remedies, and options of the Noteowner at law or in equity or under any other agreement.

Obligor shall pay all costs of collection on demand by the Noteowner, including without limitation, reasonable attorneys' fees and disbursements, which costs may be added to the indebtedness hereunder, together with interest thereon, to the extent allowed by law, as set forth in the Funding Loan Agreement.

This Governmental Note may not be changed orally. Presentment for payment, notice of dishonor, protest, and notice of protest are hereby waived. The acceptance by the Noteowner of any amount after the same is due shall not constitute a waiver of the right to require prompt payment, when due, of all other amounts due hereunder. The acceptance by the Noteowner of any sum in an amount less than the amount then due shall be deemed an acceptance on account only and upon condition that such acceptance shall not constitute a waiver of the obligation of Obligor to pay the entire sum then due, and Obligor's failure to pay such amount then due shall be and continue to be a default notwithstanding such acceptance of such amount on account, as aforesaid. Consent by the Noteowner to any action of Obligor which is subject to consent or approval of the Noteowner hereunder shall not be deemed a waiver of the right to require such consent or approval to future or successive actions.

IN WITNESS WHEREOF, the undersigned has duly executed by manual or facsimile signature and delivered this Governmental Note or caused this Governmental Note to be duly executed by manual or facsimile signature and delivered by its authorized representative as of the date first set forth above.

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Governmental Lender**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary



**CERTIFICATE OF AUTHENTICATION**

This Governmental Note is issued under the provisions of and described in the within mentioned Funding Loan Agreement.

Date of Authentication: \_\_\_\_\_, 2023

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION**

By: \_\_\_\_\_  
Authorized Signer

EXHIBIT B

FORM OF INVESTOR LETTER

[Date]

Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301

U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309

Re: HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA  
MULTIFAMILY MORTGAGE REVENUE NOTE (RIDGE ROAD), SERIES 2023

The undersigned (the "**Funding Lender**") hereby acknowledges receipt of the Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023, dated \_\_\_\_\_, 2023 (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "**Funding Loan Agreement**"), among the Funding Lender, the Housing Finance Authority of Leon County, Florida (the "**Governmental Lender**"), and U.S. Bank Trust Company, National Association (the "**Fiscal Agent**"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

1. The Funding Lender has authority to purchase the Funding Loan evidenced by the Governmental Note and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the purchase of the Funding Loan evidenced by the Governmental Note.

2. The Funding Lender is an Approved Transferee.

3. The Funding Lender has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan and the Governmental Note. The Funding Lender is able to bear the economic risks of such an investment.

4. The Funding Lender acknowledges that it is purchasing the Funding Loan evidenced by the Governmental Note for investment for its own account and not with a present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan or the

Governmental Note; provided, however, that the Funding Lender may, notwithstanding the foregoing, sell, assign, or otherwise transfer (a) the Governmental Note and the Funding Loan in whole, or (b) any portion of or a participation interest in the Governmental Note and the Funding Loan in minimum denominations of \$250,000 each and multiples of \$5,000 in excess of such minimum denomination; provided, further, that the Governmental Note may be transferred, or any participation interest therein granted, only to an Approved Transferee.

5. The Funding Lender understands that the Governmental Note is not registered under the Act and that such registration is not legally required as of the date hereof; and further understands that the Governmental Note (a) is not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (b) will not be listed in any stock or other securities exchange, (c) will not carry a rating from any rating service, and (d) will be delivered in a form which may not be readily marketable.

6. The Funding Lender understands that (a) the Funding Loan and the Governmental Note are not secured by any pledge of any moneys received or to be received from taxation by the State of Florida or any political subdivision thereof and that the Governmental Lender has no taxing power, (b) the Funding Loan and the Governmental Note do not and will not represent or constitute a general obligation or a pledge of the faith and credit of the Governmental Lender, the State of Florida or any political subdivision thereof; and (c) the liability of the Governmental Lender with respect to the Funding Loan and the Governmental Note is limited to the Pledged Revenues (as defined and as set forth in the Funding Loan Agreement).

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the purchase of the Funding Loan evidenced by the Governmental Note, and the Funding Lender has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the Project Facilities, the use of proceeds of the Governmental Note, and the security therefor so that, as a reasonable lender, the Funding Lender has been able to make its decision to make the Funding Loan and to acquire the Governmental Note. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan and the Governmental Note. In addition, the Funding Lender has not relied upon the use of any offering memorandum, placement memorandum, or any other similar document with regards to its decision to make the Funding Loan and to acquire the Governmental Note. The Funding Lender is making its decision to make the Funding Loan to the Governmental Lender and to acquire the Governmental Note directly through its credit review and due diligence concerning the Borrower and the Project Facilities.

8. The Funding Lender has made its own inquiry and analysis with respect to the Funding Loan and the Governmental Note and the security therefor, and other material factors affecting the security and payment of the Funding Loan and the Governmental Note. The Funding Lender is aware that the business of the Borrower involves certain economic variables

and risks that could adversely affect the security for the Funding Loan and the Governmental Note.

9. All agreements, representations, and warranties made herein shall survive the execution and delivery of this letter agreement and, notwithstanding any investigation heretofore or hereafter, shall continue in full force and effect.

**[SIGNATURE BLOCK]**

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

**EXHIBIT C-1**

**FORM OF COSTS OF ISSUANCE REQUISITION  
(Governmental Lender Costs of Issuance Account)**

Housing Finance Authority of Leon County, Florida  
Multifamily Mortgage Revenue Note  
(Ridge Road),  
Series 2023

Mortgaged Property Name: Ridge Road

Fiscal Agent: U.S. Bank Trust Company, National Association

Payee: See Schedule A

Amount: See Schedule A

Method of Payment: See Schedule A

Description of Expense: See Schedule A

Fund and Account which expenses are to be paid from: See Schedule A

Account Number: See Schedule A

You are hereby instructed to pay the amount above to the payee set forth above by means acceptable to you and such payee.

Very truly yours,

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA**, as the Governmental Lender

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

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

EXHIBIT C-2

**FORM OF COSTS OF ISSUANCE REQUISITION  
(Borrower Costs of Issuance Account)**

Housing Finance Authority of Leon County, Florida  
Multifamily Mortgage Revenue Note  
(Ridge Road),  
Series 2023

Dated: \_\_\_\_\_, 2023

Costs of Issuance Requisition No. \_\_\_\_

TO: U.S. Bank Trust Company, National Association, as fiscal agent (the "Fiscal Agent") under the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), with the Housing Finance Authority of Leon County, Florida and Allianz Life Insurance Company Of North America

Terms used herein and not otherwise defined shall have the meanings given to such terms in the Funding Loan Agreement.

The undersigned authorized representative of ECG Ridge Road, LP, a Florida limited liability company (the "**Borrower**"), hereby certifies to you that he/she is authorized and empowered to submit this requisition to you and that attached hereto as Schedule "A" is a schedule of costs of funding incurred in connection with the execution, delivery, and placement of the Governmental Note, including the names and addresses of the payees and the specific amounts payable to each such payee, and that to the best of the undersigned's information and belief, such amounts are true and correct.

This requisition is being delivered to you in accordance with the referenced Funding Loan Agreement pursuant to which the Governmental Note was executed and delivered. You are hereby instructed to withdraw from Borrower Costs of Issuance Account of the Costs of Issuance Fund created under the Funding Loan Agreement the amounts shown across from each payee listed on Schedule "A" hereto and pay such amounts to each such payee by check delivered by first class mail or by such other means as is acceptable to you and any such payee.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the undersigned has signed this Requisition by and on behalf of the Borrower.

BORROWER:

ECG RIDGE ROAD, LP, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

Approved by the Governmental Lender Servicer:

Approved by the Controlling Person:

R4 SERVICER LLC, as Controlling Person

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

Dated: \_\_\_\_\_, 20\_\_

FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA

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

**SCHEDULE A**

**SCHEDULE OF FINANCIAL TERMS**

Project: Ridge Road

Closing Date: \_\_\_\_\_, 2023

<b>Basic Loan Terms</b>	
Authorized Amount:	\$51,000,000
Loan Funding Dates:	The Funding Lender shall fund the above draw-down installments, each installment in an amount not less than \$500,000, on the purchase dates set forth above; provided, however, that the Borrower may elect to increase or decrease the amount of the draw to be paid on such dates by providing at least ten days advance written notice to the Controlling Person, Fiscal Agent, Governmental Lender Servicer, and Funding Lender. Any such notice modifying the amounts to be drawn shall include a replacement schedule of all future draw amounts.
Interest Rate:	A Fixed Rate of 5.52% (five and 52/100 percent)
Maturity Date:	_____ 1, 2060
First Loan Payment Date:	_____ 1, 2023
First Principal Payment Date:	_____ 1, 2028 [60 Months after Closing]
First Optional Call Date:	_____ 1, 2040
First Put Date:	_____ 1, 2041
Mandatory Prepayment Amount:	\$26,876,000
<b>Other Terms:</b>	
Minimum Coverage:	1.15 to 1.0
Minimum Occupancy:	90%
Testing Period:	Three (3) Months
Operating Reserve Amount:	\$1,393,389
Completion Date:	_____ 1, 2024
Outside Stabilization Date:	_____ 1, 20__
Underwritten Expenses:	\$_____ per annum (increased on an annual basis commencing January 1, 20__ by 3%) adjusted to reflect actual cost of utilities, insurance and Impositions (provided that for Impositions constituting real property



	taxes, if any, the cost shall be based on the full assessed value of the Project after taking into account completion of construction), plus all required deposits into the Replacement Reserve Fund.
Underwritten Economic Vacancy	_____ %
Underwritten Management Fee	_____ %
Retainage	_____ % until _____ % completion, then zero percent (0%) thereafter.
Guarantor(s):	Elmington Affordable LLC
Guarantor Financial Covenants:	Minimum Liquidity: \$ _____ Minimum Net Worth: \$ _____
Subordinate Loans:	(i) \$9,800,000 State Apartment Incentive Loan (SAIL) Program Loan; (ii) \$37,500 Local Government Contribution Loan; and (iii) \$2,750,000 Self-Sourced Loan.
Subordinate Lender:	(i) Florida Housing Finance Corporation; (ii) Housing Finance Authority of Leon County, Florida; and (iii) Elmington Affordable, LLC
Origination Fee:	\$ _____
Construction Monitoring Fee:	\$ _____
Tax Abatement/Exemption:	None

SCHEDULE A-2

**EXHIBIT B**

**FORM OF BORROWER LOAN AGREEMENT**

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**BORROWER LOAN AGREEMENT**

**by and between**

**ECG RIDGE ROAD, LP**

**and**

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

**Dated as of \_\_\_\_\_ 1, 2023**

**Relating to:**

**\$51,000,000**

**Housing Finance Authority of Leon County, Florida  
Multifamily Mortgage Revenue Note  
(Ridge Road),  
Series 2023**

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All of the right, title, and interest of the Housing Finance Authority of Leon County, Florida (except for its Reserved Rights) in and to this Borrower Loan Agreement are being assigned to U.S. Bank Trust Company, National Association, as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, by and among the Governmental Lender, the Funding Lender named therein, and the Fiscal Agent.

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## BORROWER LOAN AGREEMENT

This BORROWER LOAN AGREEMENT (as amended, modified, or supplemented from time to time, this "**Agreement**") made as of \_\_\_\_\_ 1, 2023, by and between the HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA, a public body corporate and politic existing under the laws of the State of Florida (together with its permitted successors and assigns, the "**Governmental Lender**") and ECG RIDGE ROAD, LP, a limited partnership duly organized and validly existing under the laws of the State of Florida (together with its permitted successors and assigns, the "**Borrower**").

### WITNESSETH:

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of the Governmental Lender Finance Authority Law, Sections 159.601 through 159.623, Part IV, Florida Statutes, as amended; Chapter 2, Article III, Division 3, Sections 2-71 et seq., Leon County Code of Laws, as supplemented and amended (collectively, the "**Act**"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe, and sanitary housing for persons or families of low, moderate, and middle income in the State of Florida (the "**State**"); and

**WHEREAS**, the Act authorizes the Governmental Lender (a) to make loans to sponsors to provide financing for residential developments within the State, and intended to be occupied, to the extent required by applicable federal tax law, by persons or families of low, moderate, and middle income, as determined by the Governmental Lender; (b) to authorize the issuance of revenue notes by the Governmental Lender for the purpose of obtaining moneys to make such loans and to provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such notes; and (c) to pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge, or grant security interests in such loans in order to secure the payment of the principal or prepayment price of and interest on such notes; and

**WHEREAS**, the Borrower has applied to the Governmental Lender for a loan (the "**Borrower Loan**"), to finance the acquisition, construction, and equipping of a multifamily rental housing facility consisting of total of 250 units and related personal property and equipment, located in Tallahassee, Leon County, Florida and known as "Ridge Road" (the "**Project Facilities**"); and

**WHEREAS**, the Borrower has requested the Governmental Lender to enter into the Funding Loan Agreement of even date herewith (as it may be supplemented or amended, the "**Funding Loan Agreement**") under which Allianz Life Insurance Company Of North America (the "**Funding Lender**") will make a loan in the aggregate principal amount of \$51,000,000 (the "**Funding Loan**") to the Governmental Lender, the proceeds of which will be loaned pursuant to

this Agreement to finance all or a portion of the acquisition, construction, and equipping of the Project Facilities; and

**WHEREAS**, pursuant to this Agreement, the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under the Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due; and

**WHEREAS**, to evidence its payment obligations under this Agreement, the Borrower will execute and deliver to the Governmental Lender its Promissory Note, dated the Closing Date (the "**Borrower Note**"), and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project Facilities pursuant to a First Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of the date hereof, made by the Borrower to the Governmental Lender and assigned to the Fiscal Agent covering the Project Facilities (the "**Mortgage**"); and

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:

## ARTICLE I

### 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 Funding Loan Agreement or the Borrower Note, as applicable.

**Section 1.2** **Rules of Construction; Time of Day.** In this Agreement, unless otherwise indicated, (a) defined terms may be used in the singular or the plural and the use of any gender includes all genders; (b) the words "hereof," "herein," "hereto," "hereby," and "hereunder" refer to this entire Agreement; and (c) all references to particular Articles or Sections are references to the Articles or Sections of this Agreement; (d) the terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants;" (e) the term "including" shall mean "including, but not limited to;" and (f) 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 savings time, as in effect in Fort Lauderdale, Florida on such day.

## ARTICLE II

### LOAN AND PROVISIONS FOR REPAYMENT

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

(a) The Governmental Lender agrees, upon the terms and conditions contained in this Agreement and the Funding Loan Agreement, to lend to the Borrower the proceeds of the Funding Loan received by the Governmental Lender from the Funding Lender. Such proceeds shall be disbursed to or on behalf of the Borrower as provided for in this Agreement and the Funding Loan Agreement. The Borrower's obligation to repay the Borrower Loan shall be evidenced by the Borrower Note, the form of which is attached hereto as Exhibit A.

(b) The Borrower hereby agrees to pay the Borrower Note and repay the Borrower Loan made pursuant to this Agreement by paying or causing to be paid to the Fiscal Agent for payment to the Funding Lender in immediately available funds on each Loan Payment Date. As provided in the Borrower Note, such payments shall be made two Business Days prior to the applicable Loan Payment Date.

(c) Each such payment shall be made to the Fiscal Agent by deposit to such account as the Funding Lender or Controlling Person, as applicable, may designate by written notice to the Borrower. Whenever any Borrower Loan Payment shall be stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

(d) It is understood and agreed that the Borrower Note and all payments payable by the Borrower under this Section 2.1 are assigned by the Governmental Lender to Fiscal Agent for the benefit of the Funding Lender. The Borrower assents to such assignment. The Governmental Lender hereby directs the Borrower and the Borrower hereby agrees to pay to the Fiscal Agent, at the address specified in or in accordance with Section 10.1 hereof, all loan repayments payable to the Governmental Lender pursuant to the Borrower Note and this subsection.

(e) The Borrower shall have, and is hereby granted, the option to prepay the unpaid principal amount of the Borrower Loan, together with interest thereon to the date of prepayment, but only to the extent set forth in the Borrower Note.

(f) The Controlling Person shall deliver to the Fiscal Agent, the Governmental Lender, and the Borrower the Debt Service Schedule on or before the first day of the month preceding the First Principal Payment Date, providing for level debt service with respect to the Borrower Note remaining Outstanding after the first day of the month preceding the First Principal Payment Date calculated on the basis of the Fixed Rate and a 480-month amortization schedule each commencing on the first day of the month preceding the First Principal Payment Date with principal payments commencing on the First Principal Payment Date (with all remaining principal payable on the Maturity Date, if applicable).

**Section 2.2 Fees.**

(a) On the date of execution and delivery of this Agreement, the Borrower shall pay, or cause to be paid, to R4 Capital Funding LLC the Origination Fee and to R4 Servicer LLC a Construction Monitoring Fee, together with the fees and expenses of its counsel.

(b) The Borrower shall pay (as directed by the Controlling Person) two Business Days before each Loan Payment Date, commencing on the First Loan Payment Date and continuing through final completion of the Work in respect of the Project Facilities, an amount equal to the costs of the Engineering Consultant incurred by the Controlling Person in the prior month in an amount not to exceed \$2,500 per month (plus travel and reasonable and necessary expenses). If the Borrower fails to requisition such costs, the Controlling Person may request the Fiscal Agent to disburse such amounts as part of any Advance.

(c) The Borrower shall pay to the Fiscal Agent the Governmental Lender Fee and all expenses of the Governmental Lender in accordance with the provisions of the Funding Loan Documents for deposit in the Administrative Expense Fund as required by the Funding Loan Agreement.

(d) The Borrower shall pay the Fiscal Agent Fee and all expenses of the Fiscal Agent in accordance with the provisions of the Funding Loan Documents for deposit in the Administrative Expense Fund as required by the Funding Loan Agreement.

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

(f) The Borrower shall pay to the Fiscal Agent the Governmental Lender Servicer Fee and all expenses of the Governmental Lender Servicer in accordance with the provisions of the Funding Loan Documents for deposit in the Administrative Expense Fund as required by the Funding Loan Agreement; provided, however, such fees and expenses may be paid by the Borrower directly to the Governmental Lender Servicer.

**Section 2.3 Termination and Prepayment.**

(a) Notwithstanding anything to the contrary contained in this Agreement or the other Funding Loan Documents, the Controlling Person's and the Funding Lender's and each Noteowner's rights, interests, and remedies hereunder and under the other Funding Loan Documents shall not terminate or expire or be deemed to have been discharged or released until the payment in full of the Borrower Note and the Governmental Note. 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 Borrower Loan may be prepaid by the Borrower, and the Governmental Note shall be correspondingly paid pursuant to Section 3.2 of the Funding Loan Agreement, on any Loan Payment Date on or after the First Optional Call Date, upon the payment of the principal amount of the Borrower Note plus interest accrued thereon and acceleration premium, if any, to, but not including, the date of prepayment, as provided in the Borrower Note.

(c) Acceleration of the obligations of the Borrower hereunder upon an Event of Default prior to the First Optional Call Date, shall constitute an evasion of the prepayment provisions of this Agreement and any tender of payment of an amount necessary to satisfy the entire indebtedness evidenced by this Agreement shall include an acceleration premium, equal to the amount of interest which would have accrued on the amount of the Borrower Note scheduled to be outstanding from the date of acceleration to, but not including, the First Optional Call Date.

(d) In the event of a partial prepayment of the Borrower Loan (other than pursuant to Section 5(c) of the Borrower Note), the mandatory prepayment schedule set forth on the Debt Service Schedule shall be adjusted to provide for level debt service in respect of the Borrower Loan remaining outstanding after such partial prepayment, on the basis of the number of months remaining in the original 480-month amortization schedule. The Controlling Person shall provide the Governmental Lender, the Fiscal Agent, the Funding Lender, and the Borrower with the Debt Service Schedule reflecting such adjustment promptly following any such partial prepayment. The Controlling Person, with the prior written consent of the Governmental Lender and the Borrower, may deliver a modified Debt Service Schedule from time to time hereafter for any other purpose agreed to by the Governmental Lender, the Controlling Person, and Borrower. In connection with any such modified Debt Service Schedule, the Controlling Person shall, at Borrower's expense, receive a Favorable Opinion of Tax Counsel.

**Section 2.4 Obligations Absolute.** The obligations of the Borrower under this Agreement, the Borrower Note, and the other Funding Loan Documents 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: (a) any lack of validity or enforceability of the Funding Loan Documents or any other agreement or document relating thereto; (b) any amendment or waiver of or any consent to or departure from the Funding Loan Documents or any document relating thereto; or (c) the existence of any claim, set-off, defense, or other right which the Borrower may have at any time against the Governmental Lender or the Fiscal Agent (or any persons or entities for whom the Fiscal Agent 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 Borrower Loan evidenced hereby has been indefeasibly paid in full, whether owing under this Agreement or under the other Funding Loan Documents.

**Section 2.5 Indemnification.** The Borrower covenants to defend, indemnify, and hold harmless the Governmental Lender, the Fiscal Agent, the Funding Lender, the Controlling Person, and each of their respective Affiliates and each of their and their Affiliates' respective directors, officers, employees, representatives, and agents (collectively, the "**Indemnified Parties**"), except as limited below, from and against any and all claims, damages, losses, liabilities, costs, or expenses (including attorneys' fees for counsel of each of the Indemnified Parties' choice) whatsoever which the Indemnified Parties may incur (or which may be claimed against any of the Indemnified Parties by any person or entity whatsoever) by reason of or in connection with:

(a) the Governmental Note, the Funding Loan Agreement, this Agreement, Land Use Restriction Agreement, or Tax Certificate, or the execution or amendment hereof or thereof, or in connection with the transactions contemplated hereby or thereby, including the issuance, sale or resale, defeasance, or prepayment of the Governmental Note;

(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 Funding Loan 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 Funding Lender's actions taken pursuant to this Agreement or any of the other Funding Loan Documents or any other event or transaction contemplated by any of the foregoing;

(d) any untrue statement or alleged untrue statement contained or incorporated by reference in any offering or reoffering materials prepared in respect of the Governmental Note, or any supplement or amendment thereof, or the omission or

alleged omission to state therein a material fact necessary to make such statements in light of the circumstances in which they are or were made not misleading;

(e) the acceptance or administration of the Funding Loan Documents or the Security Interests thereunder or the performance of duties under the Funding Loan 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 Governmental Lender and the Fiscal Agent hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions, and other charges imposed on the Governmental Lender and the Fiscal Agent 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, including with respect to Contamination or Environmentally Sensitive Areas;

(i) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent, the Funding Lender, or any other Indemnified Party, related to remedies under, this Agreement, the Funding Loan Agreement, and the other Funding Loan 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 Governmental Note not being excludable from gross income for purposes of federal income taxation or exempt from state income taxation;

(k) any action, suit, claim, or demand contesting or affecting the title of the Project Facilities;

(l) the investigation of, preparation for, or defense of any litigation, proceeding, or investigation in connection with the Project Facilities or the transactions to

be consummated in connection therewith of any nature whatsoever, commenced or threatened against the Borrower, the Project Facilities, or any Indemnified Party; and

(m) any brokerage commissions or finders' fees claimed by any broker or other party in connection with the Governmental Note or the Project Facilities.

The indemnification shall include the reasonable costs and expenses of defending itself or investigating any claim of liability and other reasonable expenses and attorneys' fees incurred by the Indemnified Parties, provided the Borrower shall not be required to indemnify any of the Indemnified Parties for any claims, damages, losses, liabilities, costs, or expenses to the extent, but only to the extent, caused by the willful misconduct or gross negligence of any Indemnified Party. The obligations of the Borrower under this Section shall survive the termination of this Agreement and the Funding Loan Agreement. Notwithstanding any other provision of this Agreement or the Funding Loan Agreement to the contrary, the Borrower agrees (i) not to assert any claim or institute any action or suit against the Fiscal Agent or its employees arising from or in connection with any investment of funds made by the Fiscal Agent in good faith as directed by the Governmental Lender, the Borrower, the Controlling Person, or the Funding Lender, and (ii) to indemnify and hold the Fiscal Agent 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 Governmental Lender 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 Governmental Lender incurs expenses or renders service in connection with any bankruptcy or insolvency proceeding, such expenses (including the fees and expenses of its counsel) and the compensation for such services are intended to constitute expenses of administration under any bankruptcy law or law relating to creditors rights generally. The obligations of Borrower to the Indemnified Parties under this Section shall not be subject to the recourse limitations of Section 10.13 hereof.

**Section 2.6 Indemnification; Borrower's Additional Obligations.**

(a) TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE GOVERNMENTAL LENDER 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 AGREEMENT IS A PART OR ARISING IN ANY



MANNER IN CONNECTION WITH THE PROJECT FACILITIES OR THE FINANCING OF THE PROJECT FACILITIES, INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT FACILITIES OR THE OPERATION OF THE PROJECT FACILITIES DURING THE TERM OF THIS AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS AGREEMENT, OR (III) THE PROJECT FACILITIES OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT, OR RESTRICTION RELATING TO THE PROJECT FACILITIES EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE GOVERNMENTAL NOTE, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE, OR REGULATION AFFECTING THE PROJECT FACILITIES OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM THE GOVERNMENTAL LENDER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS, OR EMPLOYEES, THE BORROWER SHALL DEFEND THE GOVERNMENTAL LENDER 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 GOVERNMENTAL LENDER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

(b) IT IS THE INTENTION OF THE PARTIES HERETO THAT THE GOVERNMENTAL LENDER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE GOVERNMENTAL LENDER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES IN CONNECTION WITH THE ISSUANCE OF THE GOVERNMENTAL NOTE, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE FUNDING LOAN AGREEMENT, THIS AGREEMENT, THE TAX CERTIFICATE, THE LAND USE RESTRICTION AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE GOVERNMENTAL LENDER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES BY THIS AGREEMENT, OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE GOVERNMENTAL LENDER 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 AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT FACILITIES OR THE FINANCING OF THE PROJECT FACILITIES, INCLUDING BUT NOT LIMITED TO THE EXECUTION

AND DELIVERY OF THE FUNDING LOAN AGREEMENT, THIS AGREEMENT, THE TAX CERTIFICATE, THE LAND USE RESTRICTION AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF THE GOVERNMENTAL LENDER 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 GOVERNMENTAL LENDER 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 GOVERNMENTAL LENDER THE BORROWER SHALL DEFEND THE GOVERNMENTAL LENDER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS, AND EMPLOYEES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE GOVERNMENTAL LENDER AND THE BORROWER SHALL PAY THE GOVERNMENTAL LENDER EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE GOVERNMENTAL LENDER; PROVIDED, HOWEVER, THAT THE GOVERNMENTAL LENDER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

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

**Section 2.7 Amounts Remaining on Deposit Upon Payment of the Governmental Note.** After payment in full of the principal of, premium, if any, and interest on the Governmental Note (or defeasance of the Governmental Note) 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 Funding Loan Agreement, all amounts on deposit with the Fiscal Agent pursuant to the Funding Loan Agreement, this Agreement, or any other Funding Loan Document shall be paid by the Fiscal Agent to the Borrower.

## ARTICLE III

### SECURITY

**Section 3.1 Mortgage and Other Funding Loan Documents.** To further secure the Borrower's obligations under this Agreement, the Borrower shall, at its sole expense, execute and deliver, or cause to be executed and delivered (and where required, duly record), the Mortgage and each of the other Funding Loan Documents.

**Section 3.2 Financing Statements.** The Borrower hereby authorizes the Fiscal Agent, the Funding Lender, and the Controlling Person, 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 Governmental Lender's, the Fiscal Agent's, and/or the Funding Lender's security interests under this Agreement, the Funding Loan Agreement, the Mortgage, and the other Funding Loan Documents. The Borrower will pay upon demand the costs of filing the foregoing financing or continuation statements and the Financing Statements required under the Funding Loan Agreement in such public offices as the Controlling Person may designate.

## ARTICLE IV

### REPRESENTATIONS OF GOVERNMENTAL LENDER

**Section 4.1 Representations by the Governmental Lender.** The Governmental Lender represents to the Borrower, the Fiscal Agent, the Funding Lender, and the Noteowners of the Governmental Note as follows:

(a) The Governmental Lender is a public body corporate and politic duly created and existing under the laws of the State and is authorized by the Act to execute and to enter into this Agreement and to undertake the transactions contemplated herein and to carry out its obligations hereunder.

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

(c) The Governmental Lender has duly approved the issuance of the Governmental Note 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 Governmental Lender of its obligations under the Funding Loan Documents.

(d) [Reserved].

(e) [Reserved].

(f) There are no obligations of the Governmental Lender other than the Governmental Note 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 Governmental Lender, threatened against or affecting the Governmental Lender wherein an unfavorable decision, ruling, or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Governmental Note, the Funding Loan Agreement, or this Agreement or (ii) the excludability of interest on the Governmental Note from gross income for federal income tax purposes.

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

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

(j) [Reserved].

(k) The Governmental Lender covenants and agrees that, to the extent within its control, it will take or cause to be taken all known and required actions to preserve the excludability of interest on the Governmental Note from gross income for federal income tax purposes.

(l) No member of the Governmental Lender, nor any other official or employee of the Governmental Lender, has any interest (financial, employment, or other) in the Borrower, in the Project Facilities, or in the transactions contemplated hereby, by the Funding Loan Agreement or by the other Funding Loan Documents.

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

**Section 4.2 No Liability of Governmental Lender; No Charge Against Governmental Lender's Credit.**

(a) The Governmental Lender shall not be obligated to pay the principal of, prepayment premium, if any, or interest on the Funding Loan, except from moneys and assets received by the Fiscal Agent or the Funding Lender on behalf of the Governmental Lender pursuant to this Agreement. Any obligation or liability of the Governmental Lender created by or arising out of this Agreement (including, without limitation, any liability created by or arising out of the representations, warranties, or covenants set forth herein or otherwise) shall not impose a debt or pecuniary liability upon the Governmental Lender or a charge upon its general credit, but shall be payable solely out of the moneys due and to become due under the Funding Loan Documents (and not from any moneys due or to become due to the Governmental Lender pursuant to the Reserved Rights). Neither the issuance of the Funding Loan nor the delivery of this Agreement shall, directly or indirectly or contingently, obligate the Governmental Lender to make any appropriation for payment of the Funding Loan. No agreements or provisions contained in this Agreement, the Funding Loan Agreement, any other Funding Loan Document, nor any agreement, covenant, or undertaking by the Governmental Lender contained in any document executed by the Governmental Lender in connection with the Project Facilities or the execution and delivery of the Governmental Note shall give rise to any pecuniary liability of the Governmental Lender or a charge against its general credit or taxing powers, or shall obligate the Governmental Lender financially in any way. Nothing in the Funding Loan Agreement or this Agreement or the proceedings of the Governmental Lender authorizing the Funding Loan or in the Act or in any other related document shall be construed to authorize the Governmental Lender to create a debt of the Governmental Lender within the meaning of constitutional or statutory provision of the State. No covenant, agreement, or obligation contained herein shall be deemed to be a covenant, agreement, or obligation of any present or future director, officer, employee, or agent of the Governmental Lender in his or her individual capacity, and neither any employee or officer of the Governmental Lender nor any officer thereof executing the Governmental Note shall be liable personally on the Governmental Note or be subject to any personal liability or accountability by reason of the issuance thereof. No director, officer, employee, or agent of the Governmental Lender shall incur any personal liability with respect to any other action taken by him or her pursuant to this Agreement, the Funding Loan

Agreement, or the Act. No breach of any pledge, obligation, or agreement of the Governmental Lender hereunder may impose any pecuniary liability upon the Governmental Lender or any charge upon its general credit. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims, or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Agreement, the Funding Loan, or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Agreement.

(b) The Borrower hereby acknowledges that the Governmental Lender's sole source of moneys to repay the Funding Loan will be provided by the payments made by the Borrower pursuant to this Agreement and the Borrower Note, together with investment income on certain funds and accounts held by the Fiscal Agent under the Funding Loan Agreement, and hereby agrees that if the payments to be made hereunder shall ever prove insufficient to pay all principal of, prepayment premium, if any, and interest on the Funding Loan as the same shall become due (whether by maturity, prepayment, acceleration, or otherwise), then upon notice from the Fiscal Agent, the Borrower shall pay such amounts as are required from time to time to prevent any deficiency or default in the payment of such principal of, prepayment premium, if any, or interest on the Funding Loan, including, but not limited to, any deficiency caused by acts, omissions, nonfeasance, or malfeasance on the part of the Fiscal Agent, the Borrower, the Governmental Lender, or any third party, subject to any right of reimbursement from the Fiscal Agent, the Governmental Lender, or any such third party, as the case may be, therefor.

(c) THE FUNDING LOAN IS ORIGINATED IN ACCORDANCE WITH THE ACT AND IS A LIMITED OBLIGATION OF THE GOVERNMENTAL LENDER. NONE OF THE GOVERNMENTAL LENDER, ANY OFFICIAL OR EMPLOYEE OF THE GOVERNMENTAL LENDER, OR ANY PERSON EXECUTING THE GOVERNMENTAL NOTE, SHALL BE LIABLE PERSONALLY ON THE GOVERNMENTAL NOTE OR SUBJECT TO ANY PERSONAL LIABILITY OR ACCOUNTABILITY BY REASON OF ITS ISSUANCE. THE FUNDING LOAN, THE GOVERNMENTAL NOTE, AND THE INTEREST THEREON ARE LIMITED OBLIGATIONS OF THE GOVERNMENTAL LENDER, PAYABLE ONLY FROM THE SOURCES DESCRIBED IN THE FUNDING LOAN AGREEMENT. NONE OF THE GOVERNMENTAL LENDER, THE STATE, OR ANY OTHER POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF SUCH FUNDING LOAN, THE GOVERNMENTAL NOTE OR THE INTEREST THEREON, OR OTHER COSTS INCIDENT THERETO EXCEPT FROM THE MONEY PLEDGED THEREFOR. THE FUNDING LOAN, THE GOVERNMENTAL NOTE, AND THE INTEREST THEREON DO NOT AND SHALL NEVER CONSTITUTE A DEBT OF INDEBTEDNESS OR A GENERAL OBLIGATION OF THE GOVERNMENTAL LENDER, THE STATE, OR ANY MUNICIPAL OR POLITICAL CORPORATION OR SUBDIVISION OF THE STATE.

NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE GOVERNMENTAL LENDER, THE STATE, NOR ANY POLITICAL CORPORATION OR SUBDIVISION OR AGENCY THEREOF OR THE FAITH AND CREDIT OF THE GOVERNMENTAL LENDER IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF PREPAYMENT PREMIUM, IF ANY, OR INTEREST ON THE FUNDING LOAN, THE GOVERNMENTAL NOTE, OR OTHER COSTS INCIDENT THERETO. THE FUNDING LOAN AND GOVERNMENTAL NOTE ARE NOT DEBTS OF THE UNITED STATES OF AMERICA. THE GOVERNMENTAL LENDER HAS NO TAXING POWER.

**Section 4.3 Immunity of Members, Officers, Employees, and Directors of Governmental Lender.**

(a) No recourse shall be had for the payment of the principal of, prepayment premium, if any, or interest on the Funding Loan or for any claim based thereon or upon any obligation, covenant, or agreement in this Agreement contained, against any past, present, or future member of the Governmental Lender, its respective governing body, officers, attorneys, accountants, financial advisors, agents or staff, or the officers, attorneys, accountants, financial advisors, agents, or staff of any successor public entity, as such, either directly or through the Governmental Lender, or any successor public entity, under any rule of law or penalty of otherwise, and all such liability of any member of the Governmental Lender, its governing body, and its officers, attorneys, accountants, financial advisors, agents, and staff is hereby, and by the acceptance of the Funding Loan, expressly waived and released as a condition of, and in consideration for, the execution of this Agreement and the issuance of the Funding Loan. It is recognized that notwithstanding any other provision of this Agreement, neither the Borrower, the Funding Lender, nor the Fiscal Agent shall look to the members of the Governmental Lender or its officers, program participants, attorneys, accountants, financial advisors, agents, or staff, past, present, or future, for damages suffered by the Borrower, the Noteholders, or the Fiscal Agent as a result of the failure of the Governmental Lender to perform any covenant, undertaking, or obligation under this Agreement, the Funding Loan, the Land Use Restriction Agreement, any of the other Funding Loan Documents, or any of the other documents referred to herein, or as a result of the incorrectness of any representation made by the Governmental Lender in any of such documents, nor for any other reason except for representations made by the Governmental Lender in any certificate of the Governmental Lender and the opinion of counsel to the Governmental Lender delivered on the date of origination of the Funding Loan. Although this Agreement recognizes that such documents shall not give rise to any pecuniary liability of the Governmental Lender, nothing contained in this Agreement shall be construed to preclude in any way any action or proceeding (other than that element of any action or proceeding involving a claim for monetary damages against the Governmental Lender) in any court or before any governmental body, agency, or instrumentality or otherwise against the Governmental Lender or any of its officers or employees to enforce the provisions of any of such documents which the Governmental Lender is obligated to

perform and the performance of which the Governmental Lender has not assigned to the Fiscal Agent or any other person.

(b) No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent, or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent, or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Agreement and the issuance of the Governmental Note.

## ARTICLE V

### REPRESENTATIONS AND WARRANTIES OF THE BORROWER

The Borrower represents and warrants to and for the benefit of the Governmental Lender, the Fiscal Agent, the Funding Lender, the Controlling Person, and the Noteowners of the Governmental Note 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 and is duly qualified to do business in the State. The Borrower has furnished to the Governmental Lender, the Funding Lender, and the Controlling Person true and complete copies of its Partnership Agreement and certificate of limited partnership. The Borrower owns and will own no other assets other than the Project Facilities. The Borrower and the General Partner have been, are and will be engaged solely in the business of acquiring, constructing, equipping, financing, owning, managing, and operating the Project Facilities and activities incident thereto. The General Partner of the Borrower is ECG Ridge Road GP, LLC, a Tennessee limited liability company, duly organized, validly existing, and in good standing under the laws of the State of Tennessee and is duly qualified to do business in the State. The General Partner has furnished to the Governmental Lender, the Funding Lender, and the Controlling Person true and complete copies of its Operating Agreement and Articles of Organization. The General Partner has and will have no other assets other than its partnership interests in the Borrower.



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

**Section 5.3 Governmental Authorizations and Other Approvals.** The Borrower and the General Partner have all necessary Governmental Actions and qualifications, and have complied with all applicable Legal Requirements necessary to conduct their business as it is presently conducted and to own, operate, and construct the Project Facilities in accordance with the provisions of the Funding Loan Documents. Except as set forth on Schedule 5 hereto, the Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to renovate, own, and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect, and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities (upon completion of construction of the Project Facilities as contemplated in the Plans and Specifications) will comply with all Governmental Actions and Legal Requirements, including all zoning restrictions (including without limitation, use density, setbacks, parking, and other similar requirements) or the Borrower has a valid variance for or exemption from such requirements. All Governmental Actions obtained by the Borrower have been validly issued and are in full force and effect. With respect to any Government Actions not yet obtained, the Borrower knows of no reason such Governmental Actions will not be timely obtained in the ordinary course of business and as needed in connection with the construction or operation of the Project Facilities. No such Governmental Action will terminate, or become void or voidable or terminable, upon any sale, transfer, or other disposition of the Project Facilities including any transfer pursuant to foreclosure sale under the Mortgage.

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

**Section 5.5 No Litigation.** Except as disclosed on Schedule 1 attached hereto, there is no pending action or proceeding, including eminent domain proceedings, before any Governmental Authority or arbitrator against or involving the Borrower, the General Partner, or to the Borrower's knowledge after due inquiry, the Project Facilities and, to the best knowledge of the Borrower and the General Partner, there is no threatened action or proceeding, including eminent domain proceedings, affecting the Borrower or the General Partner before any Governmental Authority or arbitrator which, in any case, might materially and adversely affect the business, operations, assets, condition (financial or otherwise), or prospects of the Borrower or the General Partner, or the validity or enforceability of this Agreement, the Governmental Note, the Subordinate Debt Documents or the Funding Loan Documents or the construction, operation or ownership of the Project Facilities, or the excludability of interest on the Governmental Note from gross income for federal income tax purposes or, if specified on the Schedule of Financial Terms as applicable, the exemption of the Project Facilities from ad valorem real estate taxation under the laws of the State.

**Section 5.6 No Violations.** The Borrower and the General Partner are in compliance with, and not in breach of or default under (a) any applicable Governmental Actions or Legal Requirements with respect to the Project Facilities of any Governmental Authority having jurisdiction, or (b) the Funding Loan Documents, the Subordinate Debt Documents, or any other credit agreement, indenture, mortgage, agreement, or other instrument to which it is a party or otherwise subject. No event has occurred and is continuing which, with the passage of time or the giving of notice or both, would constitute an event of default under any such instrument. The Borrower is not in violation, nor is there any notice or other record of any violation of any Legal Requirements, restrictive covenants, or other restrictions applicable to any of the Project Facilities.

**Section 5.7 Compliance.** The ownership of the Project Facilities, the construction of the Project Facilities, and the use and operation of the Project Facilities as contemplated hereby do and shall, in all material respects, comply with, and are lawful and permitted uses under, the Tax Certificate and the Land Use Restriction Agreement, all applicable building, fire, safety, zoning, subdivision, sewer, Environmental Laws, health, insurance and other Legal Requirements and plan approval conditions of any Governmental Authority. The Borrower has obtained all Governmental Actions from such Governmental Authorities which are a necessary precondition to construct, own, and operate the Project Facilities and all such Governmental Actions were duly issued, are in full force and effect, and are not subject to any pending judicial or administrative proceedings, the period for judicial or administrative appeal or review having expired and no petition for administrative or judicial appeal or review having been filed. The Project Facilities are located wholly within the boundaries of the Governmental Lender's jurisdiction. The Project Facilities will satisfy all requirements of the Act and the Code with respect to multifamily rental housing and/or qualified residential rental facilities, and, if specified as applicable on the Schedule of Financial Terms, the requirements for exemption from ad valorem real estate taxation under the laws of the State.

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

**Section 5.9 Utilities and Access.** All utility services necessary for the operation of the Project Facilities in the manner contemplated hereby, including water supply, storm and sanitary sewer facilities, gas, electricity, and telephone facilities are available within the boundaries of the Project Facilities; and all roads necessary for the full utilization of the Project Facilities in the manner contemplated hereby either have been completed or rights-of-way therefor have been acquired by the appropriate Governmental Authority or others or have been dedicated to public use and accepted by such Governmental Authority.

**Section 5.10 Financial Information.**

(a) All of the financial information furnished to the Governmental Lender, the Governmental Lender Servicer, the Controlling Person, or the Funding Lender 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 Governmental Lender, the Governmental Lender Servicer, the Controlling Person, or the Funding Lender in writing.

(b) Since its formation, each of the Borrower, the Guarantor (that is not an individual), 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, (a) no withdrawal liability (within the meaning of Section 4201 of ERISA) has been incurred by the Borrower, the General Partner, or any ERISA Affiliate; (b) 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; (c) no such multi-employer pension plan is in reorganization (as defined in Section 4241(a) of ERISA); and (d) neither the Borrower, the General Partner, nor any ERISA Affiliate has any unfilled obligation to contribute to any such multi-employer pension plan. As used in this Agreement, "**ERISA Affiliate**" means (i) any corporation included with the Borrower or the General Partner in a controlled group of corporations within the meaning of Section 414(b) of the Code, (ii) any trade or business (whether or not incorporated or for-profit) which is under common control with the Borrower or the General Partner within the meaning of Section 414(c) of the Code, (iii) any member of an affiliated service group of which the Borrower or the General Partner is a member within the meaning of Section 414(m) of the Code, and (iv) any other entity treated as being under common control with the Borrower or the General Partner under Section 414(o) of the Code.

**Section 5.12 Environmental Representations.** Except as set forth on the Environmental Audit delivered to the Controlling Person (a) the Borrower has no knowledge of any activity at the Project Facilities, or any storage, treatment, or disposal of any Hazardous Substances connected with any activity at the Project Facilities, which has been conducted, or is being conducted, in violation of any Environmental Law; (b) the Borrower has no knowledge of any of the following which could give rise to material liabilities, material costs for remediation, or a material adverse change in the business, operations, assets, condition (financial or otherwise), or prospects of the Borrower: (i) Contamination present at the Project Facilities, (ii) polychlorinated biphenyls present at the Project Facilities, (iii) asbestos or materials containing asbestos present at the Project Facilities, (iv) urea formaldehyde foam insulation present at the Project Facilities, or (v) lead-based paint at the Project Facilities; (c) no portion of the Project Facilities constitutes an Environmentally Sensitive Area; (d) the Borrower has no knowledge of any investigation of the Project Facilities for the presence of radon; (e) no tanks presently or formerly used for the storage of any liquid or gas above or below ground are present at any of the Project Facilities; (f) no condition, activity, or conduct exists on or in connection with the Project Facilities which constitutes a violation of Environmental Laws; (g) no notice has been issued by any Governmental Authority to the Borrower or the General Partner identifying the Borrower or the General Partner as a potentially responsible party under any Environmental Laws; (h) there exists no investigation, action, proceeding or claim by any Governmental Authority or by any third

party which could result in any liability, penalty, sanctions, or judgment under any Environmental Laws with respect to the Project Facilities; and (i) the Borrower is not required to obtain any permit or approval from any Governmental Authority or need notify any Governmental Authority pursuant to any Environmental Law with regard to the construction of the Project Facilities.

**Section 5.13 Outstanding Obligations and Material Contracts.** Attached hereto as Schedule 2 is (a) 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 (b) a complete list of all other Material Contracts. There exists no default under any such instrument. Except for the obligations listed on Schedule 2, neither the Borrower nor the General Partner has incurred any Obligations, secured or unsecured, direct or contingent. Each of the Borrower and the General Partner has complied with all provisions of such Material Contracts in all material respects, to the extent such contract is applicable to such party, and there exists no default or event which, with the giving of notice or the passage of time, or both, would constitute a default, under any such Material Contract.

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

**Section 5.15 Full Disclosure.** This Agreement, the exhibits hereto, and the other documents, certificates, opinions, schedules, and statements furnished to the Governmental Lender, the Governmental Lender Servicer, the Controlling Person, or the Funding Lender by or on behalf of the Borrower, the Guarantor, or the General Partner in connection with the transactions contemplated hereby or by the Funding Loan Documents, do not contain any untrue statement of a material fact with respect to the Borrower, the Guarantor, or the General Partner or the Project Facilities and do not omit to state a material fact with respect to the Borrower, the Guarantor, 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 Governmental Lender, the Governmental Lender Servicer, the Controlling Person, and the Funding Lender 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 Funding Loan Documents.** Each of the Borrower, the Guarantor, and the General Partner has provided the Governmental Lender, the Governmental Lender Servicer, the Controlling Person, and the Funding Lender with true, correct, and complete copies of: (a) all documents executed by the Borrower, the Guarantor, or the General Partner in connection with the Governmental Note, including all amendments thereto and compliance reports filed thereunder; (b) all management and service contracts entered into by the Borrower in connection with the Project Facilities, including all amendments thereto; (c) all correspondence, if any, relating to the Governmental Note from the Funding Lender, the Governmental Lender, 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 (d) all documentation, if any, relating to governmental grants, subsidies, or loans or any other loans, lines of credit, or other subordinate financing (including, without limitation, the Subordinate Debt) relating to the Borrower or the Project Facilities, whether or not secured by the Project Facilities. Each of the representations and warranties on the Borrower's part made in the Funding Loan 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 Funding Loan 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, 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 U.S. Presidential Executive Order 13224 — Blocking Property and Prohibiting Transactions with Persons Who Commit, Threaten to Commit, or Support Terrorism, as amended. It shall constitute an Event of Default hereunder if the foregoing representation and warranty shall ever become false.

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

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

**Section 5.21 Development Budget.** The Development Budget attached hereto as Schedule 3 accurately reflects: (a) all anticipated costs of implementing and completing the Work

within the Plans and Specifications and (b) 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 Governmental Lender, the Governmental Lender Servicer, the Controlling Person, and the Funding Lender with true and complete sets of the Plans and Specifications. The Plans and Specifications so furnished to the Governmental Lender, the Governmental Lender Servicer, the Controlling Person, and the Funding Lender comply with all Legal Requirements, all Governmental Actions, and all restrictions, covenants, and easements affecting the Project Facilities, and have been approved by the Investor Limited Partner and such Governmental Authority as is required for renovation of the Project Facilities.

**Section 5.23 Survey.** The survey for the Project Facilities delivered to the Governmental Lender, the Governmental Lender Servicer, the Controlling Person, and the Funding Lender does not fail to reflect any material matter of survey known to the Borrower affecting the Project Facilities or the title thereto.

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

**Section 5.25 [Reserved].**

**Section 5.26 Requisition.** Each Requisition submitted to the Governmental Lender Servicer and the Controlling Person shall constitute an affirmation that the representations and warranties of the Borrower contained in this Agreement and in the other Funding Loan Documents remain true and correct as of the date thereof unless otherwise noted in writing; and unless the Governmental Lender Servicer and 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 VI

### GENERAL COVENANTS

So long as any amount is due and owing hereunder, the Borrower covenants and agrees, except to the extent the Governmental Lender and 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 (a) engage solely in the business of financing, constructing, owning,

and operating the Project Facilities and activities incident thereto; (b) 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; (c) not dissolve or otherwise dispose of all or substantially all of its assets; (d) not consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it; (e) not amend any provision of its certificate of limited partner, partnership agreement, articles of organization, or operating agreement, as applicable, relating to its purpose, management, or operation without the prior written consent of the Governmental Lender and the Controlling Person; and (f) promptly and diligently enforce its rights under the Partnership Agreement and cause Investor Limited Partner to make its capital contributions as and when required under the Partnership Agreement.

**Section 6.2 Compliance with Legal Requirements; Payment of Impositions.** The Borrower will comply with all Legal Requirements applicable to the Borrower or the Project Facilities. The Borrower will pay all Impositions and insurance premiums when due and will make the applicable deposits required by Section 8.2 of this Agreement for such purposes. The Borrower shall make commercially reasonable efforts to direct that copies of all regular Impositions and insurance premiums shall be sent directly by the Governmental Authority or insurer, as applicable, to Controlling Person with a copy to the Governmental Lender Servicer and the Fiscal Agent.

**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 Closing Date and shall provide copies thereof to the Governmental Lender Servicer, the Controlling Person, and the Funding Lender 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 Funding Loan Documents. The Borrower will promptly furnish copies of all reports and correspondence relating to a loss or proposed revocation of any such qualification to the Governmental Lender Servicer and 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 12 hereto and such additional insurance as Controlling Person may require from time to time.



(b) All insurance required by this Section 6.4 shall be produced and maintained in financially sound and generally recognized responsible insurance companies selected by the entity required to procure the same and authorized to write such insurance in the State. Such insurance may be written with deductible amounts comparable to those on similar policies carried by other companies engaged in businesses similar in size, character, and other respects to those in which the procuring entity is engaged. All property and casualty insurance policies required by Section 6.4(a) hereof shall contain a standard non-contributory mortgagee clause showing the interest of the Fiscal Agent as first mortgagee and shall provide for payment to the Fiscal Agent 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 Fiscal Agent, with a copy to the Governmental Lender Servicer and the Controlling Person. The policy evidencing liability insurance required by Section 6.4(a) hereof shall name the Governmental Lender, the Fiscal Agent, the Controlling Person, and the Funding Lender 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 Fiscal Agent pursuant to the Mortgage. Upon request of the Fiscal Agent, 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 Fiscal Agent, the policies of property and casualty insurance required under Section 6.4(a) hereof, so and in such manner and form that the Fiscal Agent shall at all times, upon such request and until the payment in full of the Governmental Note, have and hold said policies and the net proceeds thereof as collateral and further security under the Mortgage for application as provided in the Mortgage. The policies under Section 6.4(a) hereof shall contain appropriate waivers of subrogation.

(c) Copies of the policy or certificate (or binder) of insurance required by Section 6.4(a) hereof shall be delivered to the Funding Lender, with a copy to the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent, and the Controlling Person on or before the Closing Date. The Borrower shall deliver to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, and the Funding Lender before the first (1st) 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 Funding Lender, with a copy to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, and the Controlling Person, with evidence that such policy has been renewed or replaced or is no longer required by this Agreement. The Borrower shall provide such further information with respect to the insurance coverage required by this Agreement as the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, and the Controlling Person may, from time to time, reasonably require. The Fiscal Agent shall not

be required to examine such insurance policies or certificates to determine compliance with this Section 6.4.

(d) The net proceeds of the property and casualty insurance carried pursuant to the provisions of Section 6.4(a) hereof shall be applied as provided in the Funding Loan Agreement 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, which shall not be unreasonably withheld or delayed, 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 Funding Loan Documents.** The Borrower will comply with all of its covenants and agreements under the Funding Loan 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 Funding Loan Agreement 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 Funding Loan Agreement). The Borrower shall comply with all of its covenants and agreements under the Subordinate Debt Documents. The Borrower shall comply in all material respects with, or cause to be complied with, all requirements and conditions of all Material Contracts and insurance policies which relate to the Borrower or the Project Facilities.

**Section 6.6 Maintenance of Project Facilities.** The Borrower will, at its sole expense and as one of the Expenses (including use of the funds on deposit in the funds and accounts of the Funding Loan Agreement, in accordance with the terms of the Funding Loan Agreement and the Replacement Reserve Agreement), (a) maintain and preserve the Project Facilities in good working order and repair, fit for the purposes for which they were originally erected; (b) not permit, commit, or suffer any waste or abandonment of the Project Facilities; (c) 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; (d) 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; (e) perform all repairs or replacements in a good and workmanlike manner, and in compliance with all applicable Governmental Actions and Legal Requirements; (f) 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; (g) 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 (h) 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 Funding Loan Documents.

**Section 6.7 Inspection Rights.**

(a) The Borrower will, after reasonable notice of not less than 24 hours, from time to time, during normal business hours, permit the Controlling Person, the Funding Lender, the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, and the agents or representatives of the Controlling Person, the Funding Lender, the Governmental Lender, the Fiscal Agent, and the Governmental Lender Servicer, 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 not less than 24 hours, and subject to the rights of tenants, the Borrower will permit the Governmental Lender Servicer and the Engineering Consultant to inspect, or cause to be inspected, the Project Facilities at any reasonable time or times as the Governmental Lender Servicer and the Controlling Person, as applicable, may direct. The Borrower shall pay or reimburse the Controlling Person on demand for fees and expenses incurred in connection with such inspections within ten (10) business days after delivery to the Borrower of written demand for payment thereof.

(b) After the Engineering Consultant shall have inspected or caused to have been inspected the Project Facilities, the Engineering Consultant shall send written notice to the Controlling Person notifying the Controlling Person of the nature and extent of capital needs of the Project Facilities, if any, which are, in the Engineering Consultant's professional judgment, necessary to maintain and preserve the life and safety of tenants of 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 and the Governmental Lender Servicer 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.**

(a) 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:

(i) after Completion, as soon as available and in any event within thirty (30) 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, (A) during such fiscal quarter the Borrower has observed and performed all of its covenants and agreements set forth in this Agreement and the other Funding Loan Documents (including the rules qualifying the interest payable on the Governmental Note for federal tax exemption pursuant to Section 142(d) of the Code and the regulations issued thereunder), except as disclosed in such certificate, (B) if the Project Facilities have received a tax credit allocation, during such fiscal quarter the Project Facilities have complied with the requirements of Section 42 of the Code and the regulations issued thereunder, and (C) no Event of Default has occurred or exists;

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

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

of the end of such Fiscal Year (with a draft of such financial statements delivered within ninety (90) days of the close of such Fiscal Year);

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

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

(4) notwithstanding the foregoing, (A) if the Closing Date occurred on or after November 15, the Borrower may elect, by written notice to Controlling Person, to include the period from the Closing Date through the end of such Fiscal Year in the subsequent Fiscal Year audited financial statements in lieu of providing audited annual statements for the Fiscal Year in which the Closing Date occurred; and (B) audited financial statements shall not be required until the Fiscal Year in which initial occupancy first occurs;

(iii) after Completion, commencing with initial occupancy, 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;

(iv) after Completion, commencing with initial occupancy, weekly during any period with occupancy of less than 90% and monthly for other periods, an occupancy report for the Project Facilities, certified by an Authorized Person;

(v) 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;

(vi) as soon as possible and in any event within fifteen (15) days after receipt of notice thereof, notice of any pending or threatened litigation, investigation, or other proceeding involving the Borrower, the General Partner, the Guarantor, or the Project Facilities (1) 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; (2) wherein the potential damages, in the reasonable judgment of the Borrower based upon the advice of counsel experienced in such matters, are not fully covered by the insurance policies maintained by the Borrower (except for the deductible amounts applicable to such policies); or (3) which challenges the exclusion from gross income of interest on the Governmental Note for purposes of federal income taxation;

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

(viii) 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 Funding Lender, the Fiscal Agent, or the Governmental Lender;

(ix) as and when required under the Land Use Restriction Agreement, the monthly compliance certificates, the annual copies of IRS Forms 8703, and other reports and notices required to be delivered under the Land Use Restriction Agreement;

(x) 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;

(xi) not later than the Completion Date: (1) a Completion Certificate in the form attached as Schedule 7 hereto; and (2) an Estimated Use of Proceeds Certificate in the form set forth in Schedule 8 hereto;

(xii) not later than the Stabilization Date: (1) a Construction Closeout Deliveries Certificate in the form attached as Schedule 9 hereto; (2) a Final Use of Proceeds Certificate in the form set forth in Schedule 10 hereto; and (3) a Stabilization Certificate in the form set forth on Schedule 11 hereto;

(xiii) 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;

(xiv) contemporaneously with the delivery to the Fiscal Agent or the Funding Lender copies of any notices, reports or other information provided to the Fiscal Agent or the Funding Lender under the Funding Loan Documents;

(xv) copies of IRS Forms 8609 as issued and received by the Borrower;

(xvi) upon receipt thereof, copies of all real estate tax bills and insurance bills;

(xvii) upon receipt thereof, copies of all bills for the Governmental Lender Fee, the Governmental Lender Servicer Fee, or the Fiscal Agent Fee, and upon payment, evidence of payment of such fees;

(xviii) promptly following filing thereof, all tax returns of the Borrower and, if requested by the Controlling Person, the General Partner; and

(xix) 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.

(b) The Borrower will furnish to the Governmental Lender and agencies of the State such periodic reports or statements as are required under the Act, or as such agencies may otherwise reasonably require of the Governmental Lender or Borrower throughout the term of this Agreement, including, but not limited to, the timely filing of the periodic reports or statements with the Governmental Lender or the Governmental Lender Servicer as required by the Land Use Restriction Agreement.

(c) Pursuant to Section 119.0701(2), Florida Statutes, the Borrower is required to comply with public records laws, specifically to:

(i) Keep and maintain public records (as defined in Section 119.011, Florida Statutes) that ordinarily and necessarily would be required by the Governmental Lender in order to perform its services pursuant to this Agreement and the other Funding Loan Documents.

(ii) Provide the public with access to public records on the same terms and conditions that the Governmental Lender would provide the records and at a

cost that does not exceed the cost provided by Chapter 119, Florida Statutes, or as otherwise provided by law.

(iii) Ensure that public records that are exempt or confidential and exempt from public records disclosure requirements are not disclosed except as authorized by law.

(iv) Meet all requirements for retaining public records and transfer, at no cost, to the Governmental Lender all public records in possession of the Borrower upon termination of this Agreement and destroy any duplicate public records that are exempt or confidential and exempt from public records disclosure requirements. All records stored electronically must be provided to the Governmental Lender in a format that is compatible with the information technology systems of the Governmental Lender.

(v) IF THE BORROWER HAS QUESTIONS REGARDING THE APPLICATION OF CHAPTER 119, FLORIDA STATUTES, TO THE BORROWER'S DUTY TO PROVIDE PUBLIC RECORDS RELATING TO THIS AGREEMENT, CONTACT THE CUSTODIAN OF PUBLIC RECORDS AT:

Telephone: (850) 606-1900

Email: HFA@leoncountyfl.gov

Address: 615 Paul Russell Road  
Tallahassee, Florida 32301

**Section 6.10 Tax-Exempt Status.**

(a) The Borrower covenants, represents, and agrees that it will not take or omit to take or permit any action that, if taken or omitted, respectively, would adversely affect the excludability of interest on the Governmental Note from gross income for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Agreement, the Mortgage, and the Land Use Restriction Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations, or other official statements promulgated or proposed by the Department of the Treasury or the Internal Revenue Service applicable to the Governmental Note or affecting the Project Facilities.



(b) The Borrower will not make or permit any use, and will not direct the Fiscal Agent to make any investment or use of the proceeds of any of the Governmental Note, which would cause any of the Governmental Note to be "arbitrage bonds" within the meaning of Section 148 of the Code and the Regulations thereunder as the same may be applicable to the Governmental Note at the time of such action, investment, or use and agrees to take and cause the Governmental Lender and Fiscal Agent to take all actions required to comply with the provisions of Section 148 of the Code. The representations contained in the Tax Certificate (which is incorporated herein by reference) are true and correct, and the Borrower and the Governmental Lender will observe the applicable covenants therein as if set forth herein.

(c) The Borrower further covenants and agrees that it will comply with and will take all action reasonably required to insure that the Fiscal Agent complies with all applicable requirements of said Section 148 and the rules and regulations of the United States Treasury Department thereunder relating to the Governmental Note and the interest thereon, including the employment of a Rebate Analyst for the calculation of any rebatable amount (the "Rebate Amount") to the United States Treasury Department. The Borrower agrees that it will cause a qualified rebate analyst reasonably acceptable to the Controlling Person and the Governmental Lender (the "the Rebate Analyst") to calculate the Rebate Amount not later than forty-five (45) days after the fifth (5th) anniversary of the Closing Date and each five (5) years thereafter and agrees that the Borrower will pay all costs associated therewith. Within fifteen (15) days of the date of each such calculation, the Borrower shall promptly (i) deliver a report or letter from the Rebate Analyst setting forth the Rebate Amount, if any, then due and the methods used to calculate such amount (each, a "**Rebate Report**") to the Governmental Lender, the Fiscal Agent, the Controlling Person, and the Funding Lender, (ii) pay the Rebate Amount to the Fiscal Agent for deposit into the Rebate Fund in accordance with the Funding Loan Agreement and deliver evidence of such payment to the Governmental Lender and the Funding Lender, and (iii) deliver to the Fiscal Agent any forms required by the Internal Revenue Service to be submitted with the Rebate Amount, if any, and the addresses to which such forms must be sent.

(d) Neither the Borrower nor any related person shall, pursuant to any arrangement, formal or informal, purchase any of the Governmental Note, unless the Borrower or such related person delivers a Favorable Opinion of Tax Counsel to the Fiscal Agent, the Funding Lender, the Controlling Person, and the Governmental Lender.

(e) No changes will be made to the Project Facilities, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the excludability of interest on the Governmental Note from gross income for federal income tax purposes.

(f) The Borrower will not make any changes in the Project Facilities that would, at the time made, cause the average reasonably expected economic life of the Project Facilities, determined pursuant to Section 147(b) of the Code, to be less than the average reasonably expected economic life of the Project Facilities set forth in such certificates or letters of representation of the Borrower, unless the Borrower files with the Governmental Lender, the Fiscal Agent, the Funding Lender, and the Controlling Person a Favorable Opinion of Tax Counsel.

(g) The Project Facilities will be owned, managed, and operated as a "qualified residential rental property" as such phrase is utilized in Section 142(d) of the Code. To that end, the Borrower hereby represents and covenants and agrees that it will comply with the terms, conditions, and provisions of the Land Use Restriction Agreement.

(h) The Borrower will permit any duly authorized representative of the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Funding Lender, the Department of the Treasury or the Internal Revenue Service, and the Controlling Person to inspect the books and records of the Borrower pertaining to the incomes of qualifying tenants residing in the Project Facilities upon reasonable notice (given at least 5 days in advance) and at reasonable times during business hours on business days.

(i) The Borrower will promptly notify the Governmental Lender, the Governmental Lender Servicer, the Funding Lender, and the Controlling Person if at any time the dwelling units in the Project Facilities are not available for occupancy as required by the Land Use Restriction Agreement and, upon request, the Borrower will provide the Governmental Lender, the Governmental Lender Servicer, the Funding Lender, and the Controlling Person a copy of the compliance certificates required to be filed by the Borrower under and at the times provided by the Land Use Restriction Agreement.

#### **Section 6.11 Single Purpose Entities.**

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

(b) The Borrower and the General Partner shall (i) not maintain its assets in a way difficult to segregate and identify; (ii) ensure that business transactions between the Borrower and any Affiliate of the Borrower or any Affiliate of the General Partner shall be entered into upon terms and conditions that are substantially similar to those that would be available on an arms-length basis with a third Person other than the General

Partner, or any respective Affiliate thereof; (iii) not incur or contract to incur any obligations, secured or unsecured, direct or contingent (including guaranteeing any obligation), other than, in the case of the Borrower, the Obligations evidenced by this Agreement and the other Funding Loan Documents and the Subordinate Debt Documents, or unsecured loans or guaranty payments made by the partners of the Borrower or Guarantor pursuant to the Partnership Agreement, or unsecured trade payables or the Developer Fee; (iv) not make any loans or advances to any third Person (including any Affiliate of the Borrower or the General Partner), except as otherwise permitted under this Agreement or the Funding Loan Documents; (v) do or cause to be done all things necessary to preserve its existence; (vi) not amend, modify, or otherwise change its partnership certificate, partnership agreement, articles of organization, or operating agreement, without obtaining the prior written consent of the Controlling Person, not to be unreasonably withheld, conditioned, or delayed (and which Controlling Person will endeavor to accept or reject within ten (10) Business Days of request); provided that no consent shall be required for changes or amendments to the Partnership Agreement to the extent such change or amendment is solely required to effect a Permitted Transfer, and provided that any changes with respect to installments of capital contributions which constitute Required Equity Funds or the timing thereof, or that otherwise, except for a change or amendment solely required to effect a Permitted Transfer, materially and adversely affect the rights and interests of the Noteowners also require the Funding Lender's consent, which consent shall not be unreasonably withheld, conditioned, or delayed; (vii) conduct and operate its business as presently conducted and operated; (viii) maintain its books and records and bank accounts separate from those of its Affiliates; (ix) be, and at all times shall hold itself out to the public as, a legal entity separate and distinct from any other Person (including any Affiliate); (x) file its own tax returns; (xi) maintain adequate capital for the normal obligations reasonably foreseeable in a business of its size and character and in light of its contemplated business operations and in any event not less than that required under State law in order to remain a separate legal entity; (xii) not seek or consent to the dissolution or winding up, in whole or in part, of the Borrower or the General Partner; (xiii) not (1) consent to the dissolution or liquidation in whole or in part of the Borrower, or (2) permit the General Partner to dissolve, or (3) consent to the dissolution or liquidation of the General Partner; (xiv) not commingle the funds and other assets of the Borrower with those of the General Partner, any Affiliate thereof or any other Person; and (xv) not enter into any transaction with an Affiliate without the prior written consent of the Controlling Person or as permitted pursuant under the Funding Loan Documents.

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

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

leases or installment sale agreements), by the Borrower (the sale with recourse of receivables or any "sale and lease back" of any fixed assets being deemed to be the giving of a lien thereon for money borrowed), other than Permitted Encumbrances.

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

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

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

(b) The Borrower shall pay or cause to be paid the Expenses, and capital expenditures and its other accounts payable with respect to and costs of operation and maintenance of the Project Facilities within thirty (30) days of receipt of an invoice therefor, or when the same shall otherwise be due and payable. The Borrower shall make no distribution of funds to its partners unless no Default or Event of Default exists, such distribution is in accordance with the provisions of the Partnership Agreement, and all current accounts payable shall have been paid and funds shall have been set aside for the payment of accounts payable becoming due within thirty (30) days of said distribution.

(c) Without obtaining the prior written consent of the Controlling Person, the Borrower will not create, incur, assume, guarantee, or be or remain liable for any indebtedness or Obligations other than (i) Indebtedness under the Funding Loan Documents; (ii) Indebtedness in respect of the Subordinate Debt Documents; (iii) current liabilities of the Borrower relating to the Project Facilities incurred in the ordinary course of business but not incurred through the borrowing of money or obtaining of credit; and (iv) any unsecured loans or guaranteed payments from partners or their Affiliates or the Guarantor pursuant to the Partnership Agreement.

**Section 6.14 Environmental Covenants.**

(a) The Borrower will cause all activities at the Project Facilities during the term of this Agreement to be conducted in full compliance with all applicable Environmental Laws. The Borrower will obtain all Governmental Actions and will make all notifications, as required by Environmental Laws, and will, at all times, comply with the terms and conditions of any such Governmental Actions or notifications. During the term of this Agreement, if requested by the Controlling Person, the Borrower will provide to the Controlling Person copies of (i) applications or other materials submitted to any Governmental Authority in compliance with Environmental Laws, (ii) any notifications submitted to any Person pursuant to Environmental Laws, (iii) any Governmental Action granted pursuant to Environmental Laws, (iv) any record or manifest required to be maintained pursuant to Environmental Laws, and (v) any correspondence, notice of violation, summons, order, complaint, or other document received by the Borrower, its lessees, sub-lessees, or assigns, pertaining to compliance with any Environmental Laws.

(b) The Borrower will, at all times during the term of this Agreement, cause Hazardous Substances used at the Project Facilities to be handled, used, stored, and disposed in accordance with all Environmental Laws and in a manner which will not cause an undue risk of Contamination.

(c) The Borrower will cause all construction of new structures at the Project Facilities during the term of this Agreement to use design features which safeguard against or mitigate the accumulation of radon or radon products in concentrations exceeding the Environmental Protection Agency's recommended threshold of 4.0pCi/L.

(d) The Borrower shall not install or permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground, except after obtaining written permission from the Controlling Person to do so and in compliance with Environmental Laws.

(e) The Borrower shall implement a moisture management and control program (the "**Moisture Management Program**") for the Improvements at the Project Facilities to prevent the occurrence of mold, dangerous fungi, bacterial or microbial matter contamination, or pathogenic organisms that reproduces through the release of spores or the splitting of cells (collectively, "**Mold**"), at, on or under the Project Facilities, which Moisture Management Program shall include, at a minimum: (i) periodic inspections of the Improvements at the Project Facilities for Mold, (ii) 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 (iii) 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 hereof, (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 hereof or in paragraph (d) of Section 6.14 hereof, or (vii) the presence of Mold at the Project Facilities. In connection with any investigation pursuant to this paragraph, the Borrower, and its lessees, sub-lessees, and assigns, will comply with any reasonable request for information made by the Controlling Person or its agents in connection with any such investigation. Any response to any such request for information will be full and complete. The Borrower will assist the Controlling Person and its agents to obtain any records pertaining to the Project Facilities or to the Borrower and the lessees, sub-lessees, or assigns of the Borrower in connection with an investigation pursuant to this paragraph. The Borrower will permit the Controlling Person and its agents access to all areas of the Project Facilities at reasonable times and in reasonable manners in connection with any investigation pursuant to this paragraph. No investigation commissioned pursuant to this paragraph shall relieve the Borrower from any responsibility for its representations and warranties under Section 5.12 hereof or under the Environmental Indemnity Agreement.

(g) In the event of any Contamination affecting the Project Facilities, whether or not the same originates or emanates from the Project Facilities or any contiguous real estate, or if the Borrower otherwise shall fail to comply with any of the requirements of Environmental Laws, the Controlling Person may, at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Project

Facilities (after reasonable opportunity to cure by the Borrower), and take any and all other actions as the Controlling Person shall deem necessary or advisable in order to remedy said Contamination or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by the Controlling Person, shall be immediately due and payable by the Borrower and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title, or interest in or claim upon the Project Facilities attaching or accruing subsequent to the lien of the Mortgage on the Project Facilities.

**Section 6.15 Controlling Person.**

(a) The Borrower acknowledges and agrees that (i) the Funding Lender has the sole and exclusive right to arrange for servicing of the Borrower Loan and to appoint another person or entity to serve as its representative hereunder under the other Funding Loan Documents and under the Funding Loan Agreement; (ii) the Funding Lender has appointed R4 Servicer LLC to serve in the capacity of Controlling Person hereunder, under the other Funding Loan Documents, and under the Funding Loan Agreement and R4 Servicer LLC, as Controlling Person, shall perform all of the duties expressly given to the Controlling Person or the Funding Lender with respect to the servicing, administration, and collection activities under the Funding Loan Documents including, but not limited to those set forth in Section 8.2 of the Funding Loan Agreement; (iii) unless revoked in writing by the Funding Lender or the Controlling Person has resigned, the Borrower shall communicate solely with the Controlling Person with respect to matters arising under or relating to the Funding Loan Documents; and (iv) the Funding Lender retains the sole and exclusive right to appoint, remove, or replace the Controlling Person, without the consent or approval of the Borrower. The Controlling Person is hereby granted the full power and authority to conduct the servicing, administration, and collection activities for and on behalf of the Funding Lender as contemplated herein and, without limiting the generality of the foregoing, is authorized and empowered to make and accept all communications on behalf of the Funding Lender with the Borrower, Guarantor, and any of their agents and execute and deliver, on behalf of the Funding Lender, any and all instruments of amendment, modification, satisfaction, cancellation, sale, transfer, release, discharge, and all other comparable instruments with respect to the Borrower Loan. The Funding Lender hereby constitutes and appoints the Controlling Person as the Funding Lender's true and lawful attorney in fact with the power and authority to perform the foregoing. The Borrower shall comply with the directions of the Controlling Person made on behalf of the Funding Lender.

(b) Notwithstanding anything in this Agreement to the contrary, the Borrower acknowledges the Funding Loan and the Borrower Loan shall be serviced for compliance and other monitoring duties on behalf of the Governmental Lender pursuant to the Land Use Restriction Agreement, the Mortgage, the Mortgage Servicing Agreement, the

Financial Monitoring Agreement, and the Compliance Monitoring Agreement. The Borrower shall comply with the directions of the Governmental Lender Servicer made on behalf of the Governmental Lender.

**Section 6.16 Tax Returns.** The General Partner will timely file all tax returns for itself and for the Borrower, pay or cause to be paid when due all taxes imposed on their operations, assets, income, or properties, and, upon request, provide to the Controlling Person copies of such returns and receipts for payment of such taxes.

**Section 6.17 Leases.** The Borrower hereby represents that there are no leases or agreements to lease all or any part of the Project Facilities now in effect. Except for leases to residential tenants in compliance with the Land Use Restriction Agreement and leases for services associated with residential rental properties (such as laundry and cable lease), the Borrower shall not enter into or become liable under, any leases or agreements to lease all or any part of the Project Facilities without the prior written approval thereof and of the prospective tenant by the Controlling Person. Each lease of residential units in the Project Facilities to a residential tenant shall be on a form of lease approved by the Controlling Person and the Governmental Lender and shall be in compliance with the requirements of the Land Use Restriction Agreement.

**Section 6.18 Further Assurances.** The Borrower will promptly and duly execute, acknowledge, and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent, the Funding Lender, or the Controlling Person to carry out the purposes and provisions of this Agreement and the other Funding Loan Documents, to confirm the priority and/or perfection of any lien, pledge, assignment, or security interest created or intended to be created by this Agreement and to assure the Controlling Person and the Funding Lender of the subrogation and security rights in favor of the Funding Lender (or the Fiscal Agent for the benefit of the Funding Lender) for the benefit of the Noteowners of the Governmental Note contemplated by this Agreement, by the other Funding Loan Documents and by the Funding Loan Agreement. The Borrower shall obtain any approvals required under the Subordinate Debt Documents in connection with any of the foregoing.

**Section 6.19 Management Agreement.** The Borrower has entered into a property management agreement in a form approved by the Governmental Lender and the Controlling Person with the Managing Agent (together with any extension and replacements thereof and as the same may be amended, modified, or supplemented from time to time the "**Management Agreement**"). Under the Management Agreement, the Managing Agent shall provide certain management services and shall be entitled to receive as compensation for those services an amount not in excess of the Underwritten Management Fee. Any amounts due the Managing Agent in excess of the Underwritten Management Fee shall be subordinated to the payment by the Borrower of all principal of, premium, if any, and interest due on the Governmental Note, all Third Party Costs and all required deposits into the Accounts. The Borrower shall not replace the Managing Agent for the Project Facilities without the Governmental Lender's and the Controlling



Person's prior written approval, which approval shall not be unreasonably withheld or delayed if the replacement managing agent has experience managing affordable housing projects similar to the Project, and the Management Agreement shall not be terminated or modified without the Governmental Lender's and the Controlling Person's prior written approval, which approval shall not be unreasonably withheld or delayed. In the event the Managing Agent resigns or is removed, the Borrower shall promptly seek a replacement Managing Agent and submit such Managing Agent and its proposed form of Management Agreement to the Governmental Lender and the Controlling Person for approval, which approval shall not be unreasonably withheld or delayed; 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 Managing Agent on terms satisfactory to the Governmental Lender and the Controlling Person and at the expense of the Borrower. The sole and exclusive compensation (exclusive of reimbursement for expenses pursuant to the applicable Management Agreement) paid to manage the Project Facilities under the Management Agreement shall be as described in this Section 6.19. The Borrower shall have no employees whatsoever. The Managing Agent shall execute a consent to the Assignment of the Management Agreement pursuant to which the Managing Agent shall confirm the subordination provisions described above and agree that the Management Agreement shall be terminable by the 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 Governmental Lender, the Fiscal Agent, or to any Governmental Authority that interest on the Governmental Note has become includable in gross income for federal income tax purposes without first providing reasonable advance notice to the Controlling Person and the Funding Lender and permitting the Controlling Person or the Funding Lender, 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 Governmental Lender, the Fiscal Agent, the Controlling Person, and the Funding Lender.

**Section 6.21 Provision of Annual Reports; Reporting Material Events.**

(a) Beginning with the first year after Stabilization, the Borrower shall, not later than 150 days after the end of the Borrower's fiscal year, commencing within 150 days following the end of the Borrower's current fiscal year, provide to the MSRB a report (the "Annual Report") containing financial information and operating data with respect to the Project Facilities for the prior fiscal year including the name, address, number of units, number of units occupied as of the report date, average occupancy of the Project Facilities, revenues, operating expenses, net operating income, debt service on the Loan and net operating income after debt service. The Annual Report may, but is not required to, include audited financial statements.

(b) Any or all of the items listed above may be included by specific reference to other documents, including official statements of debt issues with respect to which the Borrower or any affiliate is an “obligated person” (as defined by Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time (the “Rule”)), which have been filed with the Funding Lender, the MSRB or the Securities and Exchange Commission. The Borrower shall clearly identify each such other document so included by reference.

(c) In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in this section; provided, that the financial statements of the Borrower may be submitted separately from the balance of the Annual Report and later than the date required above for the filing of the Annual Report if they are not available by that date. If the Borrower's fiscal year changes, it shall give notice of such change in the same manner as for a Material Event this Section.

(d) This Section shall govern the giving of notices of the occurrence of any of the following events (each, a “Material Event”):

- (i) principal and interest payment delinquencies;
- (ii) non-payment related defaults, if material;
- (iii) unscheduled draws on debt service reserves reflecting financial difficulty;
- (iv) unscheduled draws on credit enhancements reflecting financial difficulty;
- (v) substitution of credit or liquidity providers, or their failure to perform;
- (vi) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices or determinations with respect to the tax-exempt status of interest paid on the Governmental Note, or other Listed Events affecting the tax-exempt status of interest paid on the Governmental Note;
- (vii) modifications to rights of any interest in the Funding Loan, if material;
- (viii) optional, contingent or unscheduled prepayments of the Borrower Loan or Funding Loan, if material, and tender offers;

(ix) defeasances;

(x) release, substitution or sale of property securing repayment of the Borrower Loan or the Funding Loan, if material;

(xi) rating changes;

(xii) bankruptcy, insolvency, receivership or similar event of the Borrower. For purposes of this clause (xii), any such event shall be considered to have occurred when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or governmental authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;

(xiii) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(xiv) appointment of a successor or additional trustee or paying agent or the change of the name of a trustee or paying agent, if material;

(xv) incurrence of a financial obligation of the Governmental Lender or obligated person, if material, or agreement to covenants, events of default, remedies, priority rights or other similar terms of a financial obligation of the Borrower or obligated person, any of which affect security holders, if material; and

(xvi) default, event of acceleration, termination event, modification of terms or other similar events under the terms of the financial obligation of the Borrower or obligated person, any of which reflect financial difficulties.

(e) Whenever the Borrower obtains knowledge of the occurrence of a potential Material Event, the Borrower shall, within five (5) Business Days of obtaining such knowledge and in any event no more than eight (8) Business Days after the occurrence of

such event, determine if such event is in fact a Material Event that would be required by the Rule to be disclosed.

(f) If the Borrower has determined that a Material Event is required to be disclosed then the Borrower shall prepare a written notice describing the Material Event and provide the same to the Funding Lender no more than ten (10) Business Days after the occurrence of the Material Event.

**Section 6.22 Use of Proceeds.** The Borrower agrees that the proceeds of the Governmental Note will be allocated exclusively to pay Project Costs and that, for the greatest possible number of buildings, the proceeds of the Funding Loan 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 Governmental Note for the purpose of complying with Section 42(h)(4)(B) of the Code. All of the amounts received upon the sale of the Governmental Note 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. None of the Governmental Lender, the Governmental Lender Servicer, or the Fiscal Agent shall have any responsibility to enforce this Section 6.22 or incur any liability for failure of the Borrower to comply with this Section 6.22.

**Section 6.23 Compliance With Anti-Terrorism Regulations.** Neither the Borrower, the General Partner, nor any Person holding any legal or beneficial interest whatsoever in the Borrower shall at any time during the Term be described in, covered by, or specially designated pursuant to or be affiliated with any Person described in, covered by, or specially designated pursuant to U.S. Presidential 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 (a) give notice to the Controlling Person of such OFAC Violation, and (b) 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 beginning after initial occupancy, 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 Funding Loan Agreement.** The Borrower understands that the Governmental Lender will, pursuant to the Funding Loan Agreement and as security for the payment of the principal of, acceleration premium, if any, and the interest on the Governmental Note, assign and pledge to the Fiscal Agent, and create a security interest in favor of the Fiscal Agent for the benefit of the Funding Lender 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 Funding Loan Agreement 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 Funding Loan Agreement. The Borrower agrees that the Fiscal Agent and/or Funding Lender shall be entitled to enforce and to benefit from the terms and conditions of this Agreement that relate to it notwithstanding the fact that it is not a signatory hereto.

**Section 6.26 Conditions Precedent; Payment of Certain Fees, Deposits and Expenses.** On the date of execution and delivery hereof, (a) the Controlling Person shall have received, in immediately available funds, an amount equal to the fees set forth in Section 2.2(a) hereof, and the fees of the Engineering Consultant set forth in Section 2.2(b) hereof incurred as of the date of the execution and delivery hereof, and (b) the Fiscal Agent shall have received the deposits required to be made in the Accounts on such date pursuant to Article 8 hereof.

**Section 6.27 Additional Conditions Precedent.** The rights of the Borrower to draw the initial advance of funds from the Project Fund under this Agreement shall be subject to the conditions precedent set forth in Section 9.12 hereof and on Schedule 6 hereof.

**Section 6.28 No Amendments.** The Borrower shall not amend, modify, or otherwise change the Subordinate Debt Documents without the prior written consent of the Controlling Person.

**Section 6.29 Construction of Improvements.** The Borrower shall construct the Project Facilities in a thorough and workmanlike manner and substantially in accordance with the Plans and Specifications and in compliance with all applicable Governmental Actions and Legal Requirements. The Borrower shall provide, at the Borrower's expense all manner of materials, labor, implements, and cartage of every description for the due completion of construction of the Project Facilities. The Borrower shall take all necessary steps to assure that commencement of construction of the Project Facilities shall begin within thirty (30) days following the Closing Date, shall proceed continuously and diligently and in a commercially reasonable manner, and shall be completed lien free in a timely manner substantially in accordance with the Plans and

Specifications and in all instances in compliance with all applicable Governmental Actions and Legal Requirements, on or before the Completion Date, subject to delays caused by a Force Majeure.

**Section 6.30 Evidence of Payment of Costs.** If requested by the Controlling Person, the Borrower shall furnish, before each advance agreed to be made and on completion of construction, all receipted bills, certificates, affidavits, conditional releases of lien, and other documents which may be reasonably required by the Controlling Person, as evidence of full payment for all labor and materials incident to the construction of the Project Facilities for each requested draw with copies of unconditional releases of lien from each prior draw and will promptly secure the release of the Project Facilities from all liens by payment thereof or transfer to bond or other security.

**Section 6.31 Correction of Deficiencies in Improvements.** The Borrower agrees that it will correct any work performed and replace any materials that do not comply with the Plans and Specifications in any material respect. In the event of any dispute between the Borrower and the Controlling Person with respect to the interpretation and meaning of the Plans and Specifications, the same shall be determined by an independent engineer selected by the Borrower from the list of engineers approved by the Controlling Person.

**Section 6.32 Loan Rebalancing.** If, for any reason, the Controlling Person shall, in the reasonable exercise of the Controlling Person's judgment, determine that the combined total of (a) the remaining proceeds of the Funding Loan; (b) the capital contributions from Borrower's partners; (c) the Subordinate Debt and any other source of funds shown in the Development Budget attached hereto; and (d) any other sums deposited by the Borrower with the Fiscal Agent are insufficient to pay through completion of the Project Facilities, all of the following sums: (i) all remaining costs of construction, marketing, ownership, maintenance and leasing of the Project Facilities; and (ii) all remaining interest and all other remaining sums which may accrue or be payable under the Funding Loan Documents, then the Controlling Person may require the Borrower to deposit with the Fiscal Agent 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 Borrower Loan is to be disbursed as provided herein before any further disbursements of the proceeds of the Borrower Loan shall be made. Notwithstanding the foregoing, if, at any time, the Controlling Person determines, in the Controlling Person's reasonable discretion, that it is unlikely that Borrower will receive all or a portion of the sources of funds shown on the Development Budget (other than Funding Loan proceeds), the Controlling Person may exclude such amount from its determination of whether the Borrower Loan is "in balance" as provided above.

**Section 6.33 Use of Loan Proceeds.** All labor and materials contracted for and in connection with the construction of the Project Facilities shall be used and employed solely for the Improvements and in said construction and only in accordance with the Plans and Specifications. Moneys disbursed from the funds and accounts held under the Funding Loan

Agreement 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 Borrower Loan or any other amounts held under the Funding Loan Agreement or to impose any duty on the Controlling Person with respect thereto.

**Section 6.34 Special Servicing Costs.** The Controlling Person or the Governmental Lender Servicer, as servicers of the Borrower Loan, may charge the Borrower additional servicing fees and costs for special servicing requests. The Borrower shall pay as and when due all such special servicing fees or costs.

**Section 6.35 Developer Fee.** The Borrower will not pay any Developer Fee unless permitted under Section 2 of the Developer Fee Pledge.

**Section 6.36 Payment and Performance Bonds.** The Borrower shall furnish to the Controlling Person, the Governmental Lender, and the Governmental Lender Servicer and shall maintain in effect through final completion of the Work such Payment and Performance Bonds with respect to the Contractor, or if the Contractor does not obtain such Payment and Performance Bond, such Payment and Performance Bonds shall be obtained with respect to each contractor that enters into a Major Contract; provided, however, that if Payment and Performance Bonds have been provided by any contractor under a Major Contract in accordance with the terms hereof, any subcontractor of such contractor shall not be required to post any Payment and Performance Bonds in respect of such subcontract. The Borrower shall take such action and require such performance as the Controlling Person deems necessary under the Payment and Performance Bonds. In the event that any payments under any Payment and Performance Bonds are issued jointly to the Borrower and the Fiscal Agent or the Borrower and the Controlling Person, the Borrower shall endorse any such jointly issued payments to the order of the Fiscal Agent or the Controlling Person, as determined by the Controlling Person in its discretion, promptly upon the Controlling Person's demand. Notwithstanding the foregoing, provided no Default or Event of Default exists, the Borrower may request that the Controlling Person consent in writing to the release of the Payment and Performance Bonds following achievement of Completion.

**Section 6.37 Extension of the Outside Stabilization Date.**

(a) The Borrower may, upon 30 days prior written notice to the Controlling Person, extend the deadline for the Project Facilities to achieve Stabilization so long as:

(i) there is no uncured Default or Event of Default under the Funding Loan Documents and the Borrower is then in compliance with its obligations under the Funding Loan Documents;



(ii) the extended deadline for the achievement of Stabilization is no later than six months after the initial Outside Stabilization Date; and

(iii) an extension fee equal to 0.25% times the principal amount of outstanding amount of the Borrower Note at the date of extension is paid to the Controlling Person with respect to such extension; and

(iv) the Borrower certifies in writing to the Controlling Person, the Governmental Lender, and the Governmental Lender Servicer that cash flows generated from property operations and/or funds on deposit with the Fiscal Agent (or other sources approved by the Controlling Person) will be sufficient to pay debt service during the term of the extension.

(b) In connection with such extension, the First Principal Payment Date shall be extended to commence on the first Loan Payment Date following achievement of Stabilization.

## ARTICLE VII

### DEFAULTS AND REMEDIES

**Section 7.1 Defaults.** Each of the following shall constitute an event of default hereunder ("**Event of Default**"):

(a) failure by the Borrower to pay any amount required to be paid by the Borrower under this Agreement, the Borrower Note, or any of the other Funding Loan 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 Funding Loan Documents to which the Borrower is a party, other than as described in paragraphs (a) and (b) above, and continuation of such failure for thirty (30) days after written notice from the Fiscal Agent or the Controlling Person to the Borrower (with a copy to the Governmental Lender and the Investor Limited Partner), or such longer period to which the Controlling Person may agree in the case of a default not curable by the exercise of due diligence within such thirty (30) day period, if the Borrower, the General Partner or the Investor Limited Partner shall have commenced a cure of such default within such thirty (30) day period and shall be diligently pursuing such cure as quickly as reasonably possible;

(d) any of the representations or warranties of the Borrower set forth in this Agreement, any of the other Funding Loan Documents or any other document furnished to the Governmental Lender, the Fiscal Agent, the Controlling Person, or the Funding Lender 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 Funding Loan Documents to which the Borrower, the General Partner, or any Guarantor is a party for any reason ceases to be valid and binding on the Borrower, the General Partner, or the Guarantor, is declared to be null and void, or is violative of any applicable Legal Requirement relating to a maximum amount of interest permitted to be contracted for, charged, or received, or the validity or enforceability thereof is contested by the Borrower, the General Partner, or any Guarantor or any Governmental Authority, or the Borrower, the General Partner, or any Guarantor denies that it has any or further liability or obligation under this Agreement or any of the Funding Loan 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 Funding Loan Agreement or the other Funding Loan Documents or the Subordinate Debt Documents or an act or event (or failure to act or non-occurrence of an act) which, with the passage of time, the giving of notice or both, would constitute an Event of Default under the Funding Loan Agreement or the other Funding Loan Documents or the Subordinate Debt Documents, or the occurrence of a breach under the HAP Contract which causes, or, with the giving of notice, the passage of time, or both, would cause HUD to terminate the payments thereunder;

(g) the Borrower, any Guarantor, or the General Partner (i) applies for or consents to the appointment of a receiver, trustee liquidator, or custodian or the like of the Borrower, any Guarantor, or the General Partner, as applicable, or of property of any such party or (ii) admits in writing the inability of the Borrower, any Guarantor, or the General Partner to pay its debts generally as they become due, or (iii) makes a general assignment for the benefit of creditors, (iv) is adjudicated bankrupt or insolvent, (v) commences a voluntary case under the Bankruptcy Code or files a voluntary petition or answer seeking reorganization, an arrangement with creditors or an order for relief or seeking to take advantage of any insolvency law or files an answer admitting the material allegations of a petition filed against the Borrower, any Guarantor, or the General Partner in any bankruptcy, reorganization, or insolvency proceeding, or action of the Borrower, any Guarantor, or the General Partner is taken for the purpose of effecting any of the foregoing, or (vi) has instituted against it, without the application, approval or consent of the Borrower, any Guarantor, or the General Partner, as applicable, a proceeding in any court of competent jurisdiction, under any Legal Requirements relating to bankruptcy, insolvency, reorganization, or relief of debtors, seeking in respect of the Borrower, any Guarantor, or the General Partner an order for relief or an adjudication in bankruptcy,

reorganization, dissolution, winding up, or liquidation, a composition or arrangement with creditors, a readjustment of debts, the appointment of a trustee, receiver, liquidator, or custodian or the like of the Borrower, any Guarantor, or the General Partner or of all or any substantial part of the assets of such party or other like relief in respect thereof under any Legal Requirements relating to bankruptcy or insolvency law, and, if such proceeding is being contested by the Borrower, such Guarantor or the General Partner, as applicable, in good faith, the same (1) results in the entry of an order for relief or any such adjudication or appointment or (2) remains undismissed and undischarged for a period of ninety (90) days;

(h) the Borrower fails to maintain in full force and effect any insurance required pursuant to this Agreement unless such insurance is then commercially unavailable in the State;

(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 Fiscal Agent within thirty (30) days of the determination of such deficiency;

(j) the Project Facilities fail to achieve (i) Completion on or before the Completion Date; (ii) Stabilization on or before the Stabilization Date, or (iii) if specified on the Schedule of Financial Terms as applicable;

(k) any litigation or administrative proceeding ensues, and is not dismissed within thirty (30) days, involving the Borrower, the General Partner, any Guarantor or any instrument, contract, or document delivered by the Borrower to the Controlling Person, the Governmental Lender, or the Fiscal Agent 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 Funding Loan Documents;

(l) any one or more judgments or orders in excess of \$25,000 are entered against any Guarantor, and (i) continue unsatisfied and unstayed for thirty (30) days or (ii) a judgment lien on any property of the Borrower or the General Partner or one or more judgments or orders in excess of \$25,000 against any Guarantor 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 (i) 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), (ii) to perform any other material obligation or covenant under any such obligation or obligations, or (iii) to pay or perform any obligation or covenant under any Material Contract, any of which (1) 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 (2) 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 Funding Loan Documents;

(n) construction of the Improvements shall have been discontinued for thirty (30) consecutive working days for any reason whatsoever, except such reason as the Controlling Person shall deem reasonable;

(o) if at any time the Borrower shall have been unable for a period of forty-five (45) days to meet the requirements for an Advance under this Agreement, regardless of whether the Borrower has requested an Advance that has not been funded;

(p) the Contractor shall have defaulted under the Construction Contract, which default the Controlling Person, in its sole opinion, shall deem to be substantial, and the Borrower, upon five (5) days written notice from the Controlling Person, shall have failed to exercise any right or remedy to which it shall be entitled; and

(q) an event of default shall have occurred under the Subordinate Debt Documents.

**Section 7.2 Remedies.** If an Event of Default has occurred and is continuing uncured, the Fiscal Agent, acting at the direction of the Controlling Person, may:

(a) declare the principal of the Governmental Note then outstanding and the interest accrued thereon to be due and payable;

(b) declare the Borrower's obligations hereunder, under the Borrower Note, and under the other Funding Loan 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;

(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 Fiscal Agent 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 Fiscal Agent 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 Borrower Note or any other note given by it pursuant to the provisions hereof, to pay the Fiscal Agent upon demand any amount or amounts expended by the Fiscal Agent or its representatives for such performance, together with any costs, charges, or expenses incident thereto or otherwise incurred or expended by the Fiscal Agent or its representatives on behalf of the Borrower in connection with the Improvements, and the amounts so expended shall bear interest at the default rate specified in the Borrower Note, and shall be considered part of the indebtedness evidenced by the Borrower Note and secured by the Mortgage;

(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) (i) 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; (ii) pay out additional sums (which sums shall be immediately due and payable by the Borrower to the Fiscal Agent) and use any property of the Borrower associated with the Project Facilities, or any property of the Borrower in which the Funding Lender 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 Fiscal Agent'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: (1) all sums due from the Borrower to the Fiscal Agent; (2) premiums and costs of title and any other insurance; (3) leasing fees and brokerage or sales commissions; (4) fees, costs, and expenses of the Fiscal Agent and its counsel in connection with the enforcement and performance of this Agreement, the other Funding Loan Documents, and the other documents contemplated hereby; (5) any taxes (including

federal, state, and local taxes) or other governmental charges; (6) any sums required to indemnify and hold the Fiscal Agent harmless from any act or omission of the Fiscal Agent (except such as are grossly negligent or due to its willful misconduct) under Section 2.5 hereof, the other Funding Loan Documents, or any other document; (7) 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; (8) claims of any Governmental Authority for any required withholding of taxes on wages payable or paid by the Borrower; and (9) 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 Funding Lender's security position before the rights of all others; (iii) place additional encumbrances upon the Project Facilities; and (iv) 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;

(f) subject to all Legal Requirements, require the Borrower to transfer all security deposits to the Fiscal Agent; and

(g) exercise, or cause to be exercised, any and all such remedies as it may have under this Agreement, the other Funding Loan 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 Fiscal Agent at the direction of the Controlling Person (or by the Governmental Lender 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 Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Controlling Person, or any Noteowner 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 Fiscal Agent 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 funds and accounts held under the Funding Loan Agreement except for the Administrative Expense Fund, the Costs of Issuance Funds, the Tax and Insurance Escrow Fund, and the Rebate Fund) and other indebtedness at any time owing by the Governmental Lender 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 Funding Loan Documents, or any other agreement or instrument delivered by the Borrower to the Governmental Lender in connection therewith, whether or not the Governmental Lender shall have made any demand hereunder or thereunder and although such obligations may be contingent or unmatured. The rights of the Fiscal Agent under this Section are in addition to other rights and remedies (including, without limitation, other rights of set-off) which the Fiscal Agent may have.

**Section 7.6 Governmental Lender and Borrower to Give Notice of Default.** The Governmental Lender and the Borrower severally covenant that they will, at the expense of the Borrower, promptly give to the Fiscal Agent, the Funding Lender, the Controlling Person, and the Investor Limited Partner and to each other written notice of the occurrence of any Event of Default under this Agreement, and any act, event or circumstance which, with the passage of time, or notice, or both, would constitute such an Event of Default of which they shall have actual knowledge or written notice, but the Governmental Lender shall not be liable for failing to give such notice.

**Section 7.7 Cure by Investor Limited Partner.** Notwithstanding anything to the contrary contained herein, the Governmental Lender hereby agrees that any timely cure of any default made or tendered by the Investor Limited Partner shall be deemed to be a cure by the Borrower, and shall be accepted or rejected on the same basis as if made or tendered by the Borrower; provided, however, that the Investor Limited Partner shall not have any obligation or duty to take any action to cure any default or to cause any default to be cured.

**Section 7.8 Default Rate; Acceleration Premium.** In the event there shall have occurred an acceleration of the obligations of the Borrower hereunder following an Event of Default on or before the First Optional Call Date, any tender of payment of an amount necessary to satisfy the indebtedness evidenced by this Agreement shall include the acceleration premium set forth in Section 2.3(c) hereof. In addition, in the event that principal or interest payable hereunder is not paid when due, there shall be payable on the amount not timely paid, interest at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 7.9 Reserved Rights; Regulatory Agreement Defaults.**

(a) Notwithstanding anything to the contrary contained herein, the Governmental Lender may enforce its Reserved Rights under the Funding Loan Documents and exercise the permitted remedies with respect thereto against the Borrower, subject to the provisions of subparagraph (c) below.

(b) If there shall have occurred and be then continuing an event of default under the Land Use Restriction Agreement which would, in the reasonable judgment of the Governmental Lender or the Fiscal Agent, jeopardize the exclusion from gross income

of interest on the Governmental Note (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 Funding Lender receive written notice from the Governmental Lender or the Fiscal Agent stating that a Regulatory Agreement Default has occurred and specifying the nature of such default, then, if authorized by the Funding Loan Documents, the Governmental Lender and the Fiscal Agent may, without the consent of the Controlling Person or the Funding Lender, exercise the remedy of pursuing specific performance of the Funding Loan Documents on account of such default, unless:

(i) the Governmental Lender and the Fiscal Agent, prior to the end of such sixty (60) day period, are provided with a Favorable Opinion of Tax Counsel (which opinion may be requested and obtained by the Controlling Person or the Funding Lender and obtained at the expense of the Borrower);

(ii) the Controlling Person, the Funding Lender, 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 Funding Lender without the Fiscal Agent's first securing possession of the Project Facilities and/or operational control of the Borrower and the Controlling Person or the Funding Lender (subject to extension during any stay on account of the bankruptcy of the Borrower) (1) instructs the Fiscal Agent, subject to the terms of the Funding Loan Agreement, to institute, within such sixty (60) day period, proceedings or other action for the purposes of obtaining such possession or control pursuant to the Funding Loan Documents; (2) thereafter instructs the Fiscal Agent, pursuant to the terms of the Funding Loan Agreement, to pursue diligently such proceedings until such possession or control is obtained; and (3) diligently pursues action to cure such default after the Fiscal Agent or other designee of the Controlling Person or the Funding Lender 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 Tax Counsel provided to the Governmental Lender and the Fiscal Agent, such extension will not adversely affect the excludability of interest on the Governmental Note from gross income for federal income tax purposes; and provided further, that the Fiscal Agent, upon five (5) Business Days' prior written notice to the Controlling Person and the Funding Lender 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 Governmental Lender, the Fiscal Agent,



the Controlling Person, and the Funding Lender shall have been provided with an opinion of Tax Counsel to the effect that such reduction of such period is necessary to preserve the excludability of interest on the Governmental Note from gross income for federal income tax purposes of interest.

(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 Funding Lender, nothing in this Section 7.9 shall restrict or in any way limit the right of the Governmental Lender to take any action for specific performance available under the Land Use Restriction Agreement or at law or in equity in order to enforce the terms of the Land Use Restriction Agreement or to enforce Reserved Rights hereunder, so long as neither the Governmental Lender nor the Fiscal Agent take any action (i) to declare the outstanding balance of the Governmental Note or the Borrower 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 VIII

### 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 Fiscal Agent, for deposit into the Replacement Reserve Fund, 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.

**Section 8.2 Deposits to Tax and Insurance Escrow Fund.** Unless otherwise directed by the Controlling Person, two Business Days before each Loan Payment Date, commencing the First Loan Payment Date, and continuing each month thereafter, the Borrower shall pay, or cause to be paid, to the Fiscal Agent an amount equal to the Monthly Tax and Insurance Amount for the Project Facilities to be deposited in the Tax and Insurance Escrow Fund.

#### **Section 8.3 [Reserved].**

#### **Section 8.4 Deposits to Operating Reserve Fund.**

(a) The Borrower shall, upon receipt of the [Final Installment] under the Partnership Agreement shall pay or cause to be paid to the Fiscal Agent, to be deposited in the Operating Reserve Fund, the Operating Reserve Amount pursuant to Section 4.7 of

the Funding Loan Agreement. 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 Funding Loan Documents, and prior to the payment of any distributions to the Borrower's partners, until such time as the balance on deposit in the Operating Reserve Fund equals the Operating Reserve Amount.

(b) Moneys in the Operating Reserve Account may be used by the Borrower only to fund any operating deficits of the Borrower, Expenses, or for any other operating or capital needs approved by the Controlling Person and Investor Limited Partner in writing, which approval shall not be unreasonably withheld or delayed, with copies of all disbursement requests sent to the Governmental Lender Servicer. During the continuance of an Event of Default (with prior notice to the Governmental Lender) or in order to prevent an Event of Default, the Operating Reserve Fund shall be applied by the Borrower, at the direction of the Controlling Person: (a) first, to pay current debt service on the Governmental Note; (b) second, to pay other operating deficits of the Project Facilities; and (c) third, to the payment of any other amounts owed by the Borrower. Upon payment in full of the Governmental Note and upon payment of amounts payable to the United States of America pursuant to any rebate requirement and any other amounts owing hereunder and under the this Agreement, any amounts remaining in the Operating Reserve Fund shall be paid towards any outstanding balance of the Subordinate Debt on the Project Facilities or other loan debt administered by the Governmental Lender on the Project Facilities, then to the Governmental Lender fees related to the Funding Loan or any other program of the Governmental Lender and then any remaining balance shall be deposited into a replacement reserve account for the Project Facilities.

**Section 8.5 Investment.** The monies in the funds and accounts under the Funding Loan Agreement shall be invested in Permitted Investments upon the direction of the Borrower with the consent of the Controlling Person, as set forth in Section 4.13 of the Funding Loan Agreement. Earnings on the funds and accounts thereunder shall be held or disbursed as set forth in Article IV of the Funding Loan Agreement. The Fiscal Agent 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 Funding Loan Documents. The Fiscal Agent 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 fund or account and reinvested and applied as provided in the Funding Loan Agreement. 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 funds and accounts, which consent by the Controlling Person shall not be unreasonably withheld or delayed.

**Section 8.6 Security Interest in Accounts.** The Borrower hereby assigns and pledges to the Governmental Lender, and grants the Governmental Lender a security interest in, as additional collateral security for the Borrower's obligations to the Governmental Lender hereunder (and the Borrower acknowledges and agrees that the Governmental Lender shall have a continuing security interest in) all of the Borrower's right, title, and interest, if any, in all funds and accounts under the Funding Loan Agreement, all cash, cash equivalents, instruments, investments, and other securities at any time held in such funds and accounts, all proceeds of the foregoing, and all of the Borrower's rights associated with such funds and accounts, if any. The Governmental Lender hereby directs the Fiscal Agent to hold all moneys in the funds and accounts from time to time as assignee of the Governmental Lender.

**Section 8.7 No Liability of Fiscal Agent.** In performing any of its duties hereunder, the Fiscal Agent 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 Fiscal Agent 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 IX

### CONSTRUCTION AND FUNDING OF ADVANCES

**Section 9.1 Construction of Project Facilities; Completion and Stabilization.** The Borrower shall commence performance of the Work in respect of the Improvements no later than thirty (30) days' following the Closing Date, and shall achieve Completion of such Work in accordance with the Plans and Specifications on or before the Completion Date and Stabilization on or before the Stabilization Date. At the request of the Borrower and with the prior written approval of the Controlling Person and the Governmental Lender, the Completion Date may be extended one or more times for such periods as the Controlling Person and the Governmental Lender may approve and upon delivery of such other information and funds as the Controlling Person and the Governmental Lender may require and the Stabilization Date may be extended as provided in Section 6.37 herein.

**Section 9.2 Making The Advances.**

(a) On the Closing Date, the Fiscal Agent shall make disbursements from the Project Fund as set forth in the Closing Memorandum. Thereafter, 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 and the Governmental Lender Servicer, except as set forth in Section 5(1)(a) of the Mortgage Servicing Agreement, for its approval. No Requisition shall be delivered to the Fiscal Agent until it has been approved by the Controlling Person and the Governmental Lender Servicer and each advance by the Fiscal Agent shall be subject to the prior approval of the Requisition by the Controlling Person and the Governmental Lender Servicer. The

Controlling Person and the Governmental Lender Servicer shall endeavor to approve or object to any Requisition within ten (10) Business Days of its submission and the submission of all additional information required in connection with such Requisition and shall endeavor to provide specific information concerning the nature of any objection it may have.

(b) Each Requisition shall be submitted to the Controlling Person and the Governmental Lender Servicer at least fifteen (15) Business Days prior to the date of the requested Advance, and no more frequently than once each month (excluding the month in which the initial advance is requested). The Borrower shall open and maintain a checking account with a financial institution reasonably satisfactory to the Controlling Person. Except as otherwise provided for herein, the Controlling Person shall direct the Fiscal Agent to deposit the proceeds of each Requisition into such account.

**Section 9.3 Advances to Contractors; to Others.** At its option during the existence of any Event of Default or Default, the Funding Lender may direct the Fiscal Agent to make any or all advances: (a) for costs incurred under any construction contract directly to a contractor, subcontractor, or vendor, (b) through the Title Company, or (c) to any Person to whom the Controlling Person in good faith determines payment is due. The Fiscal Agent shall not be liable for making such advances at the direction of the Controlling Person.

**Section 9.4 Requisition.** Each Requisition shall be in the form set forth on Exhibit B hereto, shall be signed on behalf of the Borrower by an Authorized Person, shall be subject to approval by the Controlling Person and the Governmental Lender Servicer prior to payment, and shall state with respect to each disbursement to be made: (a) the number of the Requisition; (b) the amount to be disbursed; (c) that each obligation therein for which such disbursement is being requested has been properly incurred and has not been the basis for any previous disbursement; and (d) that the expenditure of such disbursement, when added to all previous disbursements, will result in not less than ninety-five percent (95%) of all disbursements having been used to pay or reimburse the Borrower for Qualified Project Costs.

**Section 9.5 Project Costs.** The Development Budget reflects the purposes and the amounts for which funds to be advanced by the Funding Lender directly to the Fiscal Agent for deposit to the Project Fund are to be used. Subject to Section 9.7 hereof, the Controlling Person shall not be required to approve any Requisition requiring disbursement of funds from the Project Fund for any item of Work in an amount exceeding the amount specified for any item in the Development Budget. Subject to Section 9.7 hereof, in no event shall the Controlling Person approve any Advance in an amount exceeding (a) the total cost (as determined by the Controlling Person) of the labor, materials, fixtures, machinery, and equipment completed, approved, and incorporated into the Project Facilities prior to the date of such Requisition, less (b) Retainage (if required), less (c) the total amount of any advances previously made by the Funding Lender directly to the Fiscal Agent for deposit to the Project Fund for such costs.

**Section 9.6 Retainage.** The Controlling Person and the Governmental Lender Servicer shall approve disbursement of Retainage upon completion of the Work or category of Work by the contractor or subcontractor under the contract for which the Retainage was held. No advance of funds by the Funding Lender directly to the Fiscal Agent for deposit to the Project Fund shall be approved unless all Work done at the date the Requisition for such advance is submitted is done in accordance with the Plans and Specifications, 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 or the Funding Lender from directing the Fiscal Agent to withhold disbursement of any further portion of the contingency reserve.

**Section 9.8 Stored Materials; Removal of Materials.**

(a) 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:

(i) such materials are components in a form ready for incorporation into the Improvements and shall be so incorporated within a period of [one hundred twenty (120)] days; and

(ii) such materials are stored at the Project Facilities, or at such other site as the Controlling Person shall approve, and are insured and protected against theft and damage.

(b) [The Controlling Person shall approve Requisitions for funds for pre-purchase deposits not to exceed an aggregate amount of \$1,000,000 for materials, furnishings, fixtures, machinery, or equipment to be incorporated into Improvements.]

(c) Within five (5) days after receiving notice from the Controlling Person (or the Engineering Consultant), the Borrower will commence or cause to be commenced the removal of all materials, whether worked or unworked, and all portions of the construction which the Controlling Person (or the Engineering Consultant) may condemn as failing in a substantial way to conform with the Plans and Specifications, and will prosecute diligently or cause to be prosecuted diligently such removal. The Borrower further agrees to make good all portions of the construction and other materials damaged by such removal.

**Section 9.9 Cost Overruns and Savings.**

(a) If the Borrower becomes aware of any change in the costs of the Work which will increase or decrease the projection of the costs reflected on the Development Budget by \$[50,000] or more, the Borrower shall immediately notify the Controlling Person and the Governmental Lender Servicer in writing and promptly submit to the Controlling Person and the Governmental Lender Servicer for their 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 Fiscal Agent at the direction of the Funding Lender any required funds necessary to cause the amount remaining on deposit with the Fiscal Agent (or available for draw under the Funding Loan) and any Required Equity Funds yet to be deposited with the Fiscal Agent 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, the Governmental Lender Servicer, and the Engineering Consultant with evidence satisfactory to them that the labor performed and materials supplied in connection with such line item of costs have been satisfactorily completed and paid for in full. At such time, such savings may be reallocated by the Borrower, with the consent of the Controlling Person, and the Governmental Lender Servicer, which consent shall not unreasonably withheld or delayed to other line items.

(d) The Governmental Lender 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 Governmental Lender, nor shall the Borrower be entitled to any diminution of the amounts payable under this Agreement or under the Borrower Note.

**Section 9.10 Right to Retain the Engineering Consultant.**

(a) The Funding Lender or the Controlling Person on behalf of the Funding Lender, shall have the right to retain, 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, the Funding Lender, the Governmental Lender Servicer, 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. None of the Controlling Person, the Governmental Lender Servicer, or 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, the Governmental Lender Servicer, and their respective 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, the Governmental Lender Servicer, and their respective 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 and the Governmental Lender Servicer a copy of all construction inspection reports made by the Borrower's Architect or engineer.

**Section 9.12 Initial Advances.** The right of the Borrower to draw the initial Advance on the Issue Date shall be subject to the satisfaction of the conditions precedent listed on Part A of Schedule 6 attached hereto.

**Section 9.13 Subsequent Advances.** The right of the Borrower to draw any subsequent Advances of funds shall be subject to the satisfaction of the conditions listed on Part B of Schedule 6 attached hereto.

**Section 9.14 Construction Information and Verification.** From time to time, within ten (10) days after the written request of Controlling Person or the Governmental Lender Servicer,

the Borrower shall deliver to Controlling Person or the Governmental Lender Servicer any and all of the following information and documents, to the extent applicable to the construction of the Project Facilities, that Controlling Person or the Governmental Lender Servicer may request, all in forms acceptable to Controlling Person or Governmental Lender Servicer, as applicable:

(a) current Plans and Specifications for the Improvements certified by the Architect as being complete and accurate, and a line item cost breakdown for the proposed construction and/or rehabilitation of the Improvements;

(b) a current, complete and correct list showing the name, address, telephone number, and license information of each contractor, subcontractor, and material supplier engaged in connection with the construction of the Improvements, and the total dollar amount of each contract and subcontract (including any changes) and the scope of work involved, together with the amounts paid through the date of the list and all other information reasonably requested by Controlling Person or the Governmental Lender Servicer;

(c) true and correct copies of the most current versions of all executed contracts and subcontracts with each party identified in the list described in clause (b) above, including any changes;

(d) true and correct copies of all grading, foundation, building, and all other construction permits, licenses, and authorizations from all applicable Governmental Authorities or third parties necessary for the construction of the Improvements and the operation of, and access to, the Project Facilities;

(e) copies of (i) owner/architect/contractor project meeting minutes, (ii) requests for information (RFI), submittal logs, proposed change orders (PCO), and change order logs, (iii) independent test results, (iv) quality inspection reports, and (v) anticipated cost reports, buy-out logs, and Major Contracts;

(f) a construction schedule showing the progress of construction and the projected sequencing and completion times for uncompleted Work, all as of the date of the schedule;

(g) any update to any item described above which Borrower may have previously delivered to Controlling Person or the Governmental Lender Servicer;

(h) the Borrower expressly authorizes Controlling Person and the Governmental Lender Servicer to contact the Architect, the Contractor, or any contractor, subcontractor, material supplier, surety, or any Governmental Authority to verify any information disclosed in accordance with this Section 9.14. The Controlling Person and the Governmental Lender Servicer shall give notice to the Borrower of any such contacts,



provided that none of the Controlling Person, the Funding Lender, or the Governmental Lender Servicer shall incur any liability to the Borrower by reason of the failure to give such notice, and the Borrower's obligations under the Borrower Loan Documents shall not be affected in any manner by any failure to give such notice. The Construction Contract shall require the Contractor to disclose such information to the Governmental Lender Servicer, the Funding Lender, and Controlling Person. Any defaulting architect, contractor, subcontractor, material supplier, or surety shall be promptly replaced, and the Borrower shall promptly deliver all required information and documents to the Governmental Lender Servicer, the Controlling Person, and Funding Lender regarding each replacement architect, contractor, subcontractor, material supplier, and surety. The Governmental Lender Servicer and the Controlling Person may disapprove any architect, contractor, subcontractor, material supplier, surety, or other party whom the Governmental Lender Servicer or the Controlling Person in their reasonable judgment may deem financially or otherwise unqualified; however, the absence of any such disapproval shall not constitute a representation of qualification.

**Section 9.15 Effect of Approval.** Approval of any Requisition by the Controlling Person and the Governmental Lender Servicer shall not constitute an approval or acceptance of the Work or materials, nor shall such approval give rise to any liability or responsibility relating to: (i) the quality of the Work, the quantity of the Work, the rate of progress in completion of the Work, or the sufficiency of materials or labor being supplied in connection therewith, and (ii) any errors, omissions, inconsistencies, or other defects of any nature in the Plans and Specifications. Any inspection of the work that the Controlling Person or the Governmental Lender Servicer may choose to make, whether through any consulting engineer or architect, agent or employee or officer, during the progress of the Work shall be solely for the Controlling Person's and the Governmental Lender Servicer's information and under no circumstances will they be deemed to have been made for the purpose of supervising or superintending the Work, or for the information or protection of any right or interest of any person or entity other than the Controlling Person, the Funding Lender, and the Governmental Lender Servicer. The Fiscal Agent may rely upon any Requisition delivered to it and approved by the Controlling Person and the Governmental Lender Servicer as to the satisfaction of the conditions of disbursement set forth herein and in the Funding Loan Agreement. The Fiscal Agent may rely upon any Requisition delivered to it and approved by the Controlling Person and the Governmental Lender Servicer as to the satisfaction of the amounts of disbursement set forth therein and in the Funding Loan Agreement.

## ARTICLE X

### MISCELLANEOUS

**Section 10.1 Notices.** All notices and other communications provided for hereunder shall be in writing and sent by electronic mail (with confirmed receipt) and by reputable overnight mail service or private delivery service addressed as follows:

**To the Governmental Lender:**

Housing Finance Authority of Leon  
County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair  
Telephone: (850) 606-1900

**With a copy to:**

Nabors Giblin & Nickerson P.A.  
1500 Mahan Drive, Suite 200  
Tallahassee, Florida 32308  
Attention: Mark Mustian, Esq.  
Email: mmustian@ngnlaw.com  
Telephone: (850) 224-4070

**To the Fiscal Agent:**

U.S. Bank Trust Company, National  
Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar  
Telephone: (954) 938-2475  
Email: amanda.kumar@usbank.com

**With a copy to:**

Liebler, Gonzalez & Portuondo, P.A.  
Courthouse Tower  
25th Floor  
44 West Flagler Street  
Miami, Florida 33130  
Attention: Bernardo Portuondo, Esq.  
Telephone: (305) 379-0400  
Email: bap@lgplaw.com

**To the Borrower:**

ECG Ridge Road, LP  
c/o Elmington Capital  
118 16th Avenue South, Suite 200  
Nashville, Tennessee 37203  
Telephone: (615) 922-2218  
Attention: John Shepard  
Email: jshepard@elmingtoncapital.com

**With a copy to:**

Reno & Cavanaugh PLLC  
424 Church Street, Suite 2910  
Nashville, Tennessee 37219  
Attention: Dwayne Barrett, Esq.  
Telephone: (615) 866-3224  
Email: dbarrett@renocavanaugh.com

**With a copy to:**

Stearns Weaver Miller Weissler Alhadeff  
& Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Attention: Brian McDonough, Esq.  
Telephone: (305) 789-3350  
Email: bmcdonough@stearnsweaver.com

**To the Funding Lender:**

Allianz Life Insurance Company Of North  
America  
c/o R4 Capital Funding LLC  
780 Third Avenue, 16th Floor  
New York, NY 10017  
Attention: Tara Nussbaum  
E-mail: TNussbaum@r4cap.com

**To the Controlling Person**

R4 Servicer LLC  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble  
E-mail: gdoble@r4cap.com

**With a copy to**

Kutak Rock LLP  
Two Logan Square  
100 North 18th, Suite 1920  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire  
Email: Andrew.Schmutz@kutakrock.com

**If to Investor Limited Partner:**

U.S. Bancorp Community Development  
Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, Missouri 63103  
Attention: Director of LIHTC Asset  
Management

Email: curt.ridge@usbank.com

**With a copy to:**

Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Jill Goldstein, Esq.  
Email: jill.goldstein@kutakrock.com

**If to the Governmental Lender  
Servicer:**

First Housing Development Corporation  
of Florida  
107 South Willow Avenue  
Tampa, Florida 33606  
Attention: Ed Busansky  
Phone: (813) 283-1043  
Email: ebusansky@firsthousingfl.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 Fiscal Agent. Each of the Controlling Person and the Funding Lender is an express third party beneficiary of this Agreement and the rights of the Fiscal Agent (as assignee of the Governmental Lender) hereunder, with full rights of enforcement hereof. 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 Governmental Lender intend that no person other than the parties hereto, the Funding Lender, the Controlling Person, the Fiscal Agent, the Investor Limited Partner, 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 Governmental Note, the delivery of this Agreement, and the payment of any amounts under the Funding Loan 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 Closing Date and thereafter within thirty (30) days after demand, all reasonable costs and expenses of the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Controlling Person, and the Funding Lender in connection with the preparation, execution, delivery, and administration of this Agreement, the other Funding Loan Documents, and any other documents that may be delivered in connection with this Agreement or the other Funding Loan 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 Funding Lender and the Controlling Person with respect thereto and with respect to advising the Funding Lender and the Controlling Person as to their respective rights and responsibilities under this Agreement, the other Funding Loan 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 Funding Lender), in connection with the enforcement of this Agreement, the other Funding Loan 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 Governmental Lender 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 Fiscal Agent include interest in excess of such a maximum amount, the Fiscal Agent 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 Funding Loan 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 Funding Loan 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 Funding Lender, the Fiscal Agent, the Governmental Lender, and the Noteowners from time to time of the Governmental Note, with respect to the subject matter hereof.

**Section 10.9 Consent to Jurisdiction; Venue; Waiver of Jury Trial.** The parties hereby irrevocably (a) agree that any suit, action, or other legal proceeding arising out of or relating to this Agreement or the other Funding Loan 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; (b) agree that any suit, action, or other legal proceeding relating to the Funding Loan Documents shall be brought solely in a federal or state court located in the State; and (c) 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 Funding Lender 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 FUNDING LOAN 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 Governmental Notes and Secondary Market Transaction.**

(a) At the Controlling Person or Funding Lender'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 Funding Lender customarily adheres or which may be reasonably required in the marketplace or by the Controlling Person or Funding Lender in connection with obtaining a rating or one or more sales or assignments of all or a portion of the Governmental Note or participations therein or securitizations of single or multi-class securities (the "**Securities**") secured by or evidencing ownership interests in all or a portion of the Governmental Note (each such sale, assignment, and/or securitization, a "**Secondary Market Transaction**"); provided that neither the Borrower nor the Governmental Lender 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 Governmental Note, shall be paid by the Controlling Person or Funding Lender, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower and the Governmental Lender shall, so long as the Borrower Loan is still outstanding:

(i) (1) provide financial and other information with respect to the Governmental Note, and with respect to the Project Facilities, the Borrower, the General Partner, the Managing Agent, or the Contractor of the Project Facilities, (2) provide financial statements, audited, if available, relating to the Project Facilities with customary disclaimers for any forward looking statements or lack of audit, and (3) at the expense of the Controlling Person or Funding Lender, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports, termite and other insect infestation reports, and other due diligence investigations of the Project Facilities, the Borrower, the General Partner, the Guarantor, the Managing Agent, the Contractor, and other third parties in connection with the Governmental Note, as may be reasonably requested from time to time by the Controlling Person or Funding Lender 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 Funding Lender pursuant to this paragraph (i) and the other information provided pursuant to this Agreement and the other Funding Loan Documents used in connection with a Secondary Market Transaction being called the "**Provided Information**"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the Controlling Person or Funding Lender 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, the General Partner, the Guarantor, the Managing Agent, the Contractor, or other third parties and the Funding Loan Documents reasonably acceptable to the Controlling Person or Funding Lender, consistent with the facts covered by such representations and warranties as they exist on the date thereof, including a "bringdown" of the representations and warranties contained in the Funding Loan 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 Funding Loan Documents to accommodate such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Funding Loan Documents and is not otherwise adverse to such party in its reasonable discretion or affect the excludability from gross income for federal income tax purposes of interest on the Governmental Note.

(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 Funding Lender 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, the General Partner, or the Guarantor shall provide, or in the case of a Borrower-engaged third party such as the Managing Agent, cause it to provide, information reasonably requested by the Controlling Person or the Funding Lender pertaining to the Borrower, the General Partner or the Guarantor, the Project Facilities, or such third party (and portions of any other sections reasonably requested by the Controlling Person or the Funding Lender pertaining to the Borrower, the General Partner or the Guarantor, the Project Facilities, or the third party). The Borrower shall, if requested by the Controlling Person or the Funding Lender, certify in writing that the Borrower has



carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the General Partner or the Guarantor, the Project Facilities, or the third party, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the Project Facilities, or the third party) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such third parties; provided further that the Borrower will make commercially reasonable efforts to cause such third parties to provide similar certification with respect to any information not so certified by the Borrower. Furthermore, the Borrower hereby indemnifies the Fiscal Agent, the Controlling Person, the Funding Lender, the Governmental Lender, and issuer, sponsor, guarantor, and the underwriter group for any securities, and their affiliates, officers, directors, partners, members, agents, attorneys, and controlling persons (the "**Underwriter Group**") for any liabilities to which any such parties may become subject to the extent such liabilities arise out of or are based upon the use of the Provided Information in a Secondary Market Disclosure Document.

(d) In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) defend and indemnify the Controlling Person, the Funding Lender, the Fiscal Agent, the Governmental Lender, its members, and the Underwriter Group for any liabilities to which the Funding Lender, the Controlling Person, the Governmental Lender, the Fiscal Agent, or the Underwriter Group may become subject insofar as such liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information, in the light of the circumstances under which they were made not misleading, and (ii) reimburse the Controlling Person, the Funding Lender, the Fiscal Agent, the Governmental Lender, the Underwriter Group, and other indemnified parties listed above for any legal or other expenses reasonably incurred by the Controlling Person, the Funding Lender, the Fiscal Agent, the Governmental Lender, or the Underwriter Group in connection with defending or investigating the liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties, but shall require such third parties to provide such indemnification with respect to information they certify.

(e) Promptly after receipt by an indemnified party under this Section 10.12 of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except

to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by written notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 10.12 and provided that the Borrower duly provides the defense and indemnity herein described, including payment of all required fees, expenses, and liabilities, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

(f) In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in this Section 10.12 is for any reason held to be unenforceable by an indemnified party in respect of any liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under this Section 10.12, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 11(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

(g) Notwithstanding anything herein to the contrary, unless the Governmental Note is rated in one of the four highest rating categories by a Rating Agency, any transfer of the Governmental Note in connection with a Secondary Market Transaction must comply with the requirements of Section 2.6 of the Funding Loan Agreement.

### **Section 10.13 Nonrecourse**

(a) Notwithstanding anything to the contrary contained in this Agreement (other than Sections 10.13(b) through (e) hereof) or the other Funding Loan Documents, the Governmental Lender agrees that, in connection with the exercise of any rights or remedies available to the Governmental Lender under this Agreement or any of the other

Funding Loan Documents (other than the Governmental Lender Guarantor Documents, the Environmental Indemnity, and the other guaranty agreements of the Guarantor), the Governmental Lender shall look solely to the enforcement of the lien and security interests created by this Agreement and the other Funding Loan Documents and to the collateral and other security held by the Fiscal Agent.

(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 Governmental Lender, the Fiscal Agent, the Controlling Person, or the Noteowners as a result of the occurrence of any of the following events:

(i) the Borrower fails to pay to the Fiscal Agent upon demand after an Event of Default all Rents to which the Fiscal Agent is entitled under Section 2 of the Mortgage and the amount of all security deposits collected by the Borrower from tenants then in residence. However, the 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 Fiscal Agent 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 Funding Loan Documents. However, the Borrower will not be personally liable for any failure described in this Section 10.13(b)(ii) if the Borrower is unable to apply insurance or casualty or condemnation proceeds as required by the Funding Loan Documents because of a valid order issued in a bankruptcy, receivership, or similar judicial proceeding;

(iii) if an Event of Default has occurred and is continuing, the Borrower fails to deliver all books and records relating to the Project Facilities or its operation in accordance with the provisions of Section 6.8 or 6.9 of this Agreement;

(iv) the Borrower engages in any willful act of material waste of the Project Facilities;

(v) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof;

(vi) the occurrence of any of the following transfers:

(1) any Person that is not an Affiliate creates a mechanic's lien or other involuntary lien or encumbrance against the Project

Facilities and the Borrower has not complied with the provisions of this Agreement,

(2) 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 Funding Loan Documents,

(3) the Borrower grants an easement that does not meet the requirements set forth in the Funding Loan Documents, or

(4) the Borrower executes a Lease that does not meet the requirements set forth in the Funding Loan Documents;

(vii) any act of fraud or willful misconduct or any criminal act of the Borrower, the General Partner or the Guarantor;

(viii) the Borrower's misappropriation of funds or other Collateral; or

(ix) any litigation or other legal proceeding related to the Obligations filed by any of the Borrower, Guarantor, or any of their Affiliates, or any other action of any such Person that delays, opposes, impedes, binders, enjoins, or otherwise interferes with or frustrates the efforts of Fiscal Agent to exercise any rights and remedies available to Fiscal Agent provided herein or in the other Funding Loan Documents.

(c) The Borrower and the Guarantor shall have full recourse and personal liability for all of the Indebtedness (and the limitation on liability in the first sentence of Section 10.13(a) hereof shall be null and void) as a result of the occurrence of any of the following:

(i) a violation of Section 6.11(a), 6.12(b), or 6.13(c) hereof;

(ii) the Borrower's taking any action which adversely affects the excludability of interest on the Governmental Note 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 Governmental Note from gross income for federal income tax purposes;

(iii) the Borrower or the General Partner fails to comply with any provision of Section 6.11(b) hereof and a court of competent jurisdiction holds or determines that such failure or combination of failures is the basis, in whole or in part, for the substantive consolidation of the assets and liabilities of the Borrower

or the General Partner with the assets and liabilities of a debtor pursuant to Title 11 of the Bankruptcy Code;

(iv) a transfer that is an Event of Default under Section 7.1 hereof occurs (other than a transfer described in Section 10.13(b)(vi) above, for which Borrower will have personal liability for any loss or damage); provided, however, that Borrower will not have any personal liability for a transfer consisting solely of the involuntary removal or involuntary withdrawal of the General Partner;

(v) there was fraud or written material misrepresentation by the Borrower or any officer, director, partner, member, or employee of the Borrower in connection with the application for or creation of the Indebtedness or there is fraud in connection with any request for any action or consent by the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Funding Lender, the Controlling Person, or the Noteowners;

(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 Fiscal Agent or the Noteowner) 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 Noteowners in the Borrower or the General Partner to contribute or cause the contribution of additional capital to the Borrower or the General Partner.

(d) The Borrower and the Guarantor shall have full recourse and personal liability for all of the following:

(i) the performance of and compliance with all of the 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 Governmental Lender Environmental Indemnity and the Environmental Indemnity;

(ii) the costs of any audit under Section 6.8 of this Agreement;

(iii) any costs and expenses incurred by the Governmental Lender, the Fiscal Agent, the Controlling Person, and the Funding Lender 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) the Borrower's indemnity obligations pursuant to Section 2.5 and 10.12.

(e) Further, nothing contained in this Section shall be deemed to limit, vary, modify, or amend any obligation owed under any guaranty, master lease, or indemnification agreement, including the Governmental Lender Guarantor Documents, the Environmental Indemnity, and the other guaranty agreements of the Guarantor, 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, the Governmental Lender, the Fiscal Agent, the Controlling Person, and the Noteowners shall not be deemed to have waived any right such Persons may have under Section 506(a), 506(b), 1111(b), or any other provisions of the Bankruptcy Code to file a claim for the full amount of Borrower's and Guarantor's Obligations under the Funding Loan Documents or to require that all collateral shall continue to secure all Obligations under the Funding Loan Documents.

**Section 10.14 Publicity.** The Borrower hereby authorizes the Controlling Person or the Funding Lender 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 Funding Lender also may discuss at a high level the types of services and solutions the Controlling Person or the Funding Lender has provided the Borrower.] This authorization shall remain in effect unless the Borrower notifies the Controlling Person in writing in accordance with the notice provisions set forth herein that such authorization is revoked. The Controlling Person or the Funding Lender shall also have the right to publicize its involvement in the financing of the Project Facilities, including the right to maintain a sign indicating such involvement at a location at the Project Facilities reasonably acceptable to the Borrower and Controlling Person.

**Section 10.15 Determinations by the Funding Lender, Controlling Person, and the Governmental Lender Servicer.** 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, the Funding Lender, or the Governmental Lender Servicer may be given or is required, or where any determination, judgment, or decision is to be rendered by the Controlling Person, the Funding Lender, or the Governmental Lender Servicer 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, the Funding Lender, or the Governmental Lender Servicer (or its designated representative) at its sole and absolute discretion. The Funding Lender may by separate instrument delegate, assign, transfer, and set over unto the Controlling Person any or all of the rights, remedies, duties, and obligations of the Funding Lender under this Agreement and the other Funding Loan Documents, in which event the Controlling Person shall have each of the rights, remedies, duties, and obligations delegated to it as if specifically named in this Agreement and in the other Funding Loan Documents, as applicable, and shall be entitled to act in its own name, but if necessary in the name and stead of the Funding Lender, to enforce each of the remedies provided to the Funding Lender hereunder or under the other Funding Loan Documents.

**Section 10.16 Further Assurances.** The Borrower will promptly and duly execute, acknowledge, and deliver from time to time such further instruments and take such further actions as may be reasonably required by the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Funding Lender, or the Controlling Person to carry out the purposes and provisions of this Agreement and to the other Funding Loan Documents, to make elections or take actions (or, as requested, to refrain from making elections or taking actions) related to the audit procedures involving the Borrower and/or its members set forth in the Bipartisan Budget Act of 2015 so that the Borrower's members, equityholders, shareholders, and partners will be directly responsible for any audit adjustments, changes, or modifications rather than the Borrower, to confirm the priority and/or perfection of any lien, pledge, assignment, or security interest created or intended to be created by this Agreement and the other Funding Loan Documents and to assure the Controlling Person and the Funding Lender of the subrogation and security rights in favor of the Fiscal Agent for the benefit of the Funding Lender for the benefit of the Noteowners of the Governmental Note contemplated by this Agreement, by the other

Funding Loan Documents in connection with any of the foregoing and such approvals shall be in form satisfactory to the Controlling Person.

**Section 10.17 Patriot Act.** The Fiscal Agent hereby notifies all the parties hereto that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56) (the "Patriot Act"), it is required to obtain, verify and record information that identifies the other parties hereto, which information includes the name and address of the other parties hereto and other information that will allow the Fiscal Agent to identify the other parties hereto in accordance with the Patriot Act. In addition, changes to federal banking regulations require all U.S. financial institutions to collect information regarding the beneficial ownership of our legal entity customers. At account opening, and at times during the life of the account, the Borrower shall provide, upon request, identifying information for all natural persons who, directly or indirectly, own 20 percent or more of the equity interests in the legal entity. In certain situations, the Fiscal Agent may request identifying information below 20 percent. The Fiscal Agent will also request identifying information for a controlling person, such as an executive officer or senior manager, or another individual who regularly performs similar functions.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, each of the Governmental Lender and the Borrower has caused this Agreement to be executed in its name and on its behalf by its authorized official all as of the day and year first above written.

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Governmental Lender**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

## EXHIBIT A

### FORM OF BORROWER 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 FISCAL AGENT IN ACCORDANCE WITH THE FUNDING LOAN AGREEMENT, BOTH REFERRED TO HEREIN.

\$51,000,000

\_\_\_\_\_, 2023

FOR VALUE RECEIVED, ECG RIDGE ROAD, LP, a limited partnership duly formed and validly existing under the laws of the State of Florida (the "**Borrower**"), by this promissory note hereby promises to pay to the order of the HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA (the "**Governmental Lender**") the principal sum of FIFTY ONE MILLION AND NO/100 DOLLARS (\$51,000,000.00), together with interest on the drawn and unpaid principal amount hereof, from the Closing Date (as defined in the Funding Loan Agreement referenced below) until paid in full, at a rate per annum, and acceleration premium, if any, as set forth herein.

1. **Defined Terms.** As used in this Note, the following terms shall have the following definitions:

"**First Loan Payment Date**" means the first (1st) calendar day of the second month following the Closing Date.

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

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

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

"**Fixed Rate**" shall mean the fixed rate set forth on the Schedule of Financial Terms and computed on the basis of a 360-day year comprised of twelve 30-day months.

"**Loan Payment Date**" means: (a) the first Business Day of each month, commencing on the First Loan Payment Date, and (b) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

"**Maturity Date**" shall have the meaning set forth in the Schedule of Financial Terms.

"**Maximum Rate**" means the lesser of (a) ten percent (10%) per annum or (b) the maximum interest rate that may be paid on the Borrower Loan under the laws of the State.

"**Stabilization Date**" has the meanings set forth in the Funding Loan Agreement.

"**Surplus Funding Loan Proceeds**" means all drawn but unexpended moneys and any unliquidated investments with respect thereto remaining upon Final Completion and after payment in full of the Project Costs, except for Funding Loan proceeds retained to pay for Project Costs not then due and payable.

All other capitalized terms used but not defined in this Note shall have the meanings given to such terms in the Borrower Loan Agreement.

2. **Method of Payment.** All payments due under this Note shall be payable to the Fiscal Agent or its successor. Each such payment shall be made by wire transfer of immediately available funds in accordance with wire transfer instructions that the Fiscal Agent shall supply by written notice to the Borrower from time to time on the date that is two Business Days before any other date that any payment of interest, premium, if any, principal or other amount is required to be made hereunder.

3. **Payments Due on Non-Business Days.** In any case where the date of maturity of, interest on or premium, if any, or principal of this Note or the date fixed for prepayment of any Borrower Note 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 prepayment, and, in the case of such payment, no interest shall accrue for the period from and after such date.

4. **Interest Rate.** Interest shall accrue on the drawn and unpaid principal of this Note from, and including, the Closing Date, until the Maturity Date, at the Fixed Rate. Notwithstanding any other provision of this Note to the contrary, interest shall not exceed the Maximum Rate.

5. **Payment of Principal and Interest.** Principal and interest shall be paid as follows:

(a) The Borrower shall pay all amounts due under this Note at the times and in the amounts set forth herein and in the Borrower Loan Agreement. The Borrower shall make its payments under this Note in immediately available funds.

(b) Commencing on the First Loan Payment Date and continuing on each Loan Payment Date thereafter until and including the First Principal Payment Date, the Borrower shall pay monthly payments of interest only, at the Fixed Rate, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on the second Business Day preceding each Loan Payment Date.

(c) Commencing on the First Principal Payment Date, and continuing on each Loan Payment Date thereafter until and including the Maturity Date, the Borrower shall pay monthly payments of principal and interest as set forth on the Debt Service Schedule to the Borrower Loan Agreement, in successive monthly installments. Such payments shall be made to the Fiscal Agent by 2:00 p.m., New York City time, on the second Business Day preceding each Loan Payment Date.

(d) Any accrued interest remaining past due may, at the Funding Lender's discretion, be added to and become part of the unpaid principal balance and shall bear interest at the rate or rates specified in this Note, and any reference below to "accrued interest" shall refer to accrued interest that has not become part of the unpaid principal balance.

(e) The Borrower shall pay all unpaid principal of and interest on this Note on the Maturity Date and any other amounts due hereunder.

(f) Any regularly scheduled monthly installment of principal and interest that is received by the Fiscal Agent before the date it is due shall be deemed to have been received on the due date solely for the purpose of calculating interest due.

(g) The Borrower shall make all payments of principal and interest under this Note without relief from valuation and appraisal laws.

(h) The Borrower acknowledges that the calculation of all interest payments shall be made by the Funding Lender and Controlling Person and shall be final and conclusive, absent manifest error. Monthly installments of interest shall include interest accrued through and including the last day of the preceding month, computed on the basis of a 360-day year comprised of twelve 30-day months.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, the prepayment premium payable hereunder, if any, and all other amounts payable under this Note and any other Borrower Loan Document shall at once become due and payable, at the option of the Fiscal Agent upon the written direction of the Funding Lender, without any prior notice to the Borrower (except if notice is required by applicable law, then after such notice). The Fiscal Agent, upon the written direction of the Funding Lender, may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayments.**

(a) In connection with any prepayment (that is, any receipt by the Fiscal Agent of principal, other than principal required to be paid in monthly installments pursuant to Section 5 of this Note, prior to the Maturity Date) made under this Note,

whether voluntary or involuntary, a prepayment premium shall be payable to the extent provided in Section 9 of this Note and Section 2.3(c) of the Borrower Loan Agreement. EXCEPT AS OTHERWISE PERMITTED HEREIN, NO VOLUNTARY PREPAYMENTS OF THIS NOTE, IN WHOLE OR IN PART, SHALL BE PERMITTED.

(b) *Optional Prepayment of this Note.*

(i) This Note is subject to optional prepayment in whole but not in part, by the Borrower upon not less than forty-five (45) days written notice to the Governmental Lender, the Fiscal Agent, the Funding Lender, and the Controlling Person (which notice shall be unconditional and irrevocable) on any Loan Payment Date occurring on or after the First Optional Call Date, at a prepayment price equal to 100% of the principal amount thereof, plus accrued interest thereon to, but not including, the prepayment date.

(ii) This Note is subject to optional prepayment in part on any Loan Payment Date specified by the Borrower and consented to by the Controlling Person following Completion but not later than the Stabilization Date in an amount not to exceed, in the aggregate, the Mandatory Prepayment Amount at a prepayment price equal to 100% of the principal amount of the Governmental Note to be prepaid without premium or penalty plus interest accrued thereon to, but not including, the prepayment date.

(c) *Mandatory Prepayment of this Note.*

(i) This Note is subject to mandatory prepayment in part upon the written direction of the Controlling Person from, and to the extent of, any Surplus Funding Loan Proceeds, on any Loan Payment Date after Completion of the Project Facilities, but in no event later than the Stabilization Date, at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date, without prepayment premium.

(ii) The Borrower Note is subject to mandatory prepayment in whole or in part upon the written direction of the Controlling Person on any Loan Payment Date to the extent that Insurance Proceeds or a Condemnation Award in connection with the Project Facilities are deposited in the Tax and Insurance Escrow Fund and are not to be used to repair or restore the Project Facilities at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date, without prepayment penalty.

(iii) This Note is subject to mandatory prepayment in part on any Loan Payment Date upon the written direction of, and in the amount as specified by, the Controlling Person to the Fiscal Agent necessary to cause the Project Facilities to meet the requirements of clause (b) of the definition of "Stabilization," on the Stabilization Date at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date.

(iv) This Note is subject to extraordinary mandatory prepayment in whole or in part on any Loan Payment Date at the written direction of the Controlling Person to the Fiscal Agent at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date following receipt by the Fiscal Agent of the direction of the Controlling Person, within one hundred eighty (180) days of the occurrence of any of the following events:

(1) the Project Facilities shall have been damaged or destroyed to such an extent that in the judgment of the Controlling Person (A) it cannot reasonably be restored within a period of 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 and losses from the failure of normal operations carrying on during such time are not covered by insurance, or (C) it would not be economically feasible for the Borrower to replace, repair, rebuild or restore the same;

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

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

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

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

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

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

(v) This Note is subject to mandatory prepayment in whole at a prepayment price equal to 100% of the principal amount of this Note to be prepaid plus interest accrued thereon to, but not including, the prepayment date, on the first Loan Payment Date for which notice of prepayment can be given in accordance with the Funding Loan Agreement within forty-five (45) days after the occurrence of a Determination of Taxability; provided, however, if mandatory prepayment on account of a Determination of Taxability of less than all this Note would result, in the opinion of Tax Counsel, in the interest on this Note outstanding following such mandatory prepayment being excludable from the gross income of the Noteowners of this Note outstanding, then this Note is subject to mandatory prepayment upon the occurrence of a Determination of Taxability in the amount specified in such opinion, provided that such prepayment must be in a percentage of the outstanding principal amount of the Funding Loan that is not less than \$250,000 or an interest in \$250,000 of the outstanding principal amount thereof.



(vi) This Note is subject to mandatory prepayment in whole on any Loan Payment Date specified by the Controlling Person in a written direction on or after the First Put Date, if the Controlling Person directs prepayment by providing notice to the Borrower, the Funding Lender, and the Governmental Lender at least one hundred eighty (180) days prior to the Loan Payment Date specified in such notice on which the Borrower Note is to be prepaid at a prepayment price equal to 100% of the principal amount thereof plus interest accrued thereon to, but not including, the prepayment date.

(vii) This Note is subject to mandatory prepayment in whole on any Loan Payment Date specified by the Controlling Person in a written direction following Completion but not later than the Stabilization Date in the amount of the Mandatory Prepayment Amount, to the extent not previously prepaid pursuant to Section 7(b) at a prepayment price equal to 100% of the principal amount of the Borrower Note to be prepaid without premium or penalty plus interest accrued thereon to, but not including, the prepayment date.

8. **Obligations of the Borrower Absolute and Unconditional.** Subject to Section 10.13 of the Borrower Loan Agreement, the obligations of the Borrower to make all payments required under this Note and the other Borrower Loan Documents on or before the date the same become due, and to perform all of its other obligations, covenants, and agreements hereunder and under the other Borrower Loan Documents shall be primary, absolute, unconditional, and irrevocable, and shall be paid or performed strictly in accordance with the terms of this Note and the other Borrower Loan Documents under any and all circumstances, without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment, or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project Facilities or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft, or destruction of the Project Facilities or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project Facilities, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Lender's legal organization or status, or any default of the Lender hereunder or under any other Borrower Loan Document, and regardless of the invalidity of any action of the Funding Lender or the invalidity of any portion of this Note or the other Borrower Loan Documents. Provided further, the obligations of Borrower under this Note and the other Borrower Loan Documents shall not be affected by:

(a) any lack of validity or enforceability of any Borrower Loan Document or any of the Funding Loan Documents;

(b) any amendment of, or any waiver or consent with respect to, any of the Borrower Loan Documents or Funding Loan Documents;

(c) the existence of any claim, set-off, defense, or other rights which the Borrower, the General Partner, or the Guarantor may have at any time against the Fiscal Agent (other than the defense of payment in accordance with the terms of this Note or the other Borrower Loan Documents) or any other Person, whether in connection with this Note or any other Borrower Loan Document, the Funding Loan Documents, or any transaction contemplated thereby or any unrelated transaction;

(d) any breach of contract or other dispute between the Borrower, the General Partner, or the Guarantor, and Funding Lender;

(e) any Requisition or any document presented in connection therewith, proving to be forged, fraudulent, untrue, inaccurate, invalid, or insufficient in any respect (except in the event of willful misconduct by Fiscal Agent with respect to same); or

(f) any exchange, release, or nonperfection of any lien or security interest in any collateral pledged or otherwise provided to secure any of the obligations contemplated herein, in any other Borrower Loan Document or in any Funding Loan Document.

The Borrower hereby waives the application to it of the provisions of any statute or other law now or hereafter in effect contrary to any of its obligations, covenants, or agreements under this Note or the other Borrower Loan Documents or which releases or purports to release the Borrower therefrom. Nothing contained herein shall be construed as prohibiting the Borrower from pursuing any rights or remedies it may have against any Person in a separate legal proceeding.

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

10. **Costs and Expenses.** To the fullest extent allowed by applicable law, the Borrower shall pay all expenses and costs, including, without limitation, out-of-pocket expenses and reasonable fees of attorneys (including, without limitation, in-house attorneys) and expert witnesses and costs of investigation, incurred by the Fiscal Agent and the Funding Lender as a result of any default under this Note or in connection with efforts to collect any amount due under

this Note, or to enforce the provisions of any of the other Borrower Loan Documents, including those incurred in post-judgment collection efforts and in any bankruptcy proceeding (including any action for relief from the automatic stay of any bankruptcy proceeding) or judicial or non-judicial foreclosure proceeding. For purposes of this Section 10, attorneys' out of pocket expenses shall include, but are not limited to, support staff costs, costs of preparing for litigation, computerized research, telephone and facsimile transmission expenses, mileage, deposition costs, postage, duplicating, process service, videotaping, and similar costs and expenses.

11. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace, and diligence in collecting the Indebtedness are waived by Borrower and all endorsers and guarantors of this Note and all other third party obligors.

12. **Governing Law.** This Note shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

13. **Consent to Jurisdiction and Venue.** The Borrower agrees that any controversy arising under or in relation to this Note shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Note. The Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence, or otherwise. However, nothing herein is intended to limit the Fiscal Agent's right to bring any suit, action, or proceeding relating to matters arising under this Note against the Borrower or any of the Borrower's assets in any court of any other jurisdiction.

14. **Further Assurances.** The Borrower shall at any time and from time to time, promptly execute and deliver all further instruments and documents, and take all further action that may be reasonably necessary or desirable, or that the Fiscal Agent may reasonably request, in order to protect any right or interest granted by this Note or to enable the Governmental Lender to exercise and enforce its rights and remedies under this Note.

15. **Captions.** The captions of the sections of this Note are for convenience only and shall be disregarded in construing this Note.

16. **Controlling Person.** The Borrower hereby acknowledges and agrees that, pursuant to the terms of the Mortgage: (a) from time to time, the Funding Lender may appoint a controlling person to be responsible for the performance of the servicing and other duties on behalf of the Funding Lender set forth in the Funding Loan Agreement, and to otherwise service the Borrower Loan and (b) unless the Borrower receives written notice from Funding Lender to the contrary, any action or right which shall or may be taken or exercised by Funding Lender may be taken or exercised by such controlling person with the same force and effect.

17. **Waiver of Trial by Jury.** TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF THE BORROWER AND THE GOVERNMENTAL LENDER (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

18. **Time of the Essence.** Time is of the essence with respect to this Note.

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Note or caused this Note to be duly executed and delivered by its authorized representative as of the date first set forth above.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**ENDORSEMENT**

Pay to the order of the Fiscal Agent, without recourse, as Fiscal Agent under the Funding Loan Agreement referred to in the within mentioned Note, as security for the Governmental Note issued under such Funding Loan Agreement. This endorsement is given without any warranty as to the authority or genuineness of the signature of the maker of the Borrower Note.

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Governmental Lender**

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

Name: Jeffrey Sharkey

Title: Chair

**EXHIBIT B**

**FORM OF PROJECT FUND REQUISITION**

BORROWER: ECG Ridge Road, LP

PROJECT: Ridge Road

REQUISITION NO.: \_\_\_\_\_

In the Amount of \$\_\_\_\_\_

TO: U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble

The Borrower hereby requests payments in the following amounts, from the following sources and to be made to the following parties, all as set forth on the Borrower's Request for Payment attached to this Requisition:

<u>Amount</u>	<u>Source</u>	<u>Payable to:</u>
\$_____	[identify name of Account & Fund]	[Borrower's account #] [third party payment/wire instructions must be attached]

**Requisition - Contents and Attachments**

- Borrower's Request for Payment
- Borrower's Representations and Warranties
- Updated Loan Balancing (Sources and Uses) & Monthly Requisition Spreadsheet
- Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)
- Architect, Contractor, Owner Change Order (Executed AIA G-701(s) added to G-702)
- Pending Change Order and Change Order Log (dated)
- Vendor Payee List or equivalent
- Requisitions and Invoices Supporting Application
- Contractor's Requisition Certificate

- Architect's Requisition Certificate
- Lien Waivers, Conditional for the current Hard cost pay request
- Lien Waivers, Unconditional for payment thru the prior period pay request
- Stored Materials Log and documentation (e.g., insurance, bill of sale, invoices, photos) as Applicable
- Current Project Schedule
- Other Documents as Requested by the Funding Lender or Controlling Person

### **Representations and Warranties**

2. No changes have been made in the Plans and Specifications which require and have not received the prior approval of (a) the Controlling Person under the terms of the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Agreement"), (b) any Governmental Authority having jurisdiction over the Project Facilities, or (c) the Governmental Lender Servicer and any other parties from whom such approval is required.
3. Construction of the Improvements has been performed in accordance with the Plans and Specifications (other than any changes that did not constitute Material Change Orders).
4. 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 and the Governmental Lender Servicer.
5. Funding of this Requisition shall be in accordance with the terms and provisions of the (a) Agreement, and (b) the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, with respect to the Governmental Note.
6. All money requisitioned by the Borrower for construction of the Improvements and disbursed by the Funding Lender and the Fiscal Agent 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 Funding Lender and the Fiscal Agent under previously approved Requisitions have been expended for the purpose for which they were requisitioned.
7. All of the information submitted to the Controlling Person, the Governmental Lender Servicer, the Fiscal Agent, and the Funding Lender in connection with this Requisition is true and accurate in all material respects as of the date of submission.
8. The representations and warranties set forth in the Funding Loan Documents are true and correct in all material respects as of the date hereof with the same effect as if made on this date.

9. The Borrower represents and warrants that (a) there has occurred no Event of Default or event which, with the passage of time or the giving or notice or both, would constitute an Event of Default on the part of the Borrower or the Guarantor under the terms of the Funding Loan Documents, (b) except as previously disclosed by the Borrower to the Controlling Person and the Governmental Lender Servicer, the Borrower has not received notice from or been informed by any Governmental Authority or the Engineering Consultant of any alleged deficiencies in the work performed to date or any deviation of such work from Plans and Specifications or notice of any assertion of a claim that the Improvements have not been constructed in accordance with all applicable Legal Requirements, (c) with the exception of any Permitted Liens and those being contested by the Borrower in accordance with the terms of the Funding Loan Documents, there are no liens against any portion of the Project Facilities or any other asset of the Borrower, and (d) the Funding Loan Documents are in full force and effect.
10. The Borrower represents and warrants that this Requisition is in the form of requisition required by the Controlling Person and the Governmental Lender Servicer.
11. 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 Governmental Note have been applied to the payment of Qualified Project Costs.
12. Attached hereto are copies of lien waivers from all such contractors, subcontractors, and materialmen requisitioning payment under this Requisition, the originals of which will be delivered, if requested by the Controlling Person, to the Title Insurance Company.
13. All capitalized terms used herein and not otherwise defined shall have the meanings ascribed thereto under the Borrower Loan Agreement.

Executed this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member



Approved by the Controlling Person:

R4 SERVICER LLC, as Controlling Person

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

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

Approved by the Governmental Lender Servicer:

FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA

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

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

Title: \_\_\_\_\_

Dated: \_\_\_\_\_, 20\_\_

**Contractor's Application for Payment**

Contractor's Application and Certification for Payment (AIA Form G-702 & G-703)  
Architect, Contractor, Owner Change Order (Executed AIA G-710(s) added to G-702)  
Pending Change Order and Change Order Log (dated)

**Requisitions and Invoices**

**Contractor's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: U.S. Bank Trust Company, National Association ("Fiscal Agent")  
Allianz Life Insurance Company Of North America ("Funding Lender")  
R4 Servicer LLC ("Controlling Person")

FROM: \_\_\_\_\_ ("Contractor")

RE: Construction of Ridge Road (the "Project Facilities") by ECG Ridge Road, LP  
("Borrower").

We are the general contractor for the Project Facilities and, to induce the Controlling Person and the Governmental Lender Servicer to approve disbursements of Governmental Note proceeds and other amounts by the Funding Lender and the Fiscal Agent to assist in funding construction of the Improvements and knowing that the Funding Lender, the Governmental Lender Servicer, and the Controlling Person will rely on this certificate in doing so, we hereby certify as follows:

1. In reference to our contract dated \_\_\_\_\_, 20\_\_, with Borrower for construction of the Improvements, and the Plans and Specifications therefor, no amendments, modifications, or changes have been made with respect to our contract or the Plans and Specifications except such as have had your prior written approval. There are no pending change orders except as follows:
  
2. Our Application for Payment No. \_\_\_\_\_, dated \_\_\_\_\_, 20\_\_, which we understand is to be included as an item in the Borrower's requisition to you, is in full compliance with the terms of our contract with Borrower, and, upon the payment of same, we will have no other or additional claim (including claims for so-called "extras") against Borrower on account of our contract or otherwise for and through the period of time ending upon the date of our Application for Payment, for all labor and materials furnished by us through and including the date of our Application for Payment except as follows:
  - (a) Retainage not exceeding \_\_\_\_% of the value of labor and materials incorporated into the Project Facilities and covered by applications submitted by us on account of the construction of the Improvements for which payment is to be made to us after substantial completion of our contract, as provided therein (the amount of said retainage), as of the end of the period covered by our Application for Payment dated \_\_\_\_\_, 20\_\_, is \$\_\_\_\_\_); and
  
  - (b) [specify other claims, if any]

3. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows:  [none] .
  
4. We have paid in full all our obligations to subcontractors, workmen, suppliers, and materialmen for and with respect to all labor and materials supplied through and including the date of our last Application for Payment, except for an amount equal to \_\_\_\_\_% thereof, which we are holding in accordance with the terms of such obligations and our contract, and all our subcontractors have paid their subcontractors, workmen, and materialmen in full for and with respect to all labor and materials supplied through and including the date of our last Application for Payment.
  
5. To the fullest extent allowed by law, we waive and release any and all rights to claim any lien for labor done or materials furnished up to an amount equal to the amount of our Application for Payment dated \_\_\_\_\_, 20\_\_, plus the amount of all our previously funded applications.

Executed as an instrument under seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[CONTRACTOR]

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

**Architect's Requisition Certificate**

Application for Payment No. \_\_\_\_\_

TO: U.S. Bank Trust Company, National Association ("Fiscal Agent")  
Allianz Life Insurance Company Of North America ("Funding Lender")  
R4 Servicer LLC ("Controlling Person")

FROM: \_\_\_\_\_ ("Architect")

RE: Construction of Ridge Road (the "Project Facilities") by ECG Ridge Road, LP  
("Borrower")

We are the architect for the Project Facilities and, to induce the Controlling Person and the Governmental Lender Servicer to approve disbursements of Governmental Note proceeds and other amounts by the Funding Lender and the Fiscal Agent to assist in funding construction of the Improvements, and knowing that the Controlling Person and the Governmental Lender Servicer will rely on this certificate in doing so, we hereby certify as follows:

1. We inspected the Project Facilities on \_\_\_\_\_, 20\_\_ and found the status of Work at the Project Facilities on that date and the progress made on the Project Facilities since our last certificate to you dated \_\_\_\_\_, 20\_\_ to be as follows: \_\_\_\_\_ [substantially in accordance with the approved, as amended and approved, plans and specifications], [non-compliant with the approved plans and specifications], [other – describe here].
  
2. We delivered the Plans and Specifications for the Project Facilities, copies of which have been delivered to you (the "Plans and Specifications"). We have made no changes to the Plans and Specifications except as you have approved in writing. There are no pending change orders or construction change directives except as provided in the current Pending Change Order and Change Order Log.
  
3. All Work to date has been done in accordance with the Plans and Specifications and in a good and workmanlike manner. All materials and fixtures usually furnished and installed or stored on site at the current stage of construction have been furnished, installed, or stored on site. All of the Work to date is hereby approved except as follows: \_\_\_\_\_  
\_\_\_\_\_
  
4. We have examined the requisition being submitted herewith to you by the Borrower, which requisition includes an Application for Payment from \_\_\_\_\_ ("Contractor") respecting construction of the Improvements. The payment so applied for by Contractor does not exceed (when added to the payments heretofore applied for by and paid to Contractor) \_\_\_\_\_% of the value of labor and materials incorporated into the Improvements.

5. All permits, licenses, approvals, and the like required to complete construction of the Improvements have been validly issued by the appropriate authorities and are in full force and effect, and there is no violation of any of the provisions thereof or of any Legal Requirements applicable to the Project Facilities of which we have notice or knowledge as of the date hereof except as follows:
  
6. Access to and egress from the Project Facilities and all improvements to be constructed thereon are in accordance with all applicable Legal Requirements. Water, drainage, and sanitary sewerage facilities and telephone, gas, and electric services of public utilities are or are due to be installed in the locations indicated on the Plans and Specifications and are adequate to serve the Project Facilities. All necessary approvals for installation of or connection to said facilities or services have been obtained.
  
7. To the best of our knowledge, there are no petitions, actions, or proceedings pending or threatened to revoke, rescind, alter, or declare invalid any laws, ordinances, regulations, permits, licenses, or approvals for or relating to the Project Facilities.
  
8. No amendments, modifications, or changes have been made to our contract dated \_\_\_\_\_, 20\_\_ with the Borrower except such as have had your prior written approval.
  
9. The Borrower is not in default of any of the Borrower's obligations to us as of the date hereof except as follows: \_\_\_\_\_

This certificate is rendered based on our examination of the Project Facilities, the Plans and Specifications, the data comprising the Application for Payment and all other matters which we deem relevant. We are to incur no liability under this certificate except for failure to exercise due professional skill and diligence.

Executed as a sealed instrument this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

[ARCHITECT]

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

**Borrower's Request for Payment**

[attach spreadsheets in form provided by R4 Capital]



**Lien Waivers**

**EXHIBIT C**

**MOLD/MILDEW ADDENDUM**

This Mold and Mildew Addendum (the "Addendum") dated \_\_\_\_\_, 20\_\_ is attached to and made a part of the lease dated \_\_\_\_\_, 20\_\_ (the "Lease"), by and between ECG Ridge Road, 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: (a) any evidence of a water leak or excessive moisture in the Unit, as well as in any storage room, garage, or other common area; (b) any evidence of mold- or mildew-like growth that cannot be removed by simply applying a common household cleaner and wiping the area; (c) any failure or malfunction in the heating, ventilation, or air conditioning system in the Unit; and (d) 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.

[Remainder of page intentionally left blank]

Resident or Residents:

(all Residents must sign here)

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

\_\_\_\_\_  
Resident's Signature

\_\_\_\_\_  
Resident's Name

\_\_\_\_\_  
Resident's Unit No.

Lessor:

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**SCHEDULE 1**  
**SCHEDULE OF LITIGATION**

[NONE]

**SCHEDULE 2**

**SCHEDULE OF OBLIGATIONS AND MATERIAL CONTRACTS**

**SCHEDULE 3**  
**DEVELOPMENT BUDGET**

**SCHEDULE 4**

**PLANS AND SPECIFICATIONS**

ALL PLANS AND SPECIFICATIONS ARE ON FILE WITH THE CONTROLLING PERSON  
AND THE GOVERNMENTAL LENDER SERVICER

**SCHEDULE 5**

**PERMITS AND APPROVALS NOT YET OBTAINED**



## SCHEDULE 6

### CONDITIONS TO ADVANCES

- A. CONDITIONS TO INITIAL ADVANCE. The right of the Borrower to draw the initial advance shall be subject to the fulfillment of the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:
1. Construction Documents. Each of the Architect's Agreement and the Construction Contract shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect. The Architect and the Contractor shall have duly executed and delivered to the Controlling Person a consent to the assignment of the Architect's Agreement, the Engineer's Agreement and the Construction Contract in form and substance satisfactory to the Controlling Person.
  2. Subcontracts; Other Contracts. The Borrower shall have delivered to the Controlling Person, and the Controlling Person shall have approved, a list of all subcontractors and materialmen who have been or, to the extent identified by the Borrower, will be supplying labor or materials for the Project Facilities in the amount of \$10,000 or more. The Borrower shall have delivered to the Controlling Person correct and complete photocopies of all other executed contracts with contractors, subcontractors, engineers or consultants for the Project Facilities in an amount of \$25,000 or more, and of all development, management, brokerage, sales, or leasing agreements for the Project Facilities.
  3. Validity of Liens. The Mortgage, the Assignment of Project Documents, the Assignment of Capital Contributions, the Assignment of HAP Contract, the Assignment of Subordinate Debt Documents, the Developer Fee Pledge, and the General Partner Pledge shall be effective to create in the Fiscal Agent or Funding Lender, as applicable, a legal, valid, and enforceable lien and security interest in the collateral identified therein. All filing, recordings, deliveries of preserve such liens and security interests shall have been duly effected.
  4. Deliveries. The following items or documents shall have been delivered to the Controlling Person by the Borrower and shall be in form and substance satisfactory to the Controlling Person.
    - (a) Plans and Specifications. Two complete sets of the Plans and Specifications and approval thereof by any necessary Governmental Authority, with a certification from the Architect that the Improvements to be constructed comply with all Legal Requirements and Governmental Actions and that the

Construction Contract satisfactorily provides for the construction of the Improvements.

(b) Title Policy. The Title Policy, or a pro forma policy that constitutes a commitment to issue the Title Policy in the form of such pro forma policy, together with proof of payment of all fees and premiums for such policy and true and accurate copies of all documents listed as exceptions under such policy.

(c) Other Insurance. Duplicate originals or certified copies of all policies of insurance required hereunder to be obtained and maintained during the construction of the Improvements.

(d) Evidence of Sufficiency of Funds. Evidence that the proceeds of the Funding Loan, the proceeds of the Subordinate Debt together with Required Equity Funds delivered on the Closing Date or to be delivered after the Closing Date pursuant to the Funding Loan Agreement and the Partnership Agreement, will be sufficient to cover all Project Costs reasonably anticipated to be incurred to complete the Improvements prior to the Completion Date and to carry the Project Facilities through to Stabilization.

5. Evidence of Access, Availability of Utilities, Project Approvals. Evidence as to:

(a) the methods of access to and egress from the Project Facilities, and nearby or adjoining public ways, meeting the reasonable requirements of the Project Facilities and the status of completion of any required improvements to such access;

(b) the availability of water supply and stone and sanitary sewer facilities meeting the reasonable requirements of the Project Facilities;

(c) the availability of all other required utilities, in location and capacity sufficient to meet the reasonable needs of the Project Facilities; and

(d) the obtaining of all approvals, permits, and licenses or evidence that no such permits or licenses are required) which are required, necessary or desirable for the construction of the Improvements and the access thereto, together with copies of all such Governmental Actions.

6. Environmental Report. An environmental site assessment report or reports of one or more qualified environmental engineering or similar inspection firms approved by the 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 Fiscal Agent, and the Funding Lender 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 Fiscal Agent, and the Funding Lender 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 Closing Date.
9. Deposit of Funds. The initial installment of Required Equity Funds and any other source of funds required for closing shall have been delivered to the Fiscal Agent and deposited in the funds and accounts set forth in the Closing Memorandum.
10. Requisition. If any portion of the initial Advance shall be for hard costs of construction, a completed Requisition complying with the provisions of the Funding Loan Documents and together with the approval of the Engineering Consultant.
11. Form Lease. The standard form of lease to be used by the Borrower in connection with the Improvements.
12. Engineering Consultant Report. The Controlling Person shall have received a report or written confirmation from the Engineering Consultant that (a) the Engineering Consultant has reviewed the Plans and Specifications, (b) 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, (c) the Construction Contract satisfactorily provides for the construction of the Improvements, and (d) 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 Closing Date, the Controlling Person may withhold or refuse to approve the initial Advance if any mechanic's lien or notice of intention to record or file a mechanic's lien has been filed or given.
  15. Notices. All notices required by any Governmental Authority under applicable Legal Requirements to be filed prior to commencement of construction of the Improvements shall have been filed.
  16. Appraisal. The Controlling Person shall have received an Appraisal, in form and substance satisfactory to the Controlling Person.
  17. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of the initial advance, and on the date of the initial advance there shall exist no Event of Default.
  18. Representations and Warranties. The representations and warranties made by the Obligors in the Funding Loan Documents, the General Partner Pledge, the Developer Fee Pledge, or the documents executed by the Guarantor or otherwise made by or on behalf of the Obligors in connection therewith or after the date thereof shall have been true and correct in all respects when made and shall be true and correct in all respects on the date of the initial advance.
  19. Proceedings and Documents. All proceedings in connection with the transactions contemplated by this Agreement and the other Funding Loan Documents shall be satisfactory to the Controlling Person and their counsel in form and substance, and the Controlling Person shall have received all information and such counterpart originals or certified copies of such documents and such other certificates, opinions or documents as they or their counsel may reasonably require.
  20. Payment and Performance Bonds. The Controlling Person shall have received the original Payment and Performance Bonds in form and content and from a surety satisfactory in all respects to the Controlling Person.
- B. CONDITIONS TO SUBSEQUENT ADVANCES. The right of the Borrower to draw each advance after the initial advance shall be subject to the following conditions precedent in a manner, and by documentation, satisfactory to the Controlling Person:

1. Prior Conditions Satisfied. All conditions precedent to any prior disbursement shall continue to be satisfied as of the date of the Requisition of such subsequent advance.
2. Performance; No Default. The Borrower shall have performed and complied with all terms and conditions herein required to be performed or complied with by it on or prior to the date of such Requisition, and on such date there shall exist no Default or Event of Default.
3. Representations and Warranties. Each of the representations and warranties made by the Borrower in the Funding Loan Documents or otherwise made by or on behalf of the Borrower in connection therewith after the date thereof shall have been true and correct in all respects on the date on when made and shall also be true and correct in all material respects on the Borrower on the date of such Requisition (except to the extent of changes resulting from transactions contemplated or permitted by the Funding Loan Documents).
4. No Damage. If the Improvements shall have been materially injured or damaged by fire, explosion, accident, flood, or other casualty, such Improvements are able to be and are diligently being restored in accordance with the terms of the Mortgage.
5. Receipt by Controlling Person. The Controlling Person shall have received:
  - (a) Requisition. A completed Requisition in the form set forth on Exhibit B to this Agreement, accompanied by the certificates, applications, invoices, and other materials required thereby together with approval of the portion of the Requisition applicable to the Work for such Advance by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the Work for which the Advance is requested to the date thereof was performed in a good and workmanlike manner and stating that the remaining non-disbursed portion of the Funding Loan proceeds and other available funds specified in the Development Budget are adequate to complete construction of the Improvements in accordance with the Plans and Specifications; and
  - (b) Endorsement to Title Policy. At the time of each advance to update the date of and increase the amount of coverage by the amount of such advance, such endorsements (a "Down Date Endorsement") shall be delivered by the Title Insurer, increasing the coverage under the Title Policy by the amount of the approved Requisition plus the amount of any proceeds of the

Funding Loan disbursed from the Capitalized Interest Account of the Project Fund.

6. Foundation Survey; Current Survey. If the Plans and Specifications provide for construction of the foundations, including expansion or modification of existing foundations, within thirty (30) days after completion of construction of the foundations of the Improvements, the Borrower shall deliver a survey certified by a registered engineer or surveyor showing that the foundations are located within the perimeter of the Land and any set back lines and at the location shown on the Plans and Specifications, and from time to time. An updated Survey if required by the Title Insurance Company or the Controlling Person;
7. Approval by Engineering Consultant. Approval of the Requisition for such disbursement by the Engineering Consultant, accompanied by a certificate or report from the Engineering Consultant to the effect that in its opinion, based on site observations and submissions by the Contractor, the construction of the Improvements to the date thereof was performed in a good and workmanlike manner and in accordance with the Plans and Specifications, stating the estimated total cost of construction of the Improvements, stating the percentage of in-place construction of the Improvements, and stating that the remaining non-disbursed portion of the Project Fund and Required Equity Funds allocated for such purpose in the Development Budget is adequate to complete the construction of the Improvements;
8. Contracts. Evidence that one hundred percent (100%) of the cost of the remaining Work is covered by firm fixed price or guaranteed maximum price contracts or subcontracts, or orders for the supplying of materials, with contractors, subcontractors, materialmen, or suppliers satisfactory to the Controlling Person, and that the Payment and Performance Bonds have been obtained, as required.
9. 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.
10. Lien Waivers. No sums shall be disbursed until the Borrower has delivered a waiver or full, conditional, or partial release of liens from all contractors, subcontractors, materialmen, or others who may be entitled to a lien, as permitted by law for the work supplied or materials provided and for which payment is requested, and with respect to all contractors, subcontractors, materialmen, or others entitled to a lien for work done or materials provided and paid from any prior advance funded by reliance on conditional lien waivers, on unconditional waiver or release of lien with respect to such work.

11. Required Equity Funds. All installments of Required Equity Funds which shall be then due and payable under the Partnership Agreement shall have been deposited with the Fiscal Agent.
12. Release of Retainage. In addition to the conditions set forth in this Section, 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.
13. Loan Rebalancing. The Controlling Person shall not be obligated to authorize any further advances until the requirements of Section 6.32 of this Agreement have been satisfied.
14. Material Change Orders. No Material Change Order shall have been made without the written approval of the Controlling Person.

**SCHEDULE 7**

**FORM OF COMPLETION CERTIFICATE**

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

Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair

U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Ridge Road (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities, hereby certifies to U.S. Bank Trust Company, National Association, as Fiscal Agent (the "Fiscal Agent"), the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), and R4 Servicer LLC, as Controlling Person (the "Controlling Person"), acting on behalf of Allianz Life Insurance Company Of North America (the "Funding Lender"), the funding lender of the Governmental Note issued in connection with the Project Facilities, that "Completion" has been attained as of the date hereof and all conditions relating thereto as set forth in the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Borrower Loan Agreement"), between the undersigned and the Governmental Lender have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), by and among the Funding Lender, the Fiscal Agent, and Governmental Lender, or the Borrower Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is a schedule of all Punchlist Items attached to an AIA Form G-704 or other similar notice of substantial completion as required by clause (a) of the definition of "Completion" contained in the Funding Loan Agreement;



2. Attached hereto are true copies of all Governmental Actions as required by clause (b) of the definition of "Completion" contained in the Funding Loan Agreement;

3. The requirement of clause (c) and clause (d) of the definition of "Completion" contained in the Funding Loan Agreement are true and correct as of the date hereof except for the following: [\_\_\_\_\_] [Not Applicable].

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

Accepted and Agreed to:

R4 SERVICER LLC, as Controlling Person

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

[FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA]

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

Effective Dated: \_\_\_\_\_, 20\_\_

## Schedule of Attachments to Completion Certificate

Punchlist Items  
Governmental Actions

## SCHEDULE 8

### FORM OF ESTIMATED USE OF PROCEEDS COMPLIANCE CERTIFICATE

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

Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair

U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Ridge Road (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to U.S. Bank Trust Company, National Association, as Fiscal Agent (the "Fiscal Agent"), the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), and R4 Servicer LLC, as Controlling Person (the "Controlling Person"), acting on behalf of Allianz Life Insurance Company Of North America (the "Funding Lender") that:

(a) no less than 95% of the net proceeds of the Funding Loan has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code.

(b) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Funding Loan for purposes of Section 42(h)(4).

Attached hereto is a schedule of expected expenditures evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Funding Loan expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, among the Funding Lender, the Fiscal Agent, and the Governmental Lender.

WITNESS WHEREOF, the undersigned has duly executed this Estimated Use of Proceeds Compliance Certificate as of the day and year first above written.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**Schedule of Attachments to Estimated Use of Proceeds Certificate**

[Attach Schedule]

**SCHEDULE 9**

**FORM OF CONSTRUCTION CLOSEOUT DELIVERIES CERTIFICATE**

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

Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair

U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Ridge Road (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies to U.S. Bank Trust Company, National Association, as Fiscal Agent (the "Fiscal Agent"), the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), and R4 Servicer LLC, as Controlling Person (the "Controlling Person"), acting on behalf of Allianz Life Insurance Company Of North America (the "Funding Lender"), that each of the "Construction Closeout Deliveries" has been attained as of the date hereof and all conditions relating thereto as set forth in the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, between the undersigned and the Governmental Lender (the "Borrower Loan Agreement") have been satisfied. Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), by and among the Funding Lender, the Fiscal Agent, and the Governmental Lender or the Borrower Loan Agreement.

The undersigned hereby represents and warrants that:

1. Attached hereto is an original, executed Architect's certificate in the form attached hereto as Exhibit A as required by clause (c) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

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 (b) of the definition of "Completion" contained in the Funding Loan Agreement. 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 (a) of the definition of "Completion" contained in the Funding Loan Agreement. The undersigned has completed all Punchlist Items.

4. Attached are lien waivers required by clause (f) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

5. Attached hereto is an endorsement down dating the Title Policy insuring the Mortgage in favor of the Fiscal Agent for the benefit of the Funding Lender, subject only to Permitted Encumbrances, as required by clause (h) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

6. Attached hereto is an as-built ALTA/ACSM Urban Class Survey, certified to the Funding Lender, the Fiscal Agent, and the Controlling Person and meeting the requirements of clause (i) of the definition of "Construction Closeout Deliveries" contained in the Funding Loan Agreement.

7. Attached hereto is evidence of completion of the Environmental Completion Conditions.

8. Attached hereto is evidence of insurance meeting the requirements of Section 6.4 of the Borrower Loan Agreement.

9. Attached hereto is evidence of payment of all Impositions which are due and payable.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

Accepted and Agreed to:

R4 SERVICER LLC, as Controlling Person

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

[FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA]

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

Effective Dated: \_\_\_\_\_, 20\_\_



## **Schedule of Attachments to Construction Closeout Deliveries Certificate**

Architect's Completion Certificate  
Occupancy Permits  
Lien Waivers  
Endorsement to Title Policy  
[As-Built Survey]  
Insurance Certificates  
Evidence of Payment of Impositions  
Evidence of Satisfaction of Environmental Completion Conditions

EXHIBIT A TO SCHEDULE 9

Form of Architect's Certificate

ARCHITECT'S COMPLETION CERTIFICATE

The undersigned, an architect duly licensed and registered in the State of \_\_\_\_\_ has prepared final working plans and detailed specifications (the "**Plans and Specifications**") for ECG Ridge Road, LP (the "**Borrower**") in connection with the construction of improvements on certain real property located in Tallahassee, Leon County, Florida, such improvements or project being known as Ridge Road (the "**Improvements**").

The undersigned hereby certifies to U.S. Bank Trust Company, National Association, as fiscal agent, Housing Finance Authority of Leon County, Florida, as governmental lender, and R4 Servicer LLC that to the best of our knowledge, information and belief: (a) all of the Improvements and the Property have been completed in accordance with the Plans and Specifications, (b) a [temporary] certificate of occupancy has been issued for the Project[, provided however that there is no work remaining to be done that would impair or delay the permanent occupancy of the Project or any portion thereof and issuance of a permanent certificate of occupancy with respect to the Project, and other permits required for the continued use and occupancy of the Improvements have been issued with respect thereto by the governmental agencies having jurisdiction thereof], and (c) the Improvements have been constructed in compliance with the Plans and Specifications and are in compliance with the requirements and restrictions of the governmental authorities having jurisdiction, including applicable zoning, building, environmental, fire, and health ordinances, rules and regulations, including without limitation, the Americans with Disabilities Act, the Rehabilitation Act of 1973 and the design and construction requirements of the Fair Housing Act.

[ARCHITECT]

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

**SCHEDULE 10**

**FORM OF FINAL USE OF PROCEEDS COMPLIANCE CERTIFICATE**

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

Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair

U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Ridge Road (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies U.S. Bank Trust Company, National Association, as Fiscal Agent (the "Fiscal Agent"), the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), and R4 Servicer LLC, as Controlling Person (the "Controlling Person"), acting on behalf of Allianz Life Insurance Company Of North America (the "Funding Lender"), that:

(a) no less than 95% of the proceeds of the Funding Loan has been or will be spent for Qualified Project Costs of the Project Facilities as required by Section 142(a) of the Internal Revenue Code; and

(b) not less than 50% of the land and basis of the Project Facilities has been financed with the proceeds of the Funding Loan for purposes of Section 42(h)(4).

Attached hereto is the Cost Certification evidencing compliance with the foregoing and showing all costs of the Project Facilities, the amounts expended, for each category of cost, the source of funds therefor, and a calculation of the percentage of the net proceeds of the Funding Loan expended.

Capitalized terms used herein and not defined shall have the meanings ascribed to such terms in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, among the Funding Lender, the Fiscal Agent, and the Governmental Lender.

WITNESS WHEREOF, the undersigned has duly executed this Final Use of Proceeds Compliance Certificate as of the day and year first above written.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**Schedule of Attachments to Final Use of Proceeds Compliance Certificate**

Cost Certification

**SCHEDULE 11**

**FORM OF STABILIZATION CERTIFICATE**

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

Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair

U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar

R4 Servicer LLC, as Controlling Person  
155 Federal Street, Suite 1400  
Boston, Massachusetts 02110  
Attention: Greg Doble

Re: Ridge Road (the "Project Facilities")

Ladies and Gentlemen:

The undersigned, being the owner of the Project Facilities hereby certifies U.S. Bank Trust Company, National Association, as Fiscal Agent (the "Fiscal Agent"), the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), and R4 Servicer LLC, as Controlling Person (the "Controlling Person"), acting on behalf of Allianz Life Insurance Company Of North America (the "Funding Lender"), that the date of Stabilization was \_\_\_\_\_, 20\_\_ and the undersigned further hereby represents and warrants that:

1. The Improvements have been \_\_\_\_% occupied by credit-worthy qualified tenants meeting the requirements of the Loan Documents in each of the prior \_\_\_\_ (\_\_\_\_) consecutive months.

2. The ratio of Stabilized NOI in each of the prior \_\_\_\_ (\_\_\_\_) consecutive months to maximum principal, interest, the Governmental Lender Fee, and the Fiscal Agent Fee payable in any month [other than the month in which the Maturity Date occurs] on the amount of Borrower Note is \_\_\_\_ to 1.0.

3. No Event of Default or event which, with the passage of time or the giving of notice or both, would constitute an Event of Default shall have occurred and be continuing under the

Funding Loan Documents, the General Partner Pledge, the Developer Fee Pledge, or the Guarantor Documents.

4. The Borrower has at all times been and is currently in compliance with all requirements set forth in the Land Use Restriction Agreement.

5. There have been no disbursements from [insert names of any required reserves] which have not been replenished.

6. [The Mandatory Prepayment Amount shall have been prepaid in full as required under the Borrower Note].

7. Stabilization [has/has not] occurred.

8. Attached hereto \_\_\_\_\_ showing the calculation of Stabilization.

Capitalized terms used herein and not defined shall have the meanings ascribed thereto in the Funding Loan Agreement dated as of \_\_\_\_\_ 1, 2023 among the Funding Lender, the Fiscal Agent, and the Governmental Lender.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

Accepted and Agreed to:

R4 SERVICER LLC, as Controlling Person

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

[FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA]

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

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

Title: \_\_\_\_\_

Effective Dated: \_\_\_\_\_, 20\_\_



## Stabilization Spreadsheet

## **SCHEDULE 12**

### **INITIAL INSURANCE REQUIREMENTS**

The Project Facilities must be continuously covered by acceptable property insurance policies meeting the minimum requirements described below. This is a general outline of the insurance coverage's required by the Controlling Person, additional coverage may be required at the Controlling Person's discretion.

**EXHIBIT C**

**FORM OF LAND USE RESTRICTION AGREEMENT**

This Instrument prepared by  
(and after recording should be returned to):

Jason M. Breth, Esq.  
Bryant Miller Olive P.A.  
1545 Raymond Diehl Road, Suite 300  
Tallahassee, FL 32308

### LAND USE RESTRICTION AGREEMENT

Borrower's Name and Address: ECG Ridge Road, LP  
c/o Elmington Capital  
118 16th Avenue South, Suite 200  
Nashville, Tennessee 37203

Location of Property: \_\_\_\_\_  
Tallahassee, Florida  
(See attached Exhibit A)

Name of Project: Ridge Road

Governmental Lender's Name and Address: The Housing Finance Authority of Leon  
County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301

Fiscal Agent's Name and Address: U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309

This **LAND USE RESTRICTION AGREEMENT** (this "Regulatory Agreement"), made and entered into as of \_\_\_\_\_ 1, 2023, by and among the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), a public body corporate and politic existing under the laws of the State of Florida (the "State"); U.S. Bank Trust Company, National Association, a national banking association (the "Fiscal Agent"); and ECG Ridge Road, LP, a Florida limited partnership (the "Owner");

### WITNESSETH:

**WHEREAS**, the Owner intends to acquire, construct, and equip a multifamily residential rental facility located within Leon County, Florida (the "County") to be occupied by Lower-

Income Persons, all for the public purpose of assisting persons or families of low, moderate, or middle income within the County to afford the costs of decent, safe, and sanitary housing; and

**WHEREAS**, the Governmental Lender has authorized the issuance and delivery of its Multifamily Mortgage Revenue Note (Ridge Road), Series 2023 (the "Governmental Note") in the aggregate principal amount of \$51,000,000, pursuant to the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), by and among the Governmental Lender, Allianz Life Insurance Company Of North America (the "Funding Lender"), and the Fiscal Agent, in order to provide a loan (the "Borrower Loan") to the Owner, pursuant to the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Owner, to finance a portion of the cost of the acquisition, construction, and equipping of the Project (as hereinafter defined), all under and in accordance with the Constitution and laws of the State; and

**WHEREAS**, the Funding Loan Agreement and the Borrower Loan Agreement require, as a condition of making the Borrower Loan, the execution and delivery of this Regulatory Agreement; and

**WHEREAS**, in order to satisfy such requirement, the Governmental Lender, the Fiscal Agent, and the Owner have determined to enter into this Regulatory Agreement to set forth certain terms and conditions relating to the operation of the Project, which is located on a leasehold interest on the lands described in Exhibit "A" hereto; and

**WHEREAS**, this Regulatory Agreement shall be properly filed and recorded by the Owner within the official records of the County and shall constitute a restriction upon the use of the property subject to and in accordance with the terms contained herein.

**NOW THEREFORE**, in consideration of providing the financing by the Governmental Lender to the Owner, acknowledging that compliance with this Regulatory Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes on the Governmental Note, covenants and agrees with the other parties hereto as follows:

**SECTION 1. DEFINITIONS AND INTERPRETATION.**

(a) The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Funding Loan Agreement and/or the Borrower Loan Agreement):

"Affiliated Party" of any person means a person such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or Section 707(b) of the Code, or (ii) such persons are members of the same controlled group of corporations as defined in Section 1563(a) of the Code, except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears therein.

"Applicable Income Limit" means (a) with respect to Lower-Income Persons, 60% of area median gross income, (b) with respect to Very-Low Income Persons, 30% of area median gross income, and (c) with respect to Moderate Income Persons, 70% of area median income (within the meaning of Section 142(d) of the Code) for Leon County, Florida, Standard Metropolitan Statistical Area, as determined by the Secretary of the United States Department of the Treasury in a manner consistent with determinations of low income families and area median gross income under Section 8 of the Housing Act of 1937, as amended (or if such program is terminated, under such program as in effect immediately before such termination), including adjustments for family size.

"Available Units" means residential units in a residential rental project that are actually occupied and residential units in the project that are unoccupied and have been leased at least once after becoming available for occupancy, provided that 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 attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the exclusion from gross income of interest on bonds for federal income tax purposes issued by states and political subdivisions selected by the Governmental Lender.

"Borrower Loan" means the loan originated by the Governmental Lender with respect to the Project, made to the Owner in accordance with the Governmental Lender's program guidelines, this Regulatory Agreement, and the Borrower Loan Agreement, as evidenced by the Borrower Note, for the purpose of financing a portion of the cost of the acquisition, construction, and equipping of the Project.

"Borrower Loan Agreement" means Borrower Loan Agreement dated as of \_\_\_\_\_ 1, 2023, by and between the Owner and the Governmental Lender, as amended or supplemented from time to time.

"Borrower Note" means the Promissory Note of the Owner, dated \_\_\_\_\_, 2023, issued and delivered to the Governmental Lender as consideration for the loan of the proceeds of the Governmental Note, and any amendment or supplement thereto or substitution therefore, and assigned to the Fiscal Agent.

"Certificate Concerning Commencement and Termination of Qualified Project Period" means the certificate, in the form attached hereto as Exhibit "D," required to be delivered by the Owner to the Governmental Lender and the Fiscal Agent pursuant to Section 3(d) of this Regulatory Agreement.

"Certificate of Continuing Program Compliance" means the certificate, in the form attached hereto as Exhibit "C," required to be delivered by the Owner to the Governmental Lender Servicer pursuant to Section 4(d) of this Regulatory Agreement.

"Code" means the Internal Revenue Code of 1986, as amended, and except otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final regulations or temporary regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings), and applicable court decisions.

"County" means Leon County, Florida.

"Current Annual Family Income" is determined in accordance with Section 8 of the Housing Act 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination), and includes salary, commissions, and other forms of compensation from employment, earnings from assets and investments, income from government programs such as social security, unemployment compensation, and welfare, alimony and child support, and other forms of income described in the Income Certification, but does not include earnings of children under age 18, lump sum insurance or capital gains, scholarships, the value of food stamps, or other forms of income that the Income Certification specifies may be excluded.

"Development" means the multifamily residential rental housing development known as Ridge Road, located on the Land and financed, in part, with proceeds of the Governmental Note pursuant to the Funding Loan Agreement.

"Eligible Persons" means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, familial status, mental or physical handicap or sex, who are either Lower-Income Persons or whose Current Annual Family Income does not exceed one hundred fifty percent (150%) of the area median gross income (within the meaning of Section 142(d) of the Code) for Leon County, Florida Standard Metropolitan Statistical Area, subject to family size adjustment, as indicated in the latest published Decile Distributions of Family Income by Standard Metropolitan Statistical Areas and Non-Metropolitan Counties prepared and published from time to time by HUD, or such other reliable compilation of income statistics as the Governmental Lender may determine to employ, as adjusted by the Governmental Lender according to the most recent Consumer Price Index statistic; provided that persons 65 years of age or older shall be defined as "Eligible Persons" regardless of their income.

"Funding Loan Agreement" means the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, between the Governmental Lender, the Funding Lender, and the

Fiscal Agent, pursuant to which the Governmental Note is authorized to be issued, and any amendments and supplements thereto.

"Governmental Lender Servicer" means, initially, First Housing Development Corporation of Florida, or its successors or assigns and thereafter, any Governmental Lender Servicer employed by the Governmental Lender to service the Borrower Loan and to monitor the Owner's compliance with the requirements of this Regulatory Agreement, the Funding Loan Agreement, the Borrower Loan Agreement and the Mortgage Servicing Agreement.

"HUD" means the United States Department of Housing and Urban Development or any successor agency.

"Income Certification" means the Certification of Tenant Eligibility in substantially the form attached hereto as Exhibit "B."

"Land" means the real property located in the County, described in Exhibit "A" attached hereto.

"Lower-Income Persons" means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Lower-Income Persons if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding the foregoing, a residential unit shall not fail to be treated as a residential unit that is occupied by Lower-Income Persons merely because such residential unit is occupied (i) by an individual who is (1) a student and receiving assistance under Title IV of the Social Security Act, (2) a student who was previously under the care and placement responsibility of a foster care program (under Part B or Part E of Title IV of the Social Security Act), or (3) a student enrolled in a government supported job training program, or (ii) entirely by full-time students if such students are (1) single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (2) married and file a joint return.

"Moderate Income Persons" means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Moderate Income Persons if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding the foregoing, a residential unit shall not fail to be treated as a residential unit that is occupied by Moderate Income Persons merely because such residential unit is occupied (i) by an individual who is (1) a student and receiving assistance under Title IV of the



Social Security Act, (2) a student who was previously under the care and placement responsibility of a foster care program (under Part B or Part E of Title IV of the Social Security Act), or (3) a student enrolled in a government supported job training program, or (ii) entirely by full-time students if such students are (1) single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (2) married and file a joint return.

"Mortgage" shall mean the First Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated \_\_\_\_\_, 2023, from the Owner granting a first priority security interest in the Project and the fee interest in the Land in favor of the Governmental Lender and assigned to the Fiscal Agent, to secure the Owner's repayment of the Borrower Note and the Owner's obligation to pay any other amounts due pursuant to the Borrower Loan Agreement, the Borrower Note, and the Funding Loan Agreement.

"Partnership Agreement" means the Amended and Restated Agreement of Limited Partnership of the Owner, dated as of \_\_\_\_\_, 2023, as the same may be amended from time to time.

"Qualified Project Period" means the period beginning on the later of (i) the first day on which at least 10% of the units in the Project were first occupied (which date shall be certified in writing by the Owner to the Governmental Lender and the Fiscal Agent immediately following such date) and (ii) the date the Governmental Note was issued, and ending on the latest of (1) the date that is fifteen years after the date on which at least 50% of the units in the Project were first occupied (which date shall be certified in writing by the Owner to the Governmental Lender and the Fiscal Agent immediately following such date), (2) the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding (as interpreted pursuant to the Code); (3) the date on which any assistance provided with respect to the Project under Section 8 of the U.S. Housing Act of 1937 terminates, or (4) the date which is fifty (50) years from the date of issuance of the Governmental Note.

"Regulations" means the Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations).

"State" means the State of Florida.

"Very Low-Income Persons" means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Very Low-Income Persons if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding

the foregoing, a residential unit shall not fail to be treated as a residential unit that is occupied by Very Low-Income Persons merely because such residential unit is occupied (i) by an individual who is (1) a student and receiving assistance under Title IV of the Social Security Act, (2) a student who was previously under the care and placement responsibility of a foster care program (under Part B or Part E of Title IV of the Social Security Act), or (3) a student enrolled in a government supported job training program, or (ii) entirely by full-time students if such students are (1) single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children, or (2) married and file a joint return.

(b) Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Regulatory Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

(c) The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

**SECTION 2. RESIDENTIAL RENTAL PROPERTY.** The Owner hereby represents, covenants, warrants, and agrees as follows:

(a) (i) The Owner will acquire, construct, equip, and operate the Project for the purpose of providing a "qualified residential rental project" as such phrase is used in Sections 142(a)(7) and 142(d)(1) of the Code and a "qualifying housing development" as that phrase is used in Section 159.603(6), Florida Statutes, (ii) the Owner shall own the entire Development for federal tax purposes, and (iii) the Project shall be owned, managed, and operated as multifamily residential rental properties, each comprised of a building or structure or several buildings or structures containing similarly constructed units, together with any functionally related and subordinate facilities and no other facilities, in accordance with Section 142(d) of the Code and Sections 1.103-8(b)(4) and 1.103-8(a)(3) of the Regulations, and in accordance with such requirements as may be imposed thereby and by the Code on the Project from time to time.

(b) Each residential unit in the Project shall be contained in one or more buildings or structures located on the Land and shall be similarly designed, furnished and constructed (except as to the number of bedrooms and bathrooms), each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation

for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from the other units.

(c) None of the units in the Project will at any time be (i) utilized on a transient basis, (ii) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (iii) rented for initial lease periods of less than six (6) months. No part of the Project will, at any time, be owned or used by a cooperative housing corporation or converted to condominiums.

(d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Owner will not give preference to any particular class or group of persons in renting the units in the Project, except to the extent that units are required to be leased or rented to Lower-Income Persons, Very Low-Income Persons, Moderate Income Persons, or Eligible Persons. Lower-Income Persons, Very Low-Income Persons, and Moderate Income Persons will have equal access to and enjoyment of all common facilities of the Project. The Owner will not discriminate against children of any age when renting the units in the Project.

(e) The Land consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream or similar property, and the Project comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities (such as swimming pools, recreational facilities, parking areas, and other facilities which are reasonably required for the Project) are functionally related and subordinate to the Project and are commensurate with its size and intended use.

(f) Neither the Owner nor an Affiliated Party of the Owner shall not occupy any of the units in the Project; provided, however, that the Owner or an Affiliated Party of the Owner may occupy a unit in a building or structure in the Project that contains five or more units if such employee of the Owner or an Affiliated Party of the Owner is a resident manager or other necessary employee (e.g., maintenance and security personnel). No more than two units in the Project shall be occupied by resident managers or maintenance or security personnel. No units in the Project shall be occupied by maintenance, security or managerial employees of the Owner or its property manager, which employees must be reasonably necessary for operation of the Project.

(g) None of the proceeds of the Governmental Note (including investment earnings) will be used to provide a skybox or any other private luxury box, an airplane, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises or a facility used primarily for gambling.

The requirements of this Section 2 shall remain in effect during the term of this Regulatory Agreement (as defined in Section 13 below).

**SECTION 3. LOWER-INCOME PERSONS, VERY LOW-INCOME PERSONS, MODERATE INCOME PERSONS, AND ELIGIBLE PERSONS.** The Owner hereby represents, warrants, and covenants as follows:

(a) At all times during the Qualified Project Period, not less than: (i) 34.4% of the Available Units (86 units), other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to subsection 2(f) above, shall be occupied (or held available for occupancy) on a continuous basis by persons or families who at the time of their initial occupancy of such units are Lower-Income Persons; (ii) 16.4% of the Available Units (41 units), other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to subsection 2(f) above, shall be occupied (or held available for occupancy) on a continuous basis by persons or families who at the time of their initial occupancy of such units are Very Low-Income Persons; and (iii) 49.2% of the Available Units (123 units), other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to subsection 2(f) above, shall be occupied (or held available for occupancy) on a continuous basis by persons or families who at the time of their initial occupancy of such units are Moderate Income Persons. The set aside requirements in this paragraph (a) are in addition to each other and satisfaction of one does not constitute satisfaction of the other such that 100% of the units are required to be set aside as provided herein and at all times no less than 40% of the Available Units in the Project, other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to subsection 2(f) above, shall be occupied (or held available for occupancy) on a continuous basis by persons or families who are Lower-Income Persons.

(b) At all times during the term of this Regulatory Agreement (as defined in Section 13 below), at least one hundred percent (100%) of the Available Units in the Project shall be rented to or be available for rent by Eligible Persons.

(c) For purposes of paragraph (a) and (b) of this Section 3, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Person, Very Low-Income Person, or Moderate Income Person shall be counted as occupied by a Lower-Income Person, Very Low-Income Person, or Moderate Income Person during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Person, Very Low-Income Person, or Moderate Income Person; however, such unit shall cease to be treated as occupied by a Lower-Income Person, Very Low-Income Person, or Moderate Income Person upon a determination that the tenant's most recently reported income exceeds 140% of the Applicable Income Limit if after such determination, but before the next determination, any residential rental unit of comparable or smaller size in the Project is occupied by a new tenant whose income exceeds the Applicable Income Limit and the Project is again

in compliance. In addition, a unit that was occupied by a Lower-Income Person or Very Low-Income Person shall be counted as occupied by a Lower-Income Person, Very Low-Income Person, or Moderate Income Person until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Person, Very Low-Income Person, or Moderate Income Person only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Person, Very Low-Income Person, or Moderate Income Person.

(d) Upon 50% occupancy of the Project, the Owner shall submit a completed Certificate Concerning Commencement and Termination of Qualified Project Period to the Governmental Lender and the Fiscal Agent to evidence the foregoing. The Governmental Lender shall execute the Certificate Concerning Commencement and Termination of Qualified Project Period and return it to the Owner for recording in the official public records of the County. In the event the Owner does not submit the Certificate Concerning Commencement and Termination of Qualified Project Period, the Governmental Lender shall utilize information provided to it by or on behalf of the Owner in satisfaction of the monthly reporting requirements for purposes of calculating the commencement and termination of the Qualified Project Period for the Project.

**SECTION 4. REPORTING REQUIREMENTS.** During the term of this Regulatory Agreement (as defined in Section 13 below):

(a) The Owner shall obtain and maintain on file an Income Certification in the form attached hereto as Exhibit "B" from each occupant (i) prior to the time of initial occupancy for such tenant, and (ii) upon the vacancy and re-occupancy of any residential rental unit in the Project, and with respect to each Lower-Income Person, such Income Certifications shall be obtained as often as necessary to comply with the requirements of Section 142(d) of the Code.

(b) The Owner shall file with the Governmental Lender and the Governmental Lender Servicer, on or before the tenth (10th) day of each month (or, if such tenth (10th) day of a month falls on a weekend or holiday, submission must be made the business day immediately preceding such tenth day), copies of the Income Certifications specified in Section 4(a) hereof obtained by the Owner during the previous month. The initial Income Certifications shall be prepared as of the last day of the calendar month during which the rental of the initial unit in the Project occurred.

(c) The Owner shall maintain complete and accurate records pertaining to the incomes of (as of the date of initial occupancy of each tenant) and rentals charged to Lower-Income Persons, Very Low-Income Persons, Moderate Income Persons, and Eligible Persons residing in the Project, and shall permit during normal business hours and upon five (5) business days' notice to the Owner, any duly authorized representative

of the Governmental Lender and the Governmental Lender Servicer to inspect the books and records of the Owner pertaining to the incomes of and rentals charged to all tenants residing in the Project.

(d) The Owner shall prepare and submit to the Governmental Lender and the Governmental Lender Servicer, on or before the tenth (10th) day of each month (or, if such tenth (10th) day of the month falls on a weekend or holiday, submission must be made the business day immediately preceding such tenth day), rent rolls and a Certificate of Continuing Program Compliance in the form attached hereto as Exhibit "C," as such form may be revised by the Governmental Lender from time to time upon the advice of Bond Counsel, executed by the Owner or its designee authorized in writing by the Owner stating: (i) the percentage of residential rental units that were occupied by Lower-Income Persons, Very Low-Income Persons, and Moderate Income Persons, (ii) that, other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to Section 2(f) above, at all times during the previous month 100% of the residential rental units were occupied (or deemed occupied) by Eligible Persons, and (iii) that no default has occurred under this Regulatory Agreement or, if such a default has occurred, the nature of such default and the steps, if any, the Owner has taken or proposes to take to correct such default. If the Owner reports to the Governmental Lender and the Governmental Lender Servicer that the vacancy rate at the Project is ten percent (10%) or higher, the Governmental Lender and the Governmental Lender Servicer shall be permitted during normal business hours and upon five (5) business days' notice to the Owner, to inspect all or some of the vacant units to determine to the Governmental Lender's and the Governmental Lender Servicer's reasonable satisfaction that such vacant units are ready and available for rental. The initial rent roll and Certificate of Continuing Program Compliance shall be prepared as of the last day of the calendar month during which the rental of the initial unit in the Project occurred.

(e) On or before the annual deadline established by the Internal Revenue Service, during the Qualified Project Period, the Owner will submit the completed Internal Revenue Code Form 8703-Annual Certification of a Residential Rental Project or such other annual certification required by the Code to the Secretary of the Department of Treasury as to whether the Project continues to meet the requirements of Section 142(d) of the Code, and shall provide a copy thereof to the Governmental Lender Servicer.

## **SECTION 5. INDEMNIFICATION.**

(a) The Owner hereby covenants and agrees that it shall indemnify and hold harmless the Governmental Lender, its past, present, and future members, employees, attorneys, agents, and representatives; the County, its past, present, and future officers of its governing body, employees, attorneys, agents, and representatives; and the Fiscal Agent, and their past, present, and future officers, directors, officials, employees, and agents (any or all of the foregoing being hereinafter referred to as the "Indemnified

Persons") from and against any and all losses, costs, damages, expenses, and liabilities of whatsoever nature or kind (including but not limited to, reasonable attorneys' fees, litigation and court costs related to trial and appellate proceedings, amounts paid in settlement, and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of, or related to, the issuance, offering, sale, remarketing, or delivery of the Governmental Note, or the acquisition, design, construction, equipping, installation, operation, use, occupancy, maintenance, or ownership of the Project other than for such Indemnified Persons' own grossly negligent, illegal, or unlawful acts or omissions.

(b) In the case of any action or proceeding brought against an Indemnified Person in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Owner, and the Owner upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided, that failure of a party to give that notice shall not relieve the Owner from any of its obligations under this Section except to the extent that failure prejudices the defense of the action or proceeding by the Owner. Any Indemnified Person shall have the right to employ separate counsel in any such action and to participate in the defense thereof, but the fees and expenses of such counsel shall be at the expense of such Indemnified Person unless the named parties to any such action (including any impleaded parties) include both an Indemnified Person and the Owner or one or more other Indemnified Persons, and such Indemnified Person shall have been advised by counsel that a conflict of interest between the Owner and such Indemnified Person, or between Indemnified Persons, exists, and for this reason it is not desirable for the same counsel to represent both the Owner and such Indemnified Person or Indemnified Persons, in which case the fees and expenses of such separate counsel shall be paid by the Owner; it being understood, however, that, in connection with any one such action or separate but substantially similar or related actions in the same jurisdiction arising out of the same general allegations or circumstances, the Owner shall not be liable for the reasonable fees and expenses of more than one separate firm of attorneys for each of such Indemnified Person, in the event of a potential conflict of interest between such Indemnified Persons, which firm(s) shall be designated in writing by each of such Indemnified Persons. The Owner shall not be liable for any settlement effected without its consent. This indemnity shall not be construed to cause the Owner to be personally liable for the principal of or interest on the Governmental Note or the Borrower Loan.

**SECTION 6. RELIANCE.** The Governmental Lender and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by the owners from time to time of the Governmental Note, the Governmental Lender, Bond Counsel, the Funding Lender, and the other parties to transactions involving the issuance, sale, or remarketing of the Governmental Note and their respective counsel. In performing their duties and obligations hereunder, the Governmental Lender, the Governmental Lender Servicer, and the Fiscal Agent may rely upon statements and certificates of the Owner, the Eligible Persons, the Very Low-Income Persons and the Lower-Income Persons reasonably believed by the Owner, its

agents and employees to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In addition, the Governmental Lender, the Governmental Lender Servicer, and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Governmental Lender, the Governmental Lender Servicer, or the Fiscal Agent hereunder in good faith and in conformity with the opinion of such counsel. In performing its duties and obligations hereunder, the Owner may rely upon certificates of the Eligible Persons, the Very Low-Income Persons, and the Lower-Income Persons reasonably believed to be genuine and to have been executed by the proper person or persons.

**SECTION 7. FAIR HOUSING LAWS; HOME OWNERSHIP OPPORTUNITY PROGRAM; SOCIAL SERVICE PROGRAMS.**

(a) The Owner will comply with all applicable fair housing laws, rules, regulations or orders applicable to the Project and shall not discriminate on the basis of race, creed, color, sex, age, familial status, or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project. All advertising and promotional material used in connection with the Project shall contain the phrase "Fair Housing Opportunity."

(b) The Owner hereby covenants and agrees to provide the tenant services and residential programs and amenities indicated in Exhibit "E" attached hereto.

**SECTION 8. TENANT LISTS.** All tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Project, and shall be maintained, as required by the Governmental Lender or the Governmental Lender Servicer from time to time, in a reasonable condition for proper audit and subject to examination during business hours upon reasonable notice by representatives of the Governmental Lender, the Governmental Lender Servicer, or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the Governmental Lender, the Governmental Lender Servicer, or Fiscal Agent after written request therefor will be a default hereunder.

**SECTION 9. TENANT LEASE RESTRICTIONS.** All tenant leases shall be expressly subordinate to the Mortgage and subject to this Regulatory Agreement, and shall contain clauses, among others, wherein each individual lessee:

(a) certifies the accuracy of the statements made in the Income Certification;

(b) agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of such lessee's



tenancy; that such lessee will comply promptly with all requests for information with respect thereto from the Owner, the Fiscal Agent, or the Governmental Lender, and that such lessee's failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of such lessee's tenancy; and

(c) agrees not to sublease to any person or family who does not expressly accept the lessee's obligations under this Section 9 and execute and deliver to the Governmental Lender Servicer an Income Certification.

#### **SECTION 10. SALE AND CONVERSION OF DEVELOPMENT.**

(a) The Owner shall not sell, assign, convey, or transfer any material portion of its interest in the Land, fixtures, or improvements constituting a part of the Project, or any material portion of the personal property constituting a portion of the Project during the term of this Regulatory Agreement, without (i) the prior written consent of the Governmental Lender, which consent shall not be unreasonably withheld, and (ii) the Fiscal Agent and the Governmental Lender having received an opinion of Bond Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, conveyance, transfer, or assignment will not result in interest on the Governmental Note, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes (except in the hands of a "substantial user" as defined in the Code). If a material portion of the Project financed or refinanced with proceeds from the Borrower Loan is sold during the term hereof and such material portion of such Development consisted of personal property or equipment, the proceeds from the sale thereof may be used by the Owner to purchase property of similar function to be used in connection with the Project, otherwise, the proceeds from such sale shall be applied in accordance with the Funding Loan Documents. If such material portion of such Development consists of real property and improvements, the purchaser thereof must execute and deliver to the Owner and the Fiscal Agent a document in form and substance reasonably satisfactory to the Governmental Lender pursuant to which such purchaser shall agree to operate such property in compliance with the terms and conditions of this Regulatory Agreement.

(b) The Owner shall not sell or otherwise transfer the Project in whole, or transfer or sell any partnership interest in the Owner, without the prior written consent of the Governmental Lender (which shall respond within a reasonable period of time and shall not unreasonably withhold such consent), provided that (i) the Owner shall not be in default hereunder, (ii) it is reasonably expected that continued operation of the Project will comply with the requirements of this Regulatory Agreement, (iii) the subsequent purchaser or assignee shall execute any document reasonably requested by the Governmental Lender with respect to assuming the obligations of the Owner under this

Regulatory Agreement, (iv) the Governmental Lender shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Project, (v) the purchaser or assignee shall have satisfied such other conditions as may be reasonably required by the Governmental Lender under the circumstances, (vi) the purchaser or assignee shall have first executed a document in recordable form addressed to the Governmental Lender and the Fiscal Agent to the effect that such purchaser or assignee will comply with the terms and conditions of this Regulatory Agreement, and, unless the Borrower Loan is paid in full, the Borrower Loan Agreement, the Borrower Note, the Mortgage, and any other financing documents relating to the Governmental Note, (vii) the Fiscal Agent and the Governmental Lender shall receive an opinion of counsel reasonably acceptable to the Governmental Lender to the effect that the purchaser's or assignee's obligations under this Regulatory Agreement, and, unless the Borrower Loan is paid in full, the Borrower Loan Agreement, the Borrower Note, the Mortgage, and any other financing documents relating to the Governmental Note are enforceable against such purchaser or assignee in accordance with their terms, and (viii) the Fiscal Agent and the Governmental Lender shall have received an opinion of Bond Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, transfer, disposition or assignment will not result in interest on the Governmental Note, or any part thereof, becoming includable in the gross income of the holder thereof for federal income tax purposes. It is hereby expressly stipulated and agreed that any sale, transfer, or other disposition of the Project in violation of this Section shall be ineffective to relieve the Owner of its obligations under the Funding Loan Documents. In the event that the purchaser or assignee shall assume the obligations of the Owner under the this Regulatory Agreement and the other Funding Loan Documents, as applicable, the Owner shall be released from its obligations thereunder and hereunder, other than its obligations hereunder and under this Regulatory Agreement and the other Funding Loan Documents arising prior to such date of assumption (unless such obligations are assumed by the purchaser or transferee).

(c) Notwithstanding anything in this Section 10 to the contrary, ownership of the Project may be transferred in connection with a foreclosure thereof under the Mortgage, or the acceptance of the Project by the mortgagee in lieu of foreclosure under the Mortgage, without complying with the requirements of Section 10(a) or Section 10(b) of this Regulatory Agreement, and this Regulatory Agreement shall terminate as provided in Section 13; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such transfer, the Owner or an Affiliated Party with respect to any such parties obtains an ownership interest in the Project for federal tax purposes.

(d) Notwithstanding anything in this Section 10 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Project or

any portion thereof shall not be applicable to any of the following: (i) leases of apartment units as contemplated by this Regulatory Agreement, (ii) grants of utility related easements and service or concession related leases or easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Project, providing same are granted in connection with the operation of the Project as contemplated by this Regulatory Agreement, (iii) any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, (iv) subject to the provisions of the Funding Loan Documents, (v) the placing of a subordinate mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the Project which is made expressly subject and subordinate hereto and to the Mortgage, (vi) transfers of non-managing member interests in the Owner to Affiliates of the Investor Limited Partner, (vii) transfers of ownership interests in the Investor Limited Partner or Investor Limited Partner interest in the Borrower, or (viii) the removal of the general partner of the Owner for cause under the Owner's partnership agreement and the temporary replacement of such general partner with an Affiliate of the Investor Limited Partner (provided, that the ultimate replacement general partner shall be subject to the consent of the Governmental Lender not to be unreasonably withheld).

**SECTION 11. NEGATIVE COVENANTS.** During the term of this Regulatory Agreement, the Owner shall not:

(a) Except pursuant to and as permitted by the provisions of this Regulatory Agreement and the other Funding Loan Documents, or except upon a sale or transfer of the Project in accordance with the terms of the Funding Loan Documents: (i) encumber any of the mortgaged property, including the grant of commercial leases (other than for vending machines, coin operated laundry facilities and similar amenities functionally related and subordinate to the Project and granted in connection with the day to day operation of an apartment complex), or (ii) permit the conveyance, transfer or encumbrance of such property (except for such leases and for apartment leases) for the Qualified Project Period, except as otherwise provided herein. Nothing in this paragraph shall prohibit the granting of easements for the purpose of providing utility services (including cable television or private satellite television) to the Project.

(b) Demolish any part of the Project necessary for the operation thereof for its intended purposes or substantially subtract from any real or personal property of the Project; or

(c) Permit the use of the dwelling accommodations of the Project for any purpose except rental residences in compliance with Section 142(d) of the Code.

**SECTION 12. COVENANTS TO RUN WITH THE LAND.** This Regulatory Agreement and the covenants, reservations, and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 13 hereof, shall pass to and be binding

upon the Owner's assigns and successors and all subsequent owners of the Land or the Project or any interest therein; provided, however, that upon the termination of this Regulatory Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Except as provided in Section 13 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying an interest in the Land or the Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of any interest in the Land or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Land or the Project.

**SECTION 13. TERM.** This Regulatory Agreement shall become effective upon its execution and delivery, and shall remain in full force and effect until the expiration of the Qualified Project Period; provided, however, that this Regulatory Agreement shall automatically terminate in the event of (a) involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire or other casualty, seizure, requisition, foreclosure or transfer by deed in lieu of foreclosure, (b) a change in a federal law or an action of a federal agency that prevents the Governmental Lender from enforcing the provisions hereof, or (c) condemnation or a similar event (as determined by Bond Counsel), but only if within a reasonable period thereafter or prior thereto (i) the Governmental Note is retired in full or (ii) the proceeds received as a result of such event are used to finance a development that complies with the provisions hereof and any other applicable requirements of the Code and the Regulations. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event (as determined by Bond Counsel), such termination will cease to be in effect if, at any time during the remainder of the Qualified Project Period following such event, the Owner or an Affiliated Party to the Owner, or either of them, obtains an ownership interest in the Project for federal tax purposes.

**SECTION 14. CORRECTION OF NONCOMPLIANCE.** The failure of the Owner to comply with any of the provisions of this Regulatory Agreement shall not be deemed a default hereunder unless such failure has not been corrected within a period of 60 days following the date that any of the parties hereto learned of such failure or should have learned of such failure by the exercise of reasonable diligence (which 60-day period may be extended if (a) such failure cannot reasonably be corrected within such 60-day period, (b) diligent action to correct such failure commences within such 60-day period, (c) such action is diligently pursued until such failure is corrected, and (d) with respect to a failure to comply with any of the requirements of Sections 2 or 3 hereof, the Owner delivers to the Governmental Lender and the Fiscal Agent an opinion of Bond Counsel to the effect that such longer cure period will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes). Not later than the business day next succeeding the day on which the Fiscal Agent or the Governmental Lender Servicer learns of such failure, the Fiscal Agent or the Governmental Lender Servicer shall attempt with reasonable diligence to notify the Owner and the property manager of such failure by written communication; provided, however, failure of the Fiscal Agent or the Governmental Lender Servicer to notify the Owner shall not relieve the Owner from any

of its obligations under this Regulatory Agreement. The Investor Limited Partner shall have the right, but not the obligation, to cure any default, and any cure of any default made or tendered by the equity investor shall be accepted or rejected on the same basis as if made or tendered by the Owner. The Governmental Lender Servicer shall give written notice to the Investor Limited Partner of such default.

**SECTION 15. MODIFICATION OF TAX COVENANTS.** Notwithstanding the provisions of Section 22(b) hereof, to the extent any amendments, modifications or changes to the Regulations or the Code shall, in the written opinion of Bond Counsel addressed to the Governmental Lender, the Owner and the Fiscal Agent, impose requirements upon the ownership, occupancy or operation of the Project different than those imposed by the Regulations or the Code and stated herein, and the Owner's failure to comply with such different requirements would produce a material and substantial risk that interest on the Governmental Note will become includable in gross income for federal income tax purposes, then this Regulatory Agreement shall be amended and modified in accordance with such requirements. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the opinion of and in the form approved by Bond Counsel to effectuate the intent of this Section 15.

**SECTION 16. BURDEN AND BENEFIT.** The Governmental Lender, the Fiscal Agent, and the Owner hereby acknowledge their respective understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less valuable thereby. The Fiscal Agent, the Governmental Lender, and the Owner hereby further acknowledge their respective understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project by Lower-Income Persons, the Very Low-Income Tenants, and the Moderate Income Tenants the intended beneficiaries of such covenants, reservations, and restrictions, and by furthering the public purposes for which the Governmental Note was issued. The Owner hereby expressly acknowledges that this Regulatory Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note issued by the Governmental Lender to finance the Borrower Loan and covenants and agrees that in connection with the acquisition, construction, equipping, ownership, and operation of the Project, it shall and shall require any subsequent purchaser of the Project, to fully comply with all terms and conditions of this Regulatory Agreement.

**SECTION 17. UNIFORMITY; COMMON PLAN.** The covenants, reservations, and restrictions hereof shall apply uniformly to the entire Development.

**SECTION 18. APPLICATION OF INSURANCE AND CONDEMNATION PROCEEDS.** Subject to the provisions of the Funding Loan Documents, if during the Qualified Project Period, the Project is damaged or destroyed or if all or a portion thereof is taken through eminent domain proceedings, or under the threat thereof, proceeds from insurance on the Project

or any condemnation awards pertaining to such eminent domain proceedings shall be applied as provided in the Borrower Loan Agreement and the Mortgage.

**SECTION 19. REMEDIES; ENFORCEABILITY.**

(a) The benefits of this Regulatory Agreement shall inure to, and may be enforced by, respectively, (i) the Governmental Lender and the Fiscal Agent and its successors, (ii) the holders of the Governmental Note and their successors and assigns to the extent permitted by the Funding Loan Agreement, and (iii) solely as to Section 2, 3 and 7 hereof, the Lower-Income Persons, the Very Low-Income Persons, the Moderate Income Tenants, and their successors who shall reside or be eligible to reside in units set aside for their occupancy pursuant to Section 3 of this Regulatory Agreement for the period set forth in Section 13 hereof, whether or not the Borrower Loan may be paid in full, and whether or not the Governmental Note is outstanding. If a material violation of any of the provisions hereof occurs and is not cured within the period provided by Section 14 hereof, any or all of such parties may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation, or to compel specific performance hereunder, it being recognized that the beneficiaries of the Owner's obligations hereunder cannot be adequately compensated by monetary damages in the event of the Owner's default. The remedies of the beneficiaries of this Regulatory Agreement other than the Governmental Lender (as provided in Section 19(b)) shall be limited to those described in the preceding sentence.

(b) In addition to such other remedies as may be provided for herein, if a violation of any of the provisions of this Regulatory Agreement hereof which is not being corrected as provided in Section 14 hereof occurs or is attempted, the Governmental Lender may appoint a receiver to operate the Project in compliance with this Regulatory Agreement. In lieu of the appointment of a receiver on the conditions provided in the preceding sentence, the Governmental Lender shall have the right (but not the obligation), and is specifically authorized by the Owner hereunder (but only in the event the default is caused by an act or omission of the manager of the Project and only after such manager is given thirty (30) days' prior notice and right to cure), to appoint a new manager of the Project to operate the Project in accordance with this Regulatory Agreement and the other Funding Loan Documents and take all actions necessary, in the reasonable judgment of the Governmental Lender, to cure any default by the Owner hereunder, and such new property manager assuming such management hereunder shall be paid by or on behalf of the Owner, from the rents, revenues, profits and income from the Project, a management fee not to exceed the prevailing management fee paid to managers of similar housing projects in the area of the County. Subject to Section 13 hereof, the provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or

waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times. All rights and remedies provided in this Regulatory Agreement are cumulative, non-exclusive, and in addition to any and all rights and remedies that the parties and beneficiaries hereof may otherwise have.

(c) The Owner hereby agrees that the appointment of a receiver may be necessary to serve the public purpose for which the Governmental Note was issued and to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note following a violation of the provisions of this Regulatory Agreement, which is not cured within the period provided in Section 14 hereof. The Owner hereby expressly consents to, and agrees not to contest, the appointment of a receiver to operate the Project following a violation by the Owner of the provisions of Sections 2 or 3 of this Regulatory Agreement which is not cured as provided in Section 14 hereof and hereby waives any and all defenses and objections that might otherwise be raised to any such appointment of a receiver. The Owner further agrees that the Governmental Lender shall have the right to require the Owner to remove any manager or managing agent of the Project whose actions or inactions present a material risk of a breach of the agreements of the Owner herein, including, without limitation, a material risk of an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Governmental Note and which action or inaction is not being corrected as provided in Section 14 hereof, upon such manager or managing agent being given thirty (30) days' written notice of any violation hereof, and such right shall be expressly acknowledged in any contract between the Owner and any such manager or managing agent. The Owner covenants and agrees to diligently and in good faith pursue the appointment and, if required, approval of such a replacement manager or managing agent.

**SECTION 20. FILING.** Upon execution and delivery by the parties hereto, the Owner shall cause this Regulatory Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of the County, and in such manner and in such other places as the Governmental Lender or the Fiscal Agent may reasonably request, and shall pay all fees and charges incurred in connection therewith.

**SECTION 21. GOVERNING LAW.** This Regulatory Agreement shall be governed by the laws of the State. Venue shall be in the County.

**SECTION 22. AMENDMENTS.**

(a) The interest of the Governmental Lender in this Regulatory Agreement shall be assigned to the Fiscal Agent and the rights of the Governmental Lender hereunder

shall be enforceable by the Fiscal Agent. The Owner shall not assign its interest hereunder, except by writing and in accordance with the provisions of Section 10 hereof.

(b) This Regulatory Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto (or their successors in title), and duly recorded in the official public records for the County. Anything to the contrary notwithstanding, the parties hereby agree to amend this Regulatory Agreement to the extent required, in the opinion of Bond Counsel, in order for interest on the Governmental Note to remain exempt from federal income taxation under Section 103 of the Code. The Owner agrees, from time to time, to take such other actions and steps necessary to comply, and to cause the Project to comply, with the requirements of Section 142(d) of the Code and to enter into modifications and amendments to this Regulatory Agreement to the extent required by federal law, by any amendment to the Code, or by any Regulation promulgated thereunder (and the parties hereto agree that this Regulatory Agreement shall be deemed to be automatically amended to impose such requirements pending execution of any such amendment), in each case so that interest on the Governmental Note remains exempt from federal income taxes. Any such amendment, revision, or termination shall be effected only in accordance with the Funding Loan Agreement.

(c) Subject in all respects to the other provisions of this Regulatory Agreement, the Governmental Lender, the Fiscal Agent and the Owner may from time to time enter into one or more amendments or supplements to this Regulatory Agreement for any of the following purposes:

(i) to correct or amplify the description of the Project;

(ii) to evidence the succession of another person or entity to the Governmental Lender, the Fiscal Agent, or the Owner and the agreement by any successor to perform the covenants of their predecessor;

(iii) to make such changes to the covenants hereof to the extent required by Sections 15 and 22(a) hereof in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Bonds;

(iv) to cure any ambiguities, to correct or supplement any provisions of this Regulatory Agreement which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Regulatory Agreement, which will not be inconsistent with the provisions of this Regulatory Agreement, provided that such action will not adversely affect the interests of the owners of the Bonds; or

(v) upon delivery of an opinion of Bond Counsel to the effect that such amendment or supplement will not adversely affect the exclusion from gross



income for federal income tax purposes of interest on the Bonds, to amend the covenants of the Owner hereunder to the extent consistent with any applicable amendment to the Code or Regulations.

(d) At such time as the Governmental Note has been paid in full, the Fiscal Agent shall be released from all duties and obligations under this Regulatory Agreement, and all provisions throughout this Regulatory Agreement related to the duties of, or notice to or from, the Fiscal Agent shall be of no further force and effect. If any approval or consent of the Fiscal Agent is required, such approval or consent shall be obtained from the Governmental Lender; however, multiple notices need not be provided. Notwithstanding the foregoing, any such references shall remain in effect when needed to construe land use restriction obligations under this Regulatory Agreement or to provide definitions. The Fiscal Agent's rights to indemnification shall survive such release and discharge.

**SECTION 23. NOTICE.** Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, to the Governmental Lender, the Fiscal Agent and the Owner at their respective addresses set forth in the first paragraph hereof, or at such other addresses as may be specified in writing by the parties hereto. Notice shall be deemed given on the third business day after the date of mailing. A copy of any notice sent to the Owner shall also be sent to Reno & Cavanaugh PLLC, 424 Church Street, Suite 2910, Nashville, Tennessee 37219, Attention: Dwayne Barrett, Esq.; Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A., 150 West Flagler Street, Miami, Florida 33130, Attention: Brian McDonough, Esq.; [U.S. Bancorp Community Development Corporation], 1307 Washington Avenue, Suite 300, St. Louis, Missouri 63103, Attention: Akeem Adeniji; and Kutak Rock LLP, 1650 Farnam Street, Omaha, Nebraska 68102, Attention: Jill Goldstein, Esq.

**SECTION 24. SEVERABILITY.** If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

**SECTION 25. MULTIPLE COUNTERPARTS.** This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Governmental Lender, the Fiscal Agent, and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the date first written above.

**HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA, as Governmental Lender**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

ACKNOWLEDGEMENT OF GOVERNMENTAL LENDER

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of \_\_ physical presence or \_\_ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 2023, by JEFFREY SHARKEY, as Chair, and by CHARLES A. WHITE, as Secretary, of the HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA, a legal entity duly created and a public agency duly organized and existing under the laws of the State of Florida, on behalf of the Issuer. They are personally known to me or have each produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

Witnesses:

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as Fiscal Agent**

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

By: \_\_\_\_\_  
Amanda Kumar  
Vice President

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

ACKNOWLEDGEMENT OF BOND TRUSTEE

STATE OF FLORIDA  
COUNTY OF DUVALL

The foregoing instrument was acknowledged before by means of \_\_ physical presence or \_\_ online notarization, me this \_\_\_\_ day of \_\_\_\_\_, 2023, by AMANDA KUMAR, as Vice President of U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association, as Fiscal Agent. Said person is personally known to me or has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of Texas  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

Witnesses:

**ECG RIDGE ROAD, LP**, a Florida limited partnership

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

By: ECG Ridge Road GP, LLC, a Tennessee limited liability company, its general partner

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

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

ACKNOWLEDGEMENT OF BORROWER

STATE OF \_\_\_\_\_  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before by means of \_\_ physical presence or \_\_ online notarization, me this \_\_\_ day of \_\_\_\_\_, 2023, by C. HUNTER NELSON, as managing member, of ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, as general partner of ECG RIDGE ROAD, LP, a Florida limited partnership, on behalf of the Borrower. Said person is personally known to me or has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of \_\_\_\_\_  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT B**

**FORM OF INCOME CERTIFICATION**

**Tenant Income Certification**

<b>FLORIDA HOUSING FINANCE CORPORATION TENANT INCOME CERTIFICATION</b>						Enter Full Date (mm/dd/yyyy) Effective Date: _____ Move-in Date: _____	
<input type="checkbox"/> Initial Certification <input type="checkbox"/> Recertification <input type="checkbox"/> Other _____ <small style="margin-left: 400px;">Indicates Type</small>							
<b>PART I - DEVELOPMENT DATA</b>							
Key Number _____		Development _____			County _____		
Unit ID: _____		BIN # _____		Address _____		City _____	
<b>PART II - HOUSEHOLD COMPOSITION</b>							
HH Mbr #	Last Name	First Name & Middle Initial	Relationship to Head of Household	Date of Birth (mm/dd/yyyy)	Age as of Effective Date	Full Time Student (Y or N)	
1			<b>H - Head</b>				
2							
3							
4							
5							
6							
7							
8							
9							
<b>PART III - GROSS ANNUAL ANTICIPATED HOUSEHOLD INCOME (USE ANNUALIZED AMOUNTS)</b>							
HH Mbr #	(A) Employment or Wages	(B) Social Security/ Pensions	(C) Public Assistance	(D) Other Income	If Other, Indicate Type		
Calculate sum of (A) through (D), above						<b>(E) TOTAL ANTICIPATED INCOME:</b> \$ -	
<b>PART IV - CASH VALUE OF ASSETS AND ANNUALIZED ANTICIPATED HOUSEHOLD INCOME FROM ASSETS</b>							
HH Mbr #	(F) C / I	(G) Checking	(H) Savings	(I) CD	(J) Other	If Other, Indicate Type (K) Asset Income	
(L) TOTAL CASH VALUE: Calculate sum of (G) through (J) above:						\$ -	
(M) Total Anticipated Actual Asset Income:						\$ -	
(N) Enter Item (L) amount if total exceeds \$5,000: \$ - X Passbook Rate 0.06% = (O) Imputed Income:						\$ -	
<b>(P) TOTAL INCOME FROM ASSETS: Enter the greater of Item (M) or Item (O)</b>						\$ -	
<b>PART V - (Q) TOTAL HOUSEHOLD INCOME FROM ALL SOURCES - Add (E) + (P)</b>						<b>\$ -</b>	
<b>HOUSEHOLD CERTIFICATION AND SIGNATURES</b>							
<small>The information on the form will be used to determine maximum income eligibility. I/we have provided for each person(s) set forth in Part II acceptable verification of current anticipated gross annual income. I/we agree to notify the landlord immediately upon any member of the household moving out of the unit or any new member moving in. I/we agree to notify the landlord immediately upon any member becoming a full time student.</small>							
<small>Under penalties of perjury, I/we certify that the information presented in this Certification is true and accurate to the best of my/our knowledge and belief. The undersigned further understands that providing false representations herein constitutes an act of fraud. False, misleading or incomplete information may result in the termination of the lease agreement.</small>							
Signature _____		(Date) _____		Signature _____		(Date) _____	
Signature _____		(Date) _____		Signature _____		(Date) _____	

**Tenant Income Certification**

PART VI - STUDENT STATUS																					
Is every household member a full-time student? <i>(refer to Part II)</i> <input type="checkbox"/> Yes <input type="checkbox"/> No  If YES, enter Student Explanation number _____	<b>Student Explanation</b> 1 TANF assistance 2 Job training program 3 Single parent / dependent child 4 Married / joint return 5 Former foster child in transition to independence																				
PART VII - PROGRAM NAME	PART VIII - DETERMINATION OF INCOME ELIGIBILITY																				
<p style="text-align: center;"><b>Indicate AMI category served by household for set-aside requirement of each Florida Housing program</b></p> <table style="width:100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: left;">AMI Category</th> <th style="text-align: left;">CAP **</th> </tr> </thead> <tbody> <tr> <td>MMRB _____ %</td> <td>** Upon _____ recertification the</td> </tr> <tr> <td>SAIL _____ %</td> <td>_____ household</td> </tr> <tr> <td>Housing Credit _____ %</td> <td>_____ exceeded the</td> </tr> <tr> <td>HOME _____ %</td> <td>_____ income cap</td> </tr> <tr> <td>AHL _____ %</td> <td>_____ according to</td> </tr> <tr> <td>HUD Risk Sharing _____ %</td> <td>_____ program(s)</td> </tr> <tr> <td>SHIP _____ %</td> <td>_____ eligibility</td> </tr> <tr> <td>_____ %</td> <td>_____ requirements.</td> </tr> <tr> <td>_____ %</td> <td>_____</td> </tr> </tbody> </table>	AMI Category	CAP **	MMRB _____ %	** Upon _____ recertification the	SAIL _____ %	_____ household	Housing Credit _____ %	_____ exceeded the	HOME _____ %	_____ income cap	AHL _____ %	_____ according to	HUD Risk Sharing _____ %	_____ program(s)	SHIP _____ %	_____ eligibility	_____ %	_____ requirements.	_____ %	_____	Current total household income    \$ _____ <i>(refer to Part V)</i>  <b>Most restrictive AMI category met by household</b> <i>(refer to Part VII)</i> <input type="checkbox"/> AMI %    Current Income Limit    \$ _____  <b>Recertification only</b> Household size at move in    _____ Total household income at move in    \$ _____ Current Income Limit x 140%    \$ _____ Household income exceeds 140% at Recertification: <input type="checkbox"/> Yes <input type="checkbox"/> No
AMI Category	CAP **																				
MMRB _____ %	** Upon _____ recertification the																				
SAIL _____ %	_____ household																				
Housing Credit _____ %	_____ exceeded the																				
HOME _____ %	_____ income cap																				
AHL _____ %	_____ according to																				
HUD Risk Sharing _____ %	_____ program(s)																				
SHIP _____ %	_____ eligibility																				
_____ %	_____ requirements.																				
_____ %	_____																				
PART IX - RENT																					
Rental Assistance    \$ _____ If Section 8, indicate assistance type: Tenant Based    _____ Project Based    _____ Utility Reimbursement    \$ _____ Tenant-Paid Rent <i>(include non-optional charges)</i> \$ _____ Utility Allowance    \$ _____ <b>TOTAL TENANT PAYMENT</b> <i>(Tenant paid rent plus utility allowance)</i> \$ _____	Unit meets ELI / Housing Credit / HUD Risk Sharing rent restriction at AMI Category    _____ % Unit meets HOME Program rent restriction at _____ Number of bedrooms in this unit    _____ Current rent limit for this unit    \$ _____ <i>(Refer to applicable schedule of maximum allowable rents)</i>  <b>Rent Concession - throughout current lease</b> Total Amount    \$ _____ Lease Term    _____ <i>(in months)</i>																				
PART X - CATEGORICAL OR PUBLIC PURPOSE SET ASIDE OR TARGETING REQUIREMENT TYPES																					
_____ SPND <b>(Indicate with X to select ALL set asides or targets that apply to this household)</b> _____ Link    _____ Referral Agency Number    _____ Workforce Housing _____ Commercial fishing worker    _____ Elderly    _____ Family (SAIL only) _____ Farmworker    _____ Homeless    _____ Veteran _____ Developmentally Disabled    _____ Special Needs    _____ Number of BR's (MMRB PPC only)																					
SIGNATURE OF OWNER REPRESENTATIVE																					

Based on the representations herein and upon the proofs and documentation required to be submitted, the individual(s) named in Part II of this Tenant Income Certification is/are eligible under the provisions of the program(s) indicated in Part VII, and the Extended Use Agreement and/or Land Use Restriction Agreement (if applicable), to live in a unit in this Development.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_  
 Printed Name: \_\_\_\_\_  
 Title: \_\_\_\_\_



**PART XI - STATISTICAL DATA**

**Note:** Information in this Part XI is gathered for statistical use only. No resident is required to give such information unless they desire to do so.

Refusal to provide information in this Part will not affect any rights the household has as residents. There is no penalty for households that do not complete the form.

**For Office Use: Household elected not to participate.**

**New Households**

**Prior Housing Information**

*(Answer for household head)*

Monthly rent payment \_\_\_\_\_  
 Monthly house payment \_\_\_\_\_  
 ZIP Code \_\_\_\_\_

**All Households**

**Current Employment**

*(Answer for household head)*

Occupation \_\_\_\_\_  
 ZIP Code \_\_\_\_\_

**Primary Transportation Mode**

*(Answer for household head)*

Motor vehicle \_\_\_\_\_  
 Public transportation \_\_\_\_\_  
 Other \_\_\_\_\_

**Additional Household Information**

A member of the household:

*(Check all that Apply)*

Receives Medicare benefits \_\_\_\_\_  
 Receives Medicaid benefits \_\_\_\_\_  
 Is a Person With a Disability \* \_\_\_\_\_

Racial Categories* (Select All That Apply)	Total Number of Household Members Per Category	Total Number of Hispanic or Latino Household Members
American Indian or Alaska Native		
Asian		
Black or African American		
Native Hawaiian or Other Pacific Islander		
White		
American Indian or Alaska Native and White		
Asian and White		
Black or African American and White		
American Indian or Alaska Native and Black or African American		
Asian and Black or African American		
Other mutiple race combination		
<b>TOTALS</b>		

**\* Definitions**

- Person With a Disability** A person who has a mental or physical impairment that substantially limits one or more of such person's \* Major Life Activities; has a record of such impairment; or is regarded as having such an impairment.
- Major Life Activities** Functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, sitting, standing, lifting, reaching, thinking, concentrating, reading, interacting with others, learning, sleeping and working.
- Hispanic or Latino** A person of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race. The term "Spanish origin" can be used in addition to "Hispanic" or "Latino."
- Not-Hispanic or Latino** A person not of Cuban, Mexican, Puerto Rican, South or Central American, or other Spanish culture or origin, regardless of race.
- American Indian or Alaska Native** A person having origins in any of the original peoples of North and South America (including Central America), and who maintains tribal affiliation or community attachment.
- Asian** A person having origins in any of the original peoples of the Far East, Southeast Asia, or the Indian subcontinent, for example, Cambodia, China, India, Japan, Korea, Malaysia, Pakistan, the Philippine Islands, Thailand, and Vietnam.
- Black or African American** A person having origins in any of the black racial groups of Africa. Terms such as "Haitian" or "Negro" can be used in addition to "Black" or "African American."
- Native Hawaiian or Other Pacific Islander** A person having origins in any of the original peoples of Hawaii, Guam, Samoa, or other Pacific Islands.
- White** A person having origins in any of the original peoples of Europe, the Middle East or North Africa.

**EXHIBIT C**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned authorized representative of ECG Ridge Road, LP, a Florida limited partnership (the "Borrower"), has read and is thoroughly familiar with the provisions of the various documents associated with the issuance by the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), of its \$51,000,000 Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023 (the "Governmental Note"), such documents including:

1. The Land Use Restriction Agreement, as of \_\_\_\_\_ 1, 2023, among the Governmental Lender, the Fiscal Agent, and the Borrower; and
2. First Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated \_\_\_\_\_, 2023, by the Borrower.

Based on the representations contained in the Income Certification and the proofs and documentation submitted pursuant to the Income Certification, the following percentages of dwelling units in the Project have been either occupied by Lower-Income Persons (as such term is defined in the Regulatory Agreement) on the fifteenth (15th) day of the month in which this certificate is dated and at all times during the month preceding the date of this certificate or were held vacant and available for such occupancy for all or part of such period:

Lower-Income Persons:	_____%
Eligible Persons:	_____%
Very Low-Income Persons:	_____%
Moderate Income Persons:	_____%

The undersigned hereby certifies that the Borrower is not in default under any of the above documents, with the exception of the following (if none, please so state):

---

---

Capitalized terms used but not defined in this certificate shall have the meanings assigned in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023, by and between the Governmental Lender, the Funding Lender, and the Fiscal Agent.

Date: \_\_\_\_\_

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

## EXHIBIT D

### FORM OF CERTIFICATE CONCERNING COMMENCEMENT AND TERMINATION OF QUALIFIED PROJECT PERIOD

**THIS CERTIFICATE** is being executed pursuant to the provisions of the Land Use Restriction Agreement, dated as of \_\_\_\_\_ 1, 2023, (the "Agreement"), among the Housing Finance Authority of Leon County, Florida (the "Governmental Lender"), U.S. Bank Trust Company, National Association (the "Fiscal Agent") and ECG Ridge Road, LP (the "Owner"), in connection with the financing by the Governmental Lender of Ridge Road (the "Development") in Leon County, Florida located on real property described on **Exhibit "A"** hereto, through the issuance of the Governmental Lender's \$51,000,000 Multifamily Mortgage Revenue Note, Series 2022 (Ridge Road) (the "Governmental Note").

The period for which the restrictions set forth in the Agreement are applicable to the Project is referred to as the "Qualified Project Period" and is defined in the Agreement as follows:

"Qualified Project Period" means the period beginning on the later of (i) the first day on which at least 10% of the units in the Project were first occupied (which date shall be certified in writing by the Owner to the Governmental Lender and the Fiscal Agent immediately following such date) and (ii) the date the Governmental Note was issued, and ending on the latest of (1) the date that is fifteen years after the date on which at least 50% of the units in the Project were first occupied (which date shall be certified in writing by the Owner to the Governmental Lender and the Fiscal Agent immediately following such date), (2) the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding (as interpreted pursuant to the Code); (3) the date on which any assistance provided with respect to the Project under Section 8 of the U.S. Housing Act of 1937 terminates, or (4) the date which is fifty (50) years from the date of issuance of the Governmental Note.

To evidence the Qualified Project Period with respect to the Project, the Owner certified to the following:

1. The Governmental Note was issued on \_\_\_\_\_, 2023.
2. The date of acquisition of the Project was \_\_\_\_\_, 2023.
3. The maturity date of the Governmental Note with the longest maturity is \_\_\_\_\_ 1, 2063.
4. The first day on which at least ten percent (10%) of the units in the Project were first occupied was \_\_\_\_\_, 20\_\_.

5. The date on which at least fifty percent (50%) of the units in the Project were first occupied was \_\_\_\_\_, 20\_\_.
6. The date of initial occupancy of any unit in the Project was \_\_\_\_\_, 20\_\_.
7. [No assistance was][Assistance is being] provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended. [Such assistance will end on \_\_\_\_\_, 20\_\_ unless further extended.
8. The date which is fifty (50) years from the date of issuance of the Governmental Note is \_\_\_\_\_, 2073.

Prior to the recording of this Certificate in the land records of the County, the Owner has supplied the Governmental Lender with documentation to establish the facts relating to the Project set forth in this Certificate, which documentation has been found satisfactory to all parties. Nothing in this Certificate is intended to modify the requirement that all units in the Project be rented as residential rental property for the term during which any of the Governmental Note are outstanding or any provision of the Regulatory Agreement.

[Remainder of page intentionally left blank]

IN WITNESS WHEREOF, the Owner has caused this Certificate to be executed by its duly authorized representative, and the Governmental Lender has caused this Certificate to be accepted by its duly authorized representative as of this \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

ACKNOWLEDGEMENT OF BORROWER

STATE OF FLORIDA  
COUNTY OF \_\_\_\_\_

The foregoing instrument was acknowledged before by means of \_\_ physical presence or \_\_ online notarization, me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by C. HUNTER NELSON, as managing member, of ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, as general partner of ECG RIDGE ROAD, LP, a Florida limited partnership, on behalf of the Borrower. Said person is personally known to me or has produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of \_\_\_\_\_  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Issuer**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

**ACKNOWLEDGEMENT OF ISSUER**

STATE OF FLORIDA  
COUNTY OF LEON

The foregoing instrument was acknowledged before me by means of \_\_ physical presence or \_\_ online notarization, this \_\_\_\_ day of \_\_\_\_\_, 20\_\_, by JEFFREY SHARKEY, as Chair, and by CHARLES A. WHITE, as Secretary, of the HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA, a legal entity duly created and a public agency duly organized and existing under the laws of the State of Florida, on behalf of the Issuer. They are personally known to me or have each produced a valid driver's license as identification.

\_\_\_\_\_  
Notary Public; State of Florida  
Print Name: \_\_\_\_\_  
My Commission Expires: \_\_\_\_\_  
My Commission No.: \_\_\_\_\_

## EXHIBIT E

### RESIDENT PROGRAMS AND PROJECT AMENITIES

A. The Project will consist of:

250 units located in seven residential buildings

Unit Mix:

Seventy-nine (79) one bedroom/one bath units;  
Eighty-four (84) two bedroom/two bath units;  
Sixty (60) three bedroom/two bathroom units; and  
Twenty-seven (27) four bedroom/two bathroom units.

All units are expected to meet all requirements as outlined below. The quality of the construction features committed to by the Borrower is subject to approval of the Issuer. Additionally, all Projects must meet the Housing Quality Standards provided by HUD.

The Project must meet all federal requirements and state building code requirements, including the following, incorporating the most recent amendments, regulations and rules: The Federal Fair Housing Act as implemented by 24 CFR 100, Florida Accessibility Code for Building Construction as adopted pursuant to Section 553.503, Florida Statutes, Section 504 of the Rehabilitation Act of 1973 ("Section 504"), and Titles II and III of the Americans with Disabilities Act ("ADA") of 1990 as implemented by 28 CFR 35.

The Project must meet accessibility standards of Section 504. Section 504 accessibility standards require a minimum of 5% of the total dwelling units, but not fewer than one unit, to be accessible for individuals with mobility impairments. An additional 2% of the total units, but not fewer than one unit, must be accessible for persons with hearing or vision impairments.

B. The following items are required:

- Air conditioning (window units are not allowed), in all units
- Dishwasher inside each unit
- Garbage disposal, in all new construction units
- Cable TV Hook-Up, in all units
- At least two full bathrooms in all 3-bedroom or larger new construction units
- At least 1.5 bathrooms (one full bath and one with at least a toilet and sink) in all new construction 2-bedroom units
- Full sized appliances in all units
- Bathtub in at least one bathroom in new construction non-elderly units

Exhibit E-1



- Exterior lighting for all buildings and parking areas
- C. For New Construction Units, the applicant may select items from the following list. The selected items must total 25 points:
- Window Treatments: Identify treatment inside each unit (3 points)
    - mini-blinds
    - curtains
    - vertical blinds
  - 30-Year Expected Life Roofing on all Buildings (4 points)
  - Microwave Oven (3 points)
  - Fire Sprinklers in All Units (5 points)
  - Exterior lighting (3 points)
  - Laundry Hook-ups and space for washer/dryer inside each unit (3 points)
  - Double compartment kitchen sink (1 point)
  - Non-smoking Buildings
- D. For non-elderly Development, or development with non-elderly units, the applicant may select from the following list. The selected items must be on-site and total 16 points (2 points each):
- Exercise room with appropriate equipment
  - Community center or clubhouse
  - Car care area (for car cleaning/washing)
  - Childcare facility located within three miles of the property
  - Public transportation located within one-half mile of property
  - Library/study room consisting of a minimum of 100 books and 5 magazine subscriptions. The library must include a computer lab.
  - Community Garden
  - Picnic area with at least three permanent picnic tables and a permanent outdoor grill
- E. The Project must provide the following Mandatory Features:
- Energy Star qualified refrigerator;
  - Energy Star qualified dishwasher;
  - Energy Star qualified washing machine, if provided by applicant;
  - Minimum SEER of 15 for unit air conditioners (excluding buildings with a central chiller system).
  - Caulk, weather strips, seal holes, cracks, etc. (Rehab developments)
  - Sealed and insulated heating and cooling system ducts (Rehab developments)
  - Low-VOC paint for all interior walls (50 grams per liter or less for flat paint; 150 grams per liter or less for non-flat paint).

- Low-flow water fixtures in bathrooms--Watersense labeled products or the following specifications:
  - Toilets: 1.6 gallons/flush or less
  - Faucets: 1.5 gallons/minute or less
  - Showerheads: 2.2 gallons/minute or less.

F. The Project must provide the following Optional General Features:

- Programmable thermostat in each unit
- Energy Star Ceiling Fans in all bedrooms and living areas
- Energy Star exhaust fans in bathrooms
- Energy Star rating for all windows
- Motion detector on common area lighting

G. The Borrower must provide the following Resident Programs:

- **Health Care** – Regularly scheduled visits by health care professionals such as nurses, doctors, or other licensed care providers. At a minimum, the following services must be provided at no cost to the resident: health screening, flu shots, vision and hearing tests. Regularly scheduled is defined as not less often than once each quarter. On-site space must be provided.
- **Resident Activities** – Regularly scheduled, specified activities, planned, arranged, managed, and paid for by the Applicant or its management agent as an integral part of the management plan. The Applicant must develop and execute a comprehensive plan of varied activities such as holiday or special occasion parties, community picnics or cookouts, newsletters, children's special functions, etc., to bring the resident together, foster a sense of community, and encourage community pride.
- **On Site Voter Registration** – The Applicant or its Management Agent shall work with the County Supervisor of Elections to arrange on-site voter registration. The registration shall be at least quarterly and shall be during weekend and other traditionally non-work times.
- **Financial Counseling** – This service must be provided by the Applicant or its Management Agent at no cost to the resident. Financial counseling must include the following components: must be regularly scheduled, not less often than once each quarter; must be free of charge to the residents; must include tax preparation assistance by qualified professionals; must include educational workshops on such topics as "Learning to Budget", "Handling Personal Finances", or "Comparison Shopping for the Consumer".

- **Computer Training** – This training is made in conjunction with the requirement that the Applicant commit one computer for every 50 units, with software and internet access. The applicant must provide quarterly, on-site training classes, OR access to training software on basic computer skills such as word processing and spreadsheets to the residents.
- **Hurricane Preparedness** – At least one month before each Hurricane Season, conduct training for residents on how to plan for hurricane and evacuation protocols. At start of Hurricane Season, provide all residents written instructions on planning and evacuation.
- **Life Safety Training (Optional)** – The Applicant or its Management Agent shall provide on-site courses such as fire safety, first aid (including CPR), etc. at least twice each year, at no cost to the resident.
- **Health and Nutrition Classes (Optional)** – The Applicant or its Management Agent shall provide on-site classes, at no cost to the resident, at least 8 hours per year.
- **Homeownership Opportunity Program** – Applicant must provide a homeownership opportunity program available to all residents in compliance with their current lease. The program must set aside 5% of the resident's gross rent toward a down payment for that resident when the resident moves from the development into homeownership. The resident may be suspended from the program during the period of a lease if the resident violates any provision of the lease. Upon renewal of the lease the resident must be reinstated into the program for the period of that renewal. with suspension permitted under the same terms as discussed above. The homeownership opportunity program must also include financial counseling for all residents. With emphasis on credit counseling and other items necessary for successful purchase of. and maintenance of a home.
- **First Time Homebuyer Seminars** – Applicant must arrange for and provide at no cost to the resident, in conjunction with local realtors or lending institutions, semiannual on-site seminars for residents interest in becoming homeowners.

The quality of the Resident Programs committed to by the Borrower is subject to approval of the Governmental Lender. The availability of the Resident Programs must be publicized on an ongoing basis such as through community newsletters, bulletin board posts, or flyers. It is a requirement that at least two of the resident programs are selected and offered on-site.

**EXHIBIT D**

**FORM OF COMPLIANCE MONITORING AGREEMENT**

## COMPLIANCE MONITORING AGREEMENT

**THIS COMPLIANCE MONITORING AGREEMENT** (the "Agreement") is made as of \_\_\_\_\_ 1, 2023, by and among the **HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**, a public body corporate and politic existing under the laws of the State of Florida (the "Governmental Lender"), **FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA**, its successors and assigns, a Florida corporation (the "Compliance Monitoring Agent"), **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, in its capacity as fiscal agent (in such capacity, the "Fiscal Agent"), and **ECG RIDGE ROAD, LP**, a Florida limited partnership (the "Borrower").

### WITNESSETH:

**WHEREAS**, capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), by and among the Governmental Lender, Allianz Life Insurance Company Of North America (the "Funding Lender"), and the Fiscal Agent, and the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Borrower; and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Florida Housing Finance Authority Law, Sections 159.601 through 159.623, Part IV, Florida Statutes, as amended, Chapter 2, Article III, Division 3, Sections 2-71 et seq., Leon County Code of Laws, as supplemented and amended, and other applicable provisions of law (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe, and sanitary housing for persons or families of low, moderate, or middle income in Leon County, Florida (the "County"); and

**WHEREAS**, the Act authorizes the Governmental Lender; (a) to make loans to sponsors to provide financing for residential developments located within the County, and intended to be occupied to the extent required by applicable state or federal tax law by persons or families of low, moderate, and middle income; (b) to issue revenue bonds for the purpose of obtaining monies to make such loans and provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge, or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, pursuant to resolutions of the Governmental Lender adopted on October 14, 2021 (as amended on January 13, 2022) and \_\_\_\_\_, 2023, the Governmental Lender has authorized, approved, and issued \$51,000,000 principal amount of its Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023 (the "Governmental Note"), pursuant to the Funding Loan Agreement; and

**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender, the Fiscal Agent, and the Borrower have entered into the Borrower Loan Agreement, by the terms of which the Governmental Lender has agreed to loan the proceeds of the Governmental Note to the Borrower (the "Borrower Loan") for the purpose of providing funds to acquire, construct, and equip a multifamily rental housing development located on property within the County, known as Ridge Road (the "Project")

**WHEREAS**, the Borrower Loan will be evidenced by that certain promissory note in the principal amount of \$51,000,000, dated as of \_\_\_\_\_, 2023 (the "Borrower Note"), which Borrower Loan and Borrower Note will be secured by that certain First Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of \_\_\_\_\_, 2023 (the "Mortgage"), granting the Governmental Lender a first mortgage lien and security interest in the real and personal property described therein; and

**WHEREAS**, the Governmental Lender intends to assign the Borrower Note and the Mortgage, and other instruments securing repayment of the Governmental Note, to the Fiscal Agent for the benefit of the holders of the Governmental Note, as their interests may appear; and

**WHEREAS**, to assure compliance with certain requirements of the Internal Revenue Code of 1986, as amended, and certain other requirements of the Governmental Lender with respect to the operation of the Property, the Governmental Lender, the Fiscal Agent, and the Borrower have executed a Land Use Restriction Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Land Use Restriction Agreement"), the terms of which are incorporated herein by this reference, setting forth certain terms and conditions relating to the construction and operation of the Project, and which sets forth various other covenants and agreements that run with the Project; and

**WHEREAS**, the Compliance Monitoring Agent has represented and warranted that it is duly qualified and authorized to engage in the business of administering loans of the type of the Borrower Loan referred to herein; and

**WHEREAS**, the Compliance Monitoring Agent shall act as agent of the Governmental Lender in performing certain functions under the Funding Loan Agreement, the Borrower Loan Agreement, and the Land Use Restriction Agreement, and shall monitor tenant eligibility with respect to the Property subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** The following definitions shall apply as context may require in this Agreement:

A. "Improvements" -- all improvements described in the plans for the Property (the "Plans") and all additions and equipment reasonably necessary to construct, equip, renovate, operate, and rent the Property, including all amenities. Without limiting the foregoing, the term Improvements shall include all landscaping, walls, drives, approaches, sidewalks, curbs, paving, and all chattels, furniture, furnishings and equipment described in the Plans.

B. "Borrower Loan Documents" -- collectively, this Agreement, the Governmental Note, the Borrower Loan Agreement, the Mortgage, the Land Use Restriction Agreement, the Funding Loan Agreement, and all other documents and instruments evidencing, securing or guaranteeing payment of the Borrower Loan, or any portion thereof.

C. "Mortgagee" -- the Governmental Lender, and its successors or assigns, including the Fiscal Agent.

D. "Property" -- the fee interest in the real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof, and the Improvements.

E. "Title Insurance Policy" -- the policy issued pursuant to mortgagee title insurance Commitment No. \_\_\_\_\_ issued by \_\_\_\_\_ and all endorsements issued as required by this Agreement as of the date of reference.

2. **TERM.** This Agreement shall continue from the earlier of the date of this Agreement or from the date the Compliance Monitoring Agent shall begin compliance monitoring for the Governmental Lender until occurrence of the first of the following events:

A. The end of the Qualified Project Period (as defined in the Land Use Restriction Agreement).

B. Termination of this Agreement as to the Compliance Monitoring Agent pursuant to Section 11 hereof.

3. **SERVICING OF THE BORROWER LOAN.** The Compliance Monitoring Agent shall provide the services required of the "Governmental Lender Servicer" under the Borrower Loan Documents, including, without limitation, monitoring the Property and compliance by the Borrower with the requirements of the Land Use Restriction Agreement, exercising the same degree of care in performing its obligations under this Agreement as is customary in the industry for financial institutions which service real estate loans for their own portfolios and on behalf of others. The Governmental Lender agrees that it will do and perform all things reasonably necessary to assist the Compliance Monitoring Agent in performing its obligations hereunder and under the Borrower Loan Documents.

4. **COMPENSATION OF THE COMPLIANCE MONITORING AGENT.** The Borrower shall pay to the Fiscal Agent for payment to the Compliance Monitoring Agent for the services rendered by the Compliance Monitoring Agent hereunder in accordance with the following provisions:

A. Commencing upon notification of the issuance of an initial certificate of occupancy, the annual compensation of the Compliance Monitoring Agent for the compliance monitoring services specified hereunder shall be paid semi-annually in advance by the Borrower on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, in an amount equal to a monthly base compliance monitoring fee of \$183.00 plus an additional \$11.24 per annum per set-aside unit, with a minimum monthly compliance monitoring fee of \$286.00, subject to increase on January 1 of each year based on the South Region Consumer Price Index for the twelve month period ending each November 30th (which increase shall not exceed 3% of the prior year's fees). An additional fee of \$198.00 per hour shall be paid by the Borrower for follow-up reviews and/or extraordinary compliance monitoring services for compliance monitoring.

B. The Compliance Monitoring Agent's rights to compensation hereunder for compliance monitoring shall cease upon the later to occur of:

(1) the end of the Qualified Project Period; or

(2) notification by the Governmental Lender to the Compliance Monitoring Agent that its services or this Agreement shall be terminated by the Governmental Lender or the Fiscal Agent with the Governmental Lender's consent, with or without cause.

C. Any fees not paid by the Borrower may be paid by the Fiscal Agent (from amounts available under the Funding Loan Agreement) and charged against the Borrower Loan unless Borrower gives Fiscal Agent written notice that such fees are disputed prior to such fee being paid by the Fiscal Agent.

5. **INSURANCE TO BE MAINTAINED BY THE COMPLIANCE MONITORING AGENT.** The Compliance Monitoring Agent shall maintain at all times during the existence of this Agreement, at its own expense, blanket fidelity insurance and errors and omissions insurance covering the Compliance Monitoring Agent's officers and employees and other persons acting on behalf of the Compliance Monitoring Agent relating to the Compliance Monitoring Agent's performance of this Agreement. The amount of coverage of such policies shall be acceptable to the Governmental Lender. All such policies of insurance shall be issued by an insurance company, with coverage satisfactory to the Governmental Lender and the Compliance Monitoring Agent and shall name the Governmental Lender and the Fiscal Agent as the insured under said policies.



6. **NOTIFICATION TO THE GOVERNMENTAL LENDER AND THE FISCAL AGENT.** The Compliance Monitoring Agent shall promptly notify the Governmental Lender, the Borrower, and the Fiscal Agent of any of the following which may come to the attention of the Compliance Monitoring Agent with respect to the Mortgage:

A. Any failure of the Borrower to perform any covenant or obligation, applicable to it, under the Borrower Loan Documents (of which the Compliance Monitoring Agent has knowledge) if such failure continues for a period of fifteen (15) days, or lesser period, if so provided in any Borrower Loan Document.

B. Abandonment of any one or more of the Improvements comprising the Property.

C. Any lack of repair or deterioration or waste suffered or committed in respect to any one or more of the Improvements comprising the Property.

D. Any other matter which would adversely or materially affect or result in diminution of value of the security described herein and in the Mortgage.

E. Any loss or damage by fire or any hazard to the mortgaged property requiring repairs costing in excess of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS to restore the Property to its condition prior to such loss or damage.

7. **DEFAULT OF BORROWER.** The Compliance Monitoring Agent shall not at any time, without the express written consent of the Governmental Lender and the Fiscal Agent, consent to a postponement of compliance on the part of the Borrower with any of the terms and provisions of the Borrower Loan Agreement, the Land Use Restriction Agreement, the Mortgage, or any other Borrower Loan Document, or in any manner grant an extension or waiver to the Borrower.

8. **REPRESENTATIONS OF THE COMPLIANCE MONITORING AGENT.** The Compliance Monitoring Agent covenants, warrants, and represents to the Governmental Lender and the Borrower as follows:

A. The Compliance Monitoring Agent is a duly organized corporation under the laws of the State of Florida, is in good standing in the State of Florida, and is authorized to do business in the State of Florida; that it is authorized to execute, deliver, and perform this Agreement and all other documents and agreements required hereunder, and in so doing, that it will not violate any law, any provision of its charter or bylaws, or any other agreement of instrument binding upon it.

B. The Compliance Monitoring Agent shall comply with all applicable laws and the provisions of the Borrower Loan Documents, as applicable.

C. The Compliance Monitoring Agent shall cause any funds advanced to the Compliance Monitoring Agent by the Fiscal Agent under this Agreement to be deposited with a financial institution the deposits of which are insured by FDIC or by any successor agency or instrumentality of the United States government; and will cause such financial institution to designate said funds as escrow funds for the benefit of the Fiscal Agent; and will cause such financial institution to execute an agreement providing that it will not exercise any powers of right of offset or banker's lien against such escrow funds.

D. The Compliance Monitoring Agent hereby waives and releases any lien or encumbrances which it might at any time have or be able to claim against any property or funds held by the Fiscal Agent or the Governmental Lender .

9. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** The Borrower represents and warrants to the Compliance Monitoring Agent that it may rely on the representations and warranties made by Borrower to the Governmental Lender as set forth in the Borrower Loan Agreement, the Land Use Restriction Agreement, the Mortgage, and the other Loan Documents.

10. **COVENANTS OF THE BORROWER.** The Borrower covenants and agrees with the Governmental Lender, the Fiscal Agent, and the Compliance Monitoring Agent as follows:

A. **Right of Entry.** The Borrower shall permit the Governmental Lender, the Fiscal Agent, and the Compliance Monitoring Agent and their authorized employees, agents, or representatives to enter upon the Property after reasonable prior notice during normal business hours to inspect the Improvements and all books and records related to the Property of the Borrower and will cooperate with the Governmental Lender, the Compliance Monitoring Agent, the Fiscal Agent and its representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by the Governmental Lender, the Fiscal Agent, and the Compliance Monitoring Agent, or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Borrower nor any third party shall be entitled to claim any loss or damage either against the Governmental Lender, the Fiscal Agent, and the Compliance Monitoring Agent, or their employees, agents or representatives for failure to properly discharge any alleged duties of the Governmental Lender, the Fiscal Agent, and the Compliance Monitoring Agent, and they shall have no duty to make such inspections.

B. **Additional Documents.** The Borrower agrees to execute any and all such other and further instruments as may reasonably be required by the Governmental Lender or the Fiscal Agent from time to time in order to carry out the provisions of this Agreement, the Borrower Loan Documents, or for the purpose of protecting, maintaining, or enforcing the Governmental Lender's and the Fiscal Agent's security for the Borrower Loan.

11. **TERMINATION.**

A. **By the Governmental Lender.** The Governmental Lender shall have the right to terminate the Compliance Monitoring Agent's rights and obligations under this Agreement, without cause, upon ten (10) days' written notice to the Compliance Monitoring Agent, and with cause, upon such written notice as the Governmental Lender deems reasonable under the circumstances.

B. **Automatic Termination.** Upon the occurrence of any one or more of the following events, this Agreement shall be automatically terminated:

(1) The Compliance Monitoring Agent shall assign or attempt to assign its rights or obligations under this Agreement.

(2) The Compliance Monitoring Agent shall institute proceedings for voluntary bankruptcy or shall file a petition seeking reorganization under the Federal Bankruptcy Laws or for relief under any other law for the relief of debtors or shall consent to the appointment of a receiver of all or substantially all of its property, or make a general assignment for the benefits of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall be adjudicated bankrupt or insolvent by a court of competent jurisdiction, or if an order shall be made by a court of competent jurisdiction appointing a receiver, liquidator or trustee of the Compliance Monitoring Agent or of all or substantially all of its property or approving any petition filed against the Compliance Monitoring Agent for its reorganization, and such adjudication or order shall remain in force or unstayed for a period of thirty (30) days.

(3) The Compliance Monitoring Agent shall fail to perform any of its obligations hereunder and shall fail, within thirty (30) days after written notice from the Fiscal Agent or the Governmental Lender, to correct or cure such failure.

(4) The Property is no longer subject to the Land Use Restriction Agreement.

C. **Effect of Termination.** In the event this Agreement is terminated pursuant to this Section 11, then the rights and obligations of the Compliance Monitoring Agent and its right to compensation hereunder shall immediately terminate, the Compliance Monitoring Agent shall forthwith deliver to the Governmental Lender or to whomever the Governmental Lender directs, all documents relating to the Borrower Loan and shall do such other acts as may reasonably be required by the Governmental Lender to facilitate the termination hereof.

12. **TENANT ELIGIBILITY.** The Compliance Monitoring Agent shall be responsible for the following with respect to the Property:

A. Conduct on-site management reviews of the Property at least annually. Such reviews shall include examination of tenant files, a review of administration procedures, and a physical inspection of the Property. The Compliance Monitoring Agent shall also prepare a written Management Review and Inspection Report and distribute copies to the on-site manager, the Borrower, the Managing Agent, the Fiscal Agent, and the Governmental Lender. Such report shall include a statement as to the compliance of the Borrower with its obligations under the Land Use Restriction Agreement. Such management reviews shall be conducted through the Qualified Project Period, as extended, or until no Governmental Note is outstanding, whichever is later.

B. Review Program Reports and Tenant Income Certifications and recertifications for completeness, tenant income eligibility, and timeliness of completion. The Compliance Monitoring Agent shall contact management personnel regarding any discrepancies and follow-up with respect thereto until required corrections are made and provide copies of any correspondence with respect thereto to the Governmental Lender.

C. Provide the Governmental Lender with occupancy information from each Program Report in the format provided by the Governmental Lender.

D. In addition, the Compliance Monitoring Agent shall:

(1) Be available to answer telephone inquiries relating to bond program requirements.

(2) Keep the Governmental Lender apprised of scheduled activities, any compliance problems as such occur, and changes in apartment management personnel.

(3) Provide the Governmental Lender with copies of all correspondence relating to the Property.

13. **MISCELLANEOUS PROVISIONS.**

A. **No Waiver.** Nothing herein shall be construed to waive or diminish any right or security of the Governmental Lender or the Fiscal Agent under the Borrower Loan Agreement, the Land Use Restriction Agreement and the Mortgage. It is the purpose and intent hereof to provide safeguards, protections, and rights for the Governmental Lender and the Fiscal Agent in addition to those provided in the Borrower Loan Agreement and Mortgage.

B. Cumulative Remedies. The remedies provided herein shall be in addition to and not a substitution for the rights and remedies which would otherwise be vested under any Borrower Loan Document or in law or equity, all of which rights and remedies are specifically reserved. The remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent, or the Compliance Monitoring Agent shall be cumulative and may be exercised separately or concurrently and as often as the occasion therefor may arise. The failure to exercise any of the remedies herein shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent use of any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent, or the Compliance Monitoring Agent shall continue and be each and all available until all sums due by reason of the Borrower Loan Agreement or the Mortgage are paid in full and all obligations incurred by the Borrower in connection with the construction or operation of the Improvements have been fully discharged.

C. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors, and assigns. The Borrower may be released from obligations and agreements hereunder only by a written instrument of the Fiscal Agent and the Governmental Lender specifically providing for such release. The Borrower shall be released from any and all liability hereunder, upon payment of the Borrower Loan in full and expiration of the Qualified Project Period.

D. Assignability. This Agreement shall not be assignable by the Borrower or Compliance Monitoring Agent without the prior written consent of the Governmental Lender and the Fiscal Agent. If the Governmental Lender and the Fiscal Agent approve an assignment hereof by the Borrower, the Fiscal Agent shall be entitled to make advances to such assignee and such advances shall be secured by the Borrower Loan Documents.

E. Governing Law. This Agreement shall be construed under the laws of the State of Florida, regardless of where it may have been executed or delivered. Any action to enforce or interpret this Agreement, whether arising in contract or tort, by statute or otherwise, may be brought in or removed to a state or federal court of competent jurisdiction in or for Leon County, Florida, and the parties hereto hereby submit itself to the jurisdiction of said courts.

F. Construction. Whereas this Agreement was negotiated with input from all parties hereto, this Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

G. [Reserved].

H. Invalid Provisions. All rights, powers, and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any term of this Agreement shall be held to be invalid, illegal, or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby, nor shall such terms be invalid or unenforceable under other, dissimilar facts and circumstances.

I. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

J. Amendments. This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement. the Governmental Lender reserves the right to amend this Agreement to comply with federal and state laws and regulations.

K. Time of Essence. Time is of the essence of this Agreement.

L. Right to Publicize. The Governmental Lender and the Compliance Monitoring Agent shall have the right to publicize its involvement in the financing of the Property and may require the Borrower to name the Governmental Lender as its mortgage lender in all publicity releases and promotional materials issued in connection with the Property.

M. Dealings with the Compliance Monitoring Agent. The Compliance Monitoring Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon resolution, notice, telegram, consent, wavier, certificate, affidavit, voucher, bond, title insurance commitment or policy or endorsement thereto, or other paper or document which it shall in good faith reasonable believe (1) to be genuine and, (2) to have been passed or prepared and furnished pursuant to the provisions of the Funding Loan Agreement, the Land Use Restriction Agreement, the Mortgage, or the Borrower Loan Agreement, and the Compliance Monitoring Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements unless the instrument on its face reasonably indicated that the Compliance Monitoring Agent should inquire further or unless the Compliance Monitoring Agent has actual knowledge or information which reasonably should cause the Compliance Monitoring Agent to inquire further. The Compliance Monitoring Agent shall not be held liable under this Agreement except for its own negligence or willful misconduct. The Borrower shall indemnify and hold the Compliance Monitoring Agent harmless from any claim, action or liability of any kind or character whatsoever arising from or in any way related to acts or omissions of the Borrower or any

of its agents, employees, consultants, counsel, or independent contractors. This paragraph shall in no way be construed to relieve the Compliance Monitoring Agent of the normal and usual duties of a reasonably prudent loan servicer or monitoring agent.

N. Terms. Wherever used herein, the terms utilized shall include masculine, feminine, neuter, singular, and/or plural, as the context admits or requires.

O. Conflicts. Notwithstanding anything herein to the contrary, the terms and conditions of the Borrower Loan Agreement and the Mortgage shall govern, control, and prevail, in the event of any conflict between the terms and conditions hereof and those contained in the Borrower Loan Agreement and the Mortgage.

14. REMEDIES. Subject to the applicable terms, conditions and restrictions set forth in the Land Use Restriction Agreement, upon the occurrence of any Event of Default which is not cured within the applicable cure period, the Governmental Lender (or the Fiscal Agent or the Compliance Monitoring Agent), shall be entitled to seek specific performance hereof against the Borrower, and/or in addition to any other right or remedy available to it in law or equity. It is specifically agreed by the Borrower that a violation of this Agreement or the Land Use Restriction Agreement could cause harm for which no damages could be calculated, therefore entitling the Governmental Lender to immediate equitable relief, including without limitation a temporary restraining order or mandatory injunction without notice. The Investor Limited Partner shall have the right, but not the obligation to cure any Event of Default hereunder on behalf of the Borrower, and the parties hereto shall treat such cure as if made by the Borrower.

15. NOTICES. Any notice required to be given hereunder shall be given by personal delivery, by registered U.S. mail or by expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt of sent by registered U.S. Mail.

The Governmental Lender: Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair  
Telephone: 850-606-1900

The Fiscal Agent: U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar  
Telephone: (954) 938-2475  
Email: amanda.kumar@usbank.com

The Borrower: ECG Ridge Road, LP  
c/o Elmington Capital  
118 16th Avenue South, Suite 200  
Nashville, Tennessee 37203  
Telephone: (615) 922-2218  
Attention: John Shepard  
Email: jshepard@elmingtoncapital.com

with a copy to: Reno & Cavanaugh PLLC  
424 Church Street, Suite 2910  
Nashville, Tennessee 37219  
Attention: Dwayne Barrett, Esq.  
Telephone: (615) 866-3224  
Email: dbarrett@renocavanaugh.com

and to: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Attention: Brian McDonough, Esq.  
Telephone: (305) 789-3350  
Email: bmcdonough@stearnsweaver.com

To Investor Limited  
Partner: U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, Missouri 63103  
Attention: Director of LIHTC Asset Management  
Email: curt.ridge@usbank.com

with a copy to: Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Jill Goldstein, Esq.  
Email: jill.goldstein@kutakrock.com

The Compliance  
Monitoring Agent: First Housing Development Corporation of Florida  
107 South Willow Avenue  
Tampa, Florida 33606  
Attention: Ed Busansky  
Phone: (813) 283-1043  
Email: ebusansky@firsthousingfl.com



16. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Governmental Lender, the Compliance Monitoring Agent, the Fiscal Agent, and the Borrower as to the subject matter hereof, and all prior agreements, negotiations and understandings with respect thereto are merged into and superseded by this Agreement.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Governmental Lender**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

**FIRST HOUSING DEVELOPMENT  
CORPORATION OF FLORIDA**, a Florida  
corporation

By: \_\_\_\_\_  
Name: Edward Busansky  
Title: Senior Vice President

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Vice President

**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT E**

**FORM OF CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT**

## CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT

This **CONSTRUCTION LOAN AND MORTGAGE SERVICING AGREEMENT** (this "Agreement") is made as of \_\_\_\_\_ 1, 2023, by and among the **HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA** a public body corporate and politic existing under the laws of the State of Florida (the "Governmental Lender"), **FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA**, a Florida corporation, its successors and assigns (the "Governmental Lender Servicer"), **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, in its capacity as fiscal agent (the "Fiscal Agent"), and **ECG RIDGE ROAD, LP**, a Florida limited partnership (the "Borrower").

### WITNESSETH:

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), by and among the Governmental Lender, Allianz Life Insurance Company Of North America (the "Funding Lender"), and the Fiscal Agent, and the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Borrower; and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Florida Housing Finance Authority Law, Sections 159.601 through 159.623, Part IV, Florida Statutes, as amended, Chapter 2, Article III, Division 3, Sections 2-71 et seq., Leon County Code of Laws, as supplemented and amended, and other applicable provisions of law (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe, and sanitary housing for persons or families of low, moderate, or middle income in Leon County, Florida (the "County"); and

**WHEREAS**, the Act authorizes the Governmental Lender; (a) to make loans to finance residential developments located within the County, and intended to be occupied to the extent required by applicable state or federal tax law by persons or families of low, moderate, and middle income; (b) to issue revenue bonds for the purpose of obtaining monies to make such loans and provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge, or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, pursuant to resolutions of the Governmental Lender adopted on October 14, 2021 (as amended on January 13, 2022) and \_\_\_\_\_, 2023, the Governmental Lender has authorized, approved, and issued \$51,000,000 principal amount of its Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023 (the "Governmental Note"), pursuant to the Funding Loan Agreement; and



**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender, the Fiscal Agent, and the Borrower have entered into the Borrower Loan Agreement, by the terms of which the Governmental Lender has agreed to loan the proceeds of the Governmental Note to the Borrower (the "Borrower Loan") for the purpose of providing funds to acquire, construct, and equip a multifamily rental housing development located on property within the County, known as Ridge Road (the "Project"); and

**WHEREAS**, the Borrower Loan will be evidenced by that certain promissory note in the principal amount of \$51,000,000, dated as of \_\_\_\_\_, 2023 (the "Borrower Note"), which Borrower Loan and Borrower Note will be secured by that certain First Mortgage, Assignment of Rents and Leases, Security Agreement and Fixture Filing, dated as of \_\_\_\_\_, 2023 (the "Mortgage"), granting the Governmental Lender a first mortgage lien and security interest in the real and personal property described therein; and

**WHEREAS**, the Governmental Lender intends to assign the Borrower Note and the Mortgage, and other instruments securing repayment of the Governmental Note, to the Fiscal Agent for the benefit of the holders of the Governmental Note, as their interests may appear; and

**WHEREAS**, the Governmental Lender Servicer has represented and warranted that it is duly qualified and authorized to engage in the business of administering loans of the type of the Borrower Loan referred to herein; and

**WHEREAS**, the Governmental Lender Servicer shall act as agent of the Governmental Lender in performing certain functions under the Funding Loan Agreement, the Borrower Loan Agreement, and the Land Use Restriction Agreement (as defined herein), and shall manage and service the Land Use Restriction Agreement on behalf of the Governmental Lender, subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Ten Dollars (\$10.00) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** Capitalized terms used herein and not defined below shall have the meanings ascribed to them in the Funding Loan Agreement and/or the Borrower Loan Agreement. The following definitions shall apply as context may require in this Agreement:

A. "Agreement" – this Construction Loan and Mortgage Servicing Agreement, as from time to time amended, modified, or supplemented.

B. "Architect" – Southeast Venture Design, LLC.

C. "Borrower Loan" – the loan contemplated by the Borrower Loan Agreement in an original amount of \$51,000,000.

D. "Borrower Loan Documents" – collectively, this Agreement, the Borrower Note, the Borrower Loan Agreement, the Mortgage, the Land Use Restriction Agreement, the Funding Loan Agreement, all other documents and instruments evidencing, securing or guaranteeing payment of the Borrower Loan, or any portion thereof.

E. "Budget" – the proposed budget for the Improvements which is attached hereto as Exhibit "B" and by this reference made a part hereof, which contains a construction schedule of the Improvements, as amended in accordance with the terms hereof, including, without limitation, amendments resulting from change orders approved in accordance with the terms hereof.

F. "Completion Date" – [June 1, 2025], unless otherwise extended with the consent of the Governmental Lender Servicer.

G. "Construction Contract" – that certain Standard Form of Agreement between the Borrower and the Contractor, dated \_\_\_\_\_, 20\_\_, regarding the construction of the Improvements.

H. "Contractor" – Elmington Construction, LLC, and its successors.

I. "Costs of the Improvements" – all direct and indirect costs, including interest costs, required to be expended by the Borrower to comply with requirements of this Agreement, specifically including items set forth in the Budget. The Project Costs shall include the reasonable cost of labor and materials actually expended or incurred by the Borrower and incorporated in the Improvements on the Land, as well as interest costs and issuance costs and fees associated with the closing of the Borrower Loan and the issuance of the Governmental Note (excluding any fees and profit of the Borrower), and include materials stored on the Land.

J. "Environmental Indemnity" – that certain Environmental Indemnity Agreement from the Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.

K. "Events of Default" – those events of default as defined in Paragraph 18 of this Agreement.

L. "Force Majeure" – an act 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 or labor or materials, the occurrence of labor or supply shortage/stoppage due to a declared pandemic (e.g., COVID) 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 (financial inability excepted).

M. "Improvements" – all improvements described in the Plans and Specification and all additions and equipment reasonably necessary to construct, equip, renovate, operate, and rent the Project, including all amenities. Without limiting the foregoing, the term Improvements shall include all landscaping, walls, drives, approaches, sidewalks, curbs, paving and all chattels, furniture, furnishings, and equipment described in the Plans and Specifications.

N. "Inspecting Engineer" – [GLE Associates, Inc.]

O. "Land" – the fee interest in the real property described in Exhibit "A," which is attached hereto and by this reference made a part hereof.

P. "Land Use Restriction Agreement" – The Land Use Restriction Agreement, dated as of \_\_\_\_\_ 1, 2023, by and among the Governmental Lender, the Fiscal Agent, and the Borrower.

Q. "Mortgagee" – the Governmental Lender, and its successors or assigns, including the Fiscal Agent.

R. "Operating Deficit Guaranty: – that certain Absolute and Unconditional Guaranty of Operating Deficits, dated as of \_\_\_\_\_ 1, 2023, from the Guarantors, jointly and severally, in favor of the Governmental Lender and the Fiscal Agent.

S. "Plans and Specifications" – the final plans and specifications for the Improvements heretofore approved by the Governmental Lender and the Inspecting Engineer or their respective agents together with any and all amendments and modifications thereto made with the approval of the Governmental Lender or its agent or otherwise in accordance with the terms hereof. It is understood that the Plans and Specifications shall be construed in such manner so that any works, structures, or parts thereof mentioned or shown in the Plans and Specifications and not mentioned or shown in the specifications, or vice versa, are to be constructed and erected as if they were in fact reflected in the Plans and Specifications.

T. "Project" – collectively, the Land and the Improvements.

2. **TERM.** This Agreement shall continue from the earlier of the date of this Agreement or from the date the Governmental Lender Servicer shall begin servicing the Borrower Loan for the Governmental Lender until occurrence of the first of the following events:

- A. The Borrower Loan shall be paid in full.
- B. The Mortgage shall be foreclosed in accordance with the Borrower Loan Documents or the property encumbered by the Mortgage shall be acquired by the Fiscal Agent.
- C. Termination of this Agreement as to the Governmental Lender Servicer, with or without cause, pursuant to Paragraph 16 hereof.
- D. Assignment of all right, title, and interest of the Governmental Lender to a third party which terminates the interests of the Governmental Lender.

3. **SERVICING.** The Governmental Lender Servicer shall perform the services of the Governmental Lender Servicer provided for in the Borrower Loan Documents. The Governmental Lender Servicer shall exercise the same degree of care, skill, prudence, and diligence in servicing the Mortgage as is the customary and usual practice of prudent financial institutions, which service real property loans for their own portfolios and on behalf of others.

A. Construction Servicing. During the period of construction of the Improvements, the Governmental Lender Servicer and/or its contractor shall be responsible for monitoring the progress of the construction work on behalf of the Governmental Lender as follows:

(1) The Governmental Lender Servicer and/or its contractor shall attend all draw meetings, if any, and represent the Governmental Lender with respect to approving all construction draws. The Governmental Lender Servicer shall approve the draw only if all documents are appropriate, accurate and supported by proper documentation in accordance with the Plans and Specifications and the Construction Contract.

(2) The Governmental Lender Servicer and/or the Contractor shall make site visits sufficient to verify that the work is being performed in accordance with the Plans and Specifications, this Agreement, and other construction documents. This includes (i) verifying the quality of the work and the materials incorporated therein, (ii) determining that the Architect is providing proper inspections of the Project in accordance with its contract, (iii) notifying appropriate parties if the Governmental Lender Servicer becomes aware that any unhealthful or unsafe condition exists at the Project, (iv) comparing waivers of and lien of materialmen and affidavits of contractor and subcontractor with Notice-to-Owner forms, and verifying that no payments are being improperly made, and (v) such other monitoring tasks as are customary and that minimize risk to the Project.

(3) Provide monthly written reports to the Governmental Lender confirming that all of the above are being performed in a manner consistent with the best interest of the Project provided in sufficient detail to allow a reasonable person to assess the Project's status.

(4) Upon completion of the Improvements, the Governmental Lender Servicer shall provide the Governmental Lender with the certification of substantial completion.

B. Permanent Loan Servicing. Following Stabilization of the Project the Governmental Lender Servicer shall perform servicing of the Borrower Loan as follows:

(1) Establish a separate loan servicing file for the Project. The file shall contain copies of all closing documents pertaining to the Project.

(2) Verify and confirm with quarterly reports to the Governmental Lender (with a copy to the Fiscal Agent) the sufficiency of all insurance policies as to dollar amounts and the types of coverage required by the Governmental Lender. Establish tickler files for the renewal or anniversary premium payment dates of all policies. In the event of loss, the Governmental Lender Servicer will administer the restoration program.

(3) Provide monthly loan servicing reports to the Governmental Lender.

(4) Timely renew and file UCC continuation statements with the Florida Secured Transaction Registry and in the County.

C. Continuing Duties of the Governmental Lender Servicer After Completion of the Construction. Monitor any other letters of credit or insurance policies issued or received in connection with the Project and do all things or take any actions necessary or appropriate on behalf of the Governmental Lender and the Fiscal Agent to secure, or cause to be secured, the timely renewal thereof for such periods as such items are to be in force and effect by the Borrower Loan Documents; provided, that the Governmental Lender Servicer has received from the Fiscal Agent (from available funds held under the Funding Loan Agreement) from time to time any fees or charges the Governmental Lender Servicer requires to secure payment or the timely renewal of such items upon the Borrower's failure to do so. The Governmental Lender Servicer shall provide timely notice to the Fiscal Agent and the Borrower of any failure by the Borrower to renew within thirty (30) days before the expiration any such letters of credit or insurance policies.

D. Continuing Duties of the Governmental Lender and the Fiscal Agent. In connection with the construction period, the Governmental Lender, the Borrower, and the Fiscal Agent agree that:

(1) they shall do and perform all things reasonably necessary to assist the Governmental Lender Servicer in servicing the Borrower Loan;

(2) the Borrower shall direct investment of the proceeds of the Governmental Note in accordance with the Funding Loan Agreement in such manner as will insure that such proceeds will be available to be disbursed at such reasonable times as proceeds of the Borrower Loan are required to be disbursed by the Fiscal Agent under this Agreement and substantially in accordance with the Draw Schedule attached hereto as Exhibit "B" and by this reference made a part hereof.

4. **COLLECTION AND DEPOSIT OF PAYMENTS.** Except to the extent payments are made to the Funding Lender or the Servicer, the Governmental Lender Servicer shall confirm that the Fiscal Agent has received each payment due under the Borrower Note and the Mortgage, as due, and if not, shall assist the Governmental Lender and the Fiscal Agent in the enforcement of their rights pursuant to the Borrower Loan Documents. Except to the extent payments are made to the Funding Lender or the Servicer, the Fiscal Agent shall receive each payment made under the Borrower Loan Documents and shall notify the Governmental Lender Servicer and the Borrower in writing if payment is not made when due.

5. **ADVANCES DURING CONSTRUCTION.** The Governmental Lender and the Fiscal Agent agree to make or cause to be made disbursements to the Borrower under the Funding Loan Agreement, the Borrower Loan Agreement, and this Agreement of the proceeds of the Governmental Note in accordance with the Funding Loan Agreement, the Borrower Loan Agreement, the Budget, and in accordance with and subject to the procedures set forth below. The Budget may be amended by the Governmental Lender Servicer from time to time, upon the written request of the Borrower with the consent of the Funding Lender, approval of such requests shall not be unreasonably withheld or delayed.

A. a requisition request (the "Requisition Request") to be submitted to the Fiscal Agent, the Funding Lender, and the Governmental Lender Servicer:

(1) At such time as the Borrower shall desire to obtain an advance, the Borrower shall complete, execute, and deliver a Requisition Request, in the form as provided for in the Borrower Loan Agreement, to the Funding Lender and the Governmental Lender Servicer. Each Requisition Request submitted by Borrower to obtain an advance under the Borrower Loan shall be signed by an Authorized Person of the Borrower. The Borrower shall not submit any Requisition Request to the Fiscal Agent until it has been approved by the Funding Lender and the

Governmental Lender Servicer, and each Advance by the Fiscal Agent of the proceeds of the Governmental Note shall be subject to the prior approval of the Requisition Request by the Funding Lender and the Governmental Lender Servicer, except as provided in (2) below and to the other conditions precedent set forth in the Funding Loan Agreement and the Borrower Loan Agreement. Requisition Requests should be submitted to the Fiscal Agent without attachments. The Governmental Lender Servicer shall approve or object to any Requisition Request within ten (10) Business Days of its submission together with all additional information required in connection with such advance. If the Governmental Lender Servicer neither approves nor objects within such time, its approval shall be deemed given; in such instances, the Governmental Lender Servicer must sign the Requisition Request by the tenth (10th) Business Day from submission and forward it to the Fiscal Agent, as if it had been approved. Failure to approve a Requisition Request on the part of the Funding Lender shall not be deemed to be an approval of the Funding Lender and under no circumstances shall the Fiscal Agent disburse a Requisition Request unless signed by the Funding Lender.

(2) Notwithstanding the foregoing, if a Requisition Request has been approved by the Funding Lender and (a)(i) has been approved by the Consulting Engineer, (ii) complies with the Budget, as amended in accordance with the terms of the Borrower Loan Documents, (iii) is for work that is in substantial accordance with the Plans and Specifications, and (iv) is accompanied by lien waivers with respect to the prior Requisition Request or by evidence that any liens which have been filed or for which notices of filing have been sent have been bonded to the satisfaction of the Title Company, or (b) if not approved, would jeopardize the coverage afforded by any Payment and Performance Bond, the Governmental Lender Servicer shall not have the right to withhold its approval of any Requisition Request approved by the Funding Lender unless, in the opinion of the Governmental Lender Servicer, such Requisition Request would violate the terms of the Borrower Loan Documents. In addition, the Governmental Lender Servicer shall not unreasonably withhold its approval of any Requisition Request otherwise approved by the Funding Lender. In the event the Governmental Lender Servicer withholds its approval of a Requisition Request which does not meet the requirements of subsections (a) and (b) of this paragraph, but which has otherwise been approved by the Funding Lender, no funds shall be advanced for the disputed items (however, funds allocable to the items on such Requisition Request which are not disputed shall be available to be advanced) and the Funding Lender and the Governmental Lender Servicer shall submit the dispute to binding arbitration by a mutually acceptable single arbitrator experienced in the type of construction contemplated in this Agreement, selected by the Funding Lender and the Governmental Lender Servicer. The Funding Lender and the Governmental Lender Servicer shall use all reasonable efforts to complete such arbitration

proceedings and obtain a decision within thirty (30) days.

B. The Governmental Lender Servicer shall review each Requisition Request for compliance with this Agreement, the Land Use Restriction Agreement, draw schedule, budgets, timelines, and all other Borrower Loan Documents; for compliance with the Plans and Specifications and all legal requirements; and for compliance with the customary and usual construction and in accordance with disbursement practices for the geographical area in which the Project is located.

(1) Where the Requisition Request includes amounts to be paid to the Contractor, such Requisition Request shall be accompanied by forms the same as or similar to AIA Form G702 and G703, to be reviewed and approved by the Governmental Lender Servicer and executed by the Contractor and the Architect.

(2) Where the Requisition Request relates to items other than payments for work performed under the Construction Contract or a subcontract, there shall be included a statement of the purpose for which the advance is desired and/or invoices for the same, as the Governmental Lender Servicer shall reasonably require.

(3) The Requisition Request shall be subject to the Inspecting Engineer verifying that the work has been accomplished in substantial accordance with the Plans and Specifications so as to entitle the Borrower to the disbursement required.

(4) The Governmental Lender shall retain from each Requisition Request a sum equal to ten percent (10%) of the amount of each Requisition Request (less any soft costs which shall be fully funded) as retainage. The Requisition Request shall specify the amount of retainage. Upon completion of fifty percent (50%) of the Improvements (as certified by the Inspecting Engineer) no further retainage shall be withheld from subsequent Requisition Requests. All retainage shall be released when the Improvements are one hundred percent (100%) complete and all conditions of subparagraph G herein have been met. The final payment of any balance due the Contractor or any subcontractor (including materialman or suppliers within the term "subcontractor") shall be made after full and final completion subject to punch list of the work on the Improvements being done by the Contractor or such subcontractor, as certified by the Borrower, the Governmental Lender Servicer, and the Inspecting Engineer, and delivery to the Governmental Lender Servicer of a final mechanic's lien waiver and the other documents required in subparagraph G hereof, in a form reasonably approved by the Governmental Lender Servicer and its counsel, at the time of final disbursement.

C. It is specifically understood and agreed that the making of any advance or



advances, or part of any advance, shall not be construed as an approval or acceptance by the Governmental Lender and the Fiscal Agent of the work theretofore done.

D. Each Requisition Request shall be submitted to the Governmental Lender Servicer at least ten (10) business days prior to the date of the requested advance; disbursements shall be made no more frequently than monthly at the principal office of Fiscal Agent or at such other place as Fiscal Agent may designate. The provisions of this paragraph shall not restrict the ability of the Fiscal Agent to make interest payments in accordance with the Funding Loan Agreement.

E. If an Event of Default has occurred and is continuing and all applicable cure periods have expired, the Fiscal Agent (at the direction of the Governmental Lender but only with the written consent of the Funding Lender) may make any or all advances for construction expenses directly to the Contractor for deposit in an appropriately designated special bank account and the execution of this Agreement by the Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Borrower Loan, subject, however, to the applicable provisions of this Agreement including, but not limited to the Funding Lender's approval of all advances. No further authorization from the Borrower shall be necessary to warrant such direct advances to Contractor and all such advances shall satisfy pro tanto the obligations of the Governmental Lender and the Fiscal Agent hereunder and shall be secured by the Mortgage as fully as if made directly to the Borrower.

F. All advances or parts of advances including the initial advance will be made subject to the approval of the Governmental Lender Servicer and to the following conditions precedent as to each advance (each of which the Borrower covenants to fulfill), satisfaction of which shall be evidenced by the Governmental Lender Servicer's approval which are in addition to and not in replacement of the requirements for advances of the Funding Lender as set forth in the Borrower Loan Agreement:

(1) That the Borrower has fully complied with all of the provisions of the Borrower Loan Documents and is entitled to such advance, it being understood that the making of any advance or portion thereof when the Borrower is not so entitled will not constitute waiver of such compliance and that no event has occurred and is continuing which constitutes a "Default" or an "Event of Default" under any Borrower Loan Document.

(2) That the Mortgage is a good and valid first lien for the full amount then and theretofore advanced, and good, marketable and insurable title to the Borrower's fee interest in the Land is vested in the Borrower, free and clear of all encumbrances, except permitted encumbrances and except for encumbrances being properly contested under the Mortgage, as evidenced by an updated title insurance endorsement.

(3) That the Improvements constructed through the date of the Requisition Request have been constructed in substantial accordance with the Plans and Specifications and all legal requirements, and that the Inspecting Engineer has made an inspection of and approves the work completed as represented in the current Requisition Request.

(4) That the Governmental Lender Servicer has been furnished with an affidavit executed by an authorized representative of the Borrower or its agent as to whether or not the Borrower has been served with written notice that a lien may be claimed for any amounts unpaid for materials furnished or labor performed by any person, firm, entity or corporation furnishing materials or performing labor of any kind in the construction or installation of any of the Improvements. The date and manner of service shall be stated in such affidavit and a true and correct copy of each such notice shall be attached to the affidavit.

(5) That the Borrower has procured or will procure verified and proper mechanic's lien waivers and receipted bills or receipts from the Contractor, any subcontractor or materialmen in a form reasonably satisfactory to the Governmental Lender or the Governmental Lender Servicer, showing payment of all parties who have furnished materials or performed labor of any kind pertaining to the construction or installation of any of the Improvements, except for claims bonded off, insured over or being contested under the terms of the Mortgage, through the date of the previous disbursement. The Governmental Lender, the Fiscal Agent, and the Governmental Lender Servicer shall not be required nor be responsible to ascertain that any such bills are, in fact, paid. In the event a lien has been filed against the Improvements, the Governmental Lender Servicer shall require such lien to be satisfied or bonded before approving a Requisition Request. Notwithstanding the foregoing, if Borrower records a notice of bond in the form set forth in Section 713.23(2), Florida Statutes, upon recordation of such notice, any liens shall be deemed transferred to the bond.

(6) That the Borrower has furnished the Governmental Lender Servicer reasonably satisfactory evidence that the undisbursed proceeds of the Borrower Loan together with projected earnings on invested funds under the Funding Loan Agreement and other identifiable funds available to the Borrower, including but not limited to, capital contributions made or to be made under the Borrower's partnership agreement and subordinate loans will be sufficient to pay the cost of completing the Improvements (other than the deferred developer fee and other deferred fees to parties related to the Borrower) as required by the Borrower Loan Documents.

(7) That the Improvements are not being constructed in violation of the Land Use Restriction Agreement or any covenants, restrictions, codes, or zoning ordinances affecting the Land.

(8) That the Borrower has caused the Governmental Lender Servicer to be provided with a title endorsement with respect to the Title Insurance Policy theretofore delivered, indicating that since issuance of the Title Insurance Policy there has been no change in the state of title to the Land which is not permitted under the terms of the Mortgage or which not otherwise accepted by the Mortgagee.

(9) That the Borrower and/or the Contractor have caused the Governmental Lender Servicer to be provided with a list of all subcontractors and materialmen to be used on the Project, to be updated with each Requisition Request, and if requested by the Governmental Lender Servicer, copies, certified by the Borrower and/or the Contractor to be true and correct, material, equipment, and furnishings to complete the Improvements.

(10) That the Requisition Request is accompanied by a certificate on the part of the Architect that the work has been accomplished in substantial accordance with the Plans and Specifications so as to entitle the Borrower to the disbursement requested.

G. Prior to approving the final advance and release of any Retainage being held back hereunder, the Governmental Lender Servicer shall have received (each item is necessary for releasing Retainage):

(1) each of the items specified in the foregoing subparagraphs F(2) through (10);

(2) such documents, if any, as may be required by the County, as appropriate for the issuance of a final certificate of occupancy;

(3) a certificate of substantial completion in a form reasonably acceptable to the Governmental Lender (the AIA form G704 is acceptable to the Governmental Lender);

(4) final lien waivers from all subcontractors and materialmen;

(5) updated title insurance endorsements insuring the lien of the Mortgage as of the Completion Date to be a valid first lien on the Project, subject only to permitted encumbrances other than mechanic's liens, and otherwise

providing the title insurance coverage required under the Mortgage as of the Completion Date;

(6) a set of "as-built" Plans;

H. The Fiscal Agent may rely upon the approval of a Requisition Request by the Funding Lender and the Governmental Lender Servicer to establish compliance by the Borrower with subparagraphs A, B, E, F, and G above.

6. **COMPENSATION OF THE GOVERNMENTAL LENDER SERVICER.** The Borrower shall provide for payment to the Governmental Lender Servicer for the services rendered by the Governmental Lender Servicer hereunder in accordance with the following provisions:

A. Servicing Fees. The Borrower shall pay the Governmental Lender Servicer fees, which include:

(1) Construction Servicing. The Governmental Lender Servicer's fee is payable directly by the Borrower to the Governmental Lender Servicer, during construction of the Project: (i) an on-site inspection fee of \$198.00 per hour for services rendered, but not in excess of \$1,956.00 per disbursement, (ii) during construction of the Project, an in-house review fee of \$198.00 per hour, and (iii) a fee for extraordinary services rendered of \$198.00 per hour.

(2) Permanent Servicing. The annual compensation payable to the Governmental Lender Servicer deposited in the Administrative Expense Fund (or credited to the Governmental Lender Servicer) in an amount equal to (i) 0.023% per annum of the Outstanding principal amount of the Governmental Note as of each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing \_\_\_\_\_ 1, 2023 (subject to monthly minimum permanent servicing fee of \$286.00), (ii) a fee for extraordinary services rendered of \$198.00 per hour, subject to increase on January 1 of each year based on the South Region Consumer Price Index for the twelve month period ending each November 30th (which increase shall not exceed 3% of the prior year's fees) and an additional fee of \$198.00 per hour for follow-up reviews and/or extraordinary compliance monitoring services for compliance monitoring, payable in arrears on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, following the issuance of the first certificate of occupancy on any unit of the Project.

(3) Notwithstanding anything in this Agreement or any of the other Borrower Loan Documents to the contrary, permanent loan servicing services related to the review, inspection, and/or consideration of requests for disbursements from the replacement reserve account shall not be considered extraordinary permanent loan servicing services, unless otherwise approved in

advance by the Governmental Lender.

B. Termination of Compensation. The Governmental Lender Servicer's right to compensation hereunder (except for accrued, unpaid compensation and unreimbursed, previously incurred costs and expenses) for servicing the Borrower Loan shall cease upon the occurrence of any of the following events:

1. the Borrower Loan shall be paid in full;
2. an Event of Default under the Borrower Note, the Mortgage, or the Borrower Loan Agreement unless the Governmental Lender Servicer is directed to assist in foreclosure of the Mortgage by the Fiscal Agent;
3. notification by the Fiscal Agent to the Governmental Lender Servicer that its services or this Agreement shall be terminated by the Governmental Lender or the Fiscal Agent at the written direction of the Governmental Lender, with or without cause;
4. assignment of all right, title, and interest of the Fiscal Agent in and to the Mortgage.

C. Deductions of Unpaid Fees. Any fees not paid by the Borrower may be deducted from a subsequent draw request.

7. **TITLE INSURANCE UPDATE FEES.** The Borrower shall be responsible for payment to the Title Insurance Company for periodic title update charges as required by the Governmental Lender or the Fiscal Agent.

8. **BUILDER'S RISK AND HAZARD INSURANCE.** The Governmental Lender Servicer shall see to it that at all times during the term of this Agreement, all buildings and improvements making up the Project are insured, under standard mortgagee clauses, for the benefit of the Fiscal Agent and the Governmental Lender, against loss or damage by fire and from such other insurable risks and hazards, all as more specifically set forth in the Mortgage and the Borrower Loan Documents. Subject to the applicable provisions of the Borrower Loan Documents, fire insurance and extended coverage shall be in an amount at least equal to the full replacement value of the Project less applicable deductibles. Subject to the applicable provisions of the Borrower Loan Documents, in the event of the failure by the Borrower to maintain such insurance in full force and effect, and upon the written authorization of the Governmental Lender, such insurance shall be maintained by the Governmental Lender Servicer, subject to payment by the Fiscal Agent, which shall advance necessary funds (from amounts available for such purposes pursuant to the Funding Loan Agreement) to the Governmental Lender Servicer, upon request from the Governmental Lender Servicer. The Governmental Lender Servicer shall retain and safely store, service, and continually maintain all such policies and documents related

thereto as are required by this paragraph. All insurance coverage maintained pursuant to this paragraph shall be without contribution by the Fiscal Agent and shall be issued by insurance companies having a general policyholder's rating and financial rating acceptable to the Governmental Lender.

The Borrower shall deliver to the Governmental Lender Servicer copies of any ad valorem tax bills and hazard insurance premium notices as payment therefor becomes due.

**9. INSURANCE TO BE MAINTAINED BY THE GOVERNMENTAL LENDER SERVICER.** The Governmental Lender Servicer shall maintain at all times during the existence of this Agreement, at its own expense, blanket fidelity insurance and errors and omissions insurance covering the Governmental Lender Servicer's officers and employees and other persons acting on behalf of the Governmental Lender Servicer relating to the Governmental Lender Servicer's performance of this Agreement. All such policies of insurance shall be issued by an insurance company, with coverage satisfactory to the Governmental Lender and the Governmental Lender Servicer and shall name the Governmental Lender and the Fiscal Agent as the insured under said policies. All premiums for such insurance shall be paid by the Governmental Lender Servicer at its own expense as a cost of doing business.

**10. NOTIFICATION TO THE FISCAL AGENT.** The Governmental Lender Servicer shall promptly notify the Governmental Lender, the Borrower, and the Fiscal Agent of any of the following which may come to the attention of the Governmental Lender Servicer:

- A. Any failure of the Borrower to perform any covenant or obligation, applicable to it, under the Borrower Loan Documents (of which the Governmental Lender Servicer has knowledge) if such failure continues for a period of fifteen (15) days, or lesser period, if so provided in any Borrower Loan Document.
- B. Abandonment of any one or more of the Improvements comprising the Project.
- C. Any lack of repair or the deterioration or waste suffered or committed in respect to any one or more of the Improvements comprising the Project.
- D. Any other matter which would adversely or materially affect or result in diminution of value of the security described herein and in the Borrower Loan Documents.
- E. Any loss or damage by fire or any hazard to the property requiring repairs costing in excess of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS to restore the Project to its condition prior to such loss or damage.

11. **DEFAULT OF BORROWER.** The Governmental Lender Servicer shall not at any time, without the express written consent of the Governmental Lender and the Fiscal Agent, consent to a postponement of compliance on the part of the Borrower with any of the terms and provisions of the Borrower Loan Agreement, the Mortgage, or any other Borrower Loan Document relating to the Borrower Loan, or in any manner grant an extension or waiver to the Borrower, subject to the applicable provisions of the Funding Loan Agreement and Borrower Loan Agreement.

12. **FORECLOSURE.** The Governmental Lender Servicer, acting for and on behalf of the Governmental Lender, in the case of any Event of Default under the Borrower Loan Documents shall, subject to the terms of the Borrower Loan and the Funding Loan Agreement, as applicable, proceed in accordance with the Funding Loan Agreement. The Governmental Lender Servicer shall be reimbursed for any of its costs and expenses, including, but not limited to, reasonable legal fees, title search charges, and the Governmental Lender Servicer's extraordinary servicing fees incurred in connection with any action taken by the Governmental Lender Servicer acting upon the direction and written authorization of the Fiscal Agent, the Governmental Lender, or the Funding Lender under any foreclosure proceeding as to the Project or the Mortgage. This paragraph does not impose upon the Governmental Lender Servicer the duty to advance funds for the purposes referred to herein unless such funds have been provided, in advance, to the Governmental Lender Servicer by the Fiscal Agent from the proceeds of the Governmental Note or other funds available for such purpose.

13. **REPRESENTATIONS OF THE GOVERNMENTAL LENDER SERVICER.** The Governmental Lender Servicer covenants, warrants, and represents to the Governmental Lender and the Borrower as follows:

A. The Governmental Lender Servicer is a duly organized corporation under the laws of the State and is in good standing in such jurisdiction; that it is authorized to execute, deliver, and perform this Agreement and all other documents and agreements required hereunder, and in so doing, that it will not violate any law, any provision of its charter or bylaws or any other agreement of instrument binding upon it.

B. The Governmental Lender Servicer shall comply with all applicable laws and the provisions of the Borrower Loan Documents.

C. The Governmental Lender Servicer shall cause any funds advanced to the Governmental Lender Servicer by the Fiscal Agent under this Agreement to be deposited with a financial institution the deposits of which are insured by FDIC or by any successor agency or instrumentality of the United States government; and will cause such financial institution to designate said funds as escrow funds for the benefit of the Fiscal Agent; and will cause such financial institution to execute an agreement providing that it will not exercise any powers of right of offset or banker's lien against such escrow funds.

D. The Governmental Lender Servicer hereby waives and releases any lien or encumbrances which it might at any time have or be able to claim against any property or funds held by the Fiscal Agent or the Governmental Lender, except monies on deposit in the Administrative Expense Fund (or similar account under the Funding Loan Agreement) and available for such payment under the Funding Loan Agreement.

14. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** As of the Closing Date, the Borrower represents and warrants to the Governmental Lender, the Fiscal Agent, and the Governmental Lender Servicer as follows:

A. Valid Existence. The Borrower is a duly organized and validly existing limited partnership in good standing under the laws of the State, with full power and authority to consummate the transactions contemplated hereby.

B. Unencumbered Land. Other than the permitted encumbrances, the Borrower is indefeasibly seized of a fee interest in the Land and has full power and lawful right to mortgage the same, and that the Land is free and clear of all encumbrances, except current taxes and assessments which are not yet due and payable.

C. No Mechanic's Liens. That no materials of any kind have been placed on the Land by anyone, and no work or labor has been performed, thereon that has not been paid for; there are no unpaid bills for labor, materials, supplies, or services furnished upon the Land; and no notice of commencement or claim of lien affecting the Land or the Improvements has been filed in the public records of the County which has not been provided to and approved by the Governmental Lender, and no such notice of commencement or claim of lien will be so filed prior to the recording of the Mortgage. The Borrower covenants, however, that it will, immediately upon notification of recordation of the Mortgage, cause to be executed and filed of record among the public records of the County, a notice of commencement, as required by Chapter 713, Florida Statutes, as amended, and a certified copy thereof to be posted on the Land and to remain so posted during the period of construction, all in accordance with the applicable provisions of Chapter 713, Florida Statutes, as amended.

D. Plans and Specifications Approved. By the date of commencement of construction, the Plans and Specifications shall have been approved by the Governmental Lender Servicer and the Inspecting Engineer on behalf of the Governmental Lender, and to the extent required by applicable law or any effective restrictive covenant, by all governmental authorities having jurisdiction thereover and the beneficiary of any such covenant, respectively.

E. Utilities. That all utilities services necessary for the construction of the Improvements and the operation thereof for their intended purpose, are or will be available prior to commencement of construction for the use of the Borrower at the Land,



including water supply, storm and sanitary sewer facilities, electric, and telephone services.

F. Access. That adequate vehicular, pedestrian, and utility access for reasonably direct ingress, egress, and service, to and from the Land from publicly owned and maintained paved roadways are or will be available when needed at the Land.

G. Licenses and Permits. That all necessary licenses and permits will be obtained as soon as each is reasonably obtainable so as to permit the construction and completion of the Improvements, and operation of the Project.

H. Labor and Materials. That all labor and materials contracted for or utilized in connection with the construction of the Improvements shall be used and employed solely on the Land and in said construction and shall be substantially in accordance with the Plans and Specifications.

I. Monies in Trust. That the monies disbursed under this Agreement shall constitute a trust fund and shall be used solely for the payment of the Costs of the Improvements and for no other purpose, unless another use is specifically provided for in this Agreement or another Borrower Loan Document, or is consented to in writing by the Governmental Lender or Governmental Lender Servicer prior to any such usage.

J. No Suits Pending. That there are no actions, suits, or proceedings pending against the Borrower or, to the knowledge of the Borrower, threatened against or affecting it or the Land or involving the validity or enforceability of the Mortgage or the priority of the lien thereof, at law or in equity, or before or by any governmental authority except actions, suits, and proceedings fully covered by insurance or which, if adversely determined, would not substantially impair the ability of the Borrower to pay when due any amounts which may become payable in respect to the Borrower Loan Agreement; and to the Borrower's knowledge it is not in default with respect to any order, writ, injunction, decree, or demand of any court or any governmental authority.

K. No Violation of Agreements. That the consummation of the transactions hereby contemplated and performance of this Agreement and the Mortgage will not result in any breach of, or constitute default under, any mortgage, lease, bank loan or credit agreement, corporate charter, bylaws, partnership agreement, operating agreement, joint venture agreement, or other instrument to which the Borrower or its general partners are a party or by which they may be bound or affected.

L. No Event of Default Under Borrower Loan Agreement. That no Event of Default presently exists under the Borrower Note, the Borrower Loan Agreement, the Mortgage, this Agreement, or any other Borrower Loan Document, and no event has occurred and is continuing which with notice or the passage of time or either would

constitute a default under the Borrower Note, the Borrower Loan Agreement, the Mortgage, or this Agreement or any other Borrower Loan Document.

M. No Financial Impediments. That Borrower has no known or contingent liabilities, and no material financial obligations under other agreements to which Borrower is a party or by which the Land is bound other than those obligations incurred with regard to the acquisition of the leasehold interest in the Land or in the ordinary course of the operation of the Project and those obligations arising out of or specified in the Borrower Loan Documents, and the Borrower's partnership agreement.

N. Continuing Warranties. That each of the representations and warranties set forth in this paragraph will be true in all material respects on the date of each advance and the acceptance of any advance by the Borrower shall be deemed to be a reaffirmation of each and every one of said representations and warranties.

15. **COVENANTS OF THE BORROWER**. As of the Closing Date, and thereafter, the Borrower covenants and agrees with the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer as follows:

A. Survey. The Borrower shall forthwith, and prior to the initial disbursement of any funds hereunder, furnish to the Governmental Lender Servicer, at the Borrower's expense, a current survey, which survey shall be satisfactory to the Governmental Lender Servicer, and which survey shall locate all recorded restrictions and easements by recording references. Such survey shall be made by a civil engineer or surveyor reasonably acceptable to the Governmental Lender Servicer and the Governmental Lender and shall be paid for by the Borrower and shall be on a form and contain such matters as may reasonably be required by the Governmental Lender Servicer and the Governmental Lender.

B. Insurance. The Borrower shall furnish and pay, or cause to be furnished and paid, the premiums for fire and extended coverage insurance as well as insurance against such other hazards (1) as required under the Borrower Loan Agreement and the Mortgage, or (2) if greater, as may be reasonably required by the Governmental Lender and the Governmental Lender Servicer, including flood insurance if required, with a company or companies meeting the reasonable requirements of the Governmental Lender and the Mortgage, said policies to be in full replacement value of the Improvements and covering the same, said policies to be in such amount, in such form and with such deductibles as are reasonably acceptable to the Governmental Lender and the Governmental Lender Servicer. Loss under such insurance policies shall be payable in accordance with the relevant provisions of the Borrower Loan Documents and said policies shall provide that they shall not be cancelable without at least thirty (30) days' prior written notice by the insurer to the Fiscal Agent and the Governmental Lender. The Borrower shall also furnish at the Borrower's expense, or cause to be furnished, such

workers' compensation insurance as may be reasonably required by law. Evidence of the foregoing shall be provided to the Fiscal Agent prior to the initial disbursement of funds. All insurance policies identified herein shall be renewed at least twenty (20) days prior to expiration with notice of renewal provided the Fiscal Agent. The provisions herein are intended to be consistent with and to impose the same insurance obligations as set forth in the Borrower Loan Agreement and the Mortgage.

C. Construction in Workmanlike Manner. The Borrower shall construct, or cause to be constructed, the Improvements on the Land in a true, thorough, and workmanlike manner and in substantial accordance with the Plans and Specifications. The Borrower shall provide, or cause to be provided, at the Borrower's cost, all manner of materials, labor, scaffolding, implements, and other items of every description as are required for the complete construction of the Improvements. The Borrower shall not make any material changes in the Plans and Specifications or materially deviate therefrom, except with the prior written consent of the Governmental Lender and the Governmental Lender Servicer which approval will not be unreasonably withheld or delayed and except with respect to change orders that do not require the consent of the Governmental Lender or the Governmental Lender Servicer pursuant to Section 17.D. The question of materiality will be solely and reasonably decided by the Governmental Lender or the Governmental Lender Servicer in light of the Plans and Specifications submitted, existing building standards, and the public purpose of the Project.

D. Lien Releases. The Borrower shall furnish all receipted bills, certificates, affidavits, receipts, releases of lien, approved bonds, and any other documents which may be required or allowed by the lien laws of the State, or which may be reasonably required by the Governmental Lender, the Governmental Lender Servicer or the Fiscal Agent, as evidence of full payment or acceptable bond for all labor and materials incident to the construction of the Improvements, and will promptly secure the release (except for liens which are the subject of a bond as herein described) of the Land from any and all liens that might be imposed thereon. The Borrower specifically reserves the right to contest any such liens, provided such liens are properly transferred to a surety bond or cash deposit in accordance with Florida law. Notwithstanding the foregoing, if Borrower records a notice of bond in the form set forth in Section 713.23(2), Florida Statutes, upon recordation of such notice, any liens shall be deemed transferred to the bond.

E. Compliance with Borrower Loan Agreement. The Borrower shall comply with and perform each and every one of the provisions, terms, conditions, requirements, and contingencies embodied in the Borrower Loan Agreement and the other Borrower Loan Documents as required to be performed by Borrower and shall execute all instruments required to completely comply with and perform the same, and shall abide by, complete, and carry out all of the Borrower's representations, proposals, and commitments made in the Borrower Loan Documents.

F. No Further Encumbrances. The Borrower will not convey, encumber, or impose a security interest on its interest in the Land or the Improvements in any way without the consent of the Governmental Lender and the Fiscal Agent, except as permitted in the Mortgage nor shall the Borrower assign any rights under this Agreement or any advance or portion of any advance to be made hereunder without the Governmental Lender's and the Fiscal Agent's prior written consent. All proposed easements affecting the Land shall be submitted to the Governmental Lender Servicer for its reasonable approval prior to the execution thereof by the Borrower and, to the extent required by the Governmental Lender, shall be accompanied by a drawing or survey adequate to show the proposed location thereof.

G. Right of Entry. The Borrower will permit the Governmental Lender, the Fiscal Agent, and the Governmental Lender Servicer and their authorized employees, agents or representatives to enter upon the Land after reasonable prior notice during normal business hours, to inspect the Improvements and all materials to be used in the construction thereof, and to examine all detailed plans and shop drawings which are or may be kept at the construction site and all books and records of the Borrower and the Contractor relating to the Land, and will cooperate and cause the Contractor to cooperate with the Governmental Lender, the Fiscal Agent, and/or the Governmental Lender Servicer and their representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Borrower nor any third party shall be entitled to claim any loss or damage either against the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer or its employees, agents, or representatives for failure to properly discharge any alleged duties of the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer and they shall have no duty to make such inspections.

H. Correct Non-Complying Work. The Borrower agrees that it will cause to be corrected at no cost to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer, any work performed and replace any material that does not substantially comply with the Plans and Specifications.

I. Additional Documents. The Borrower agrees to execute any and all such other and further instruments as may reasonably be required by the Governmental Lender or Fiscal Agent from time to time in order to carry out the provisions of this Agreement, the Borrower Loan Documents, or for the purpose of protecting, maintaining, or enforcing the Governmental Lender's and the Fiscal Agent's security for the Borrower Loan.

J. Insufficiency of Borrower Loan Proceeds. Unless otherwise agreed in writing by the Governmental Lender, the Funding Lender, and the Governmental Lender

Servicer, the Borrower covenants, warrants, and agrees that it will provide from its own funds such amounts as may be necessary to pay for all Costs of the Improvements which are in excess of the disbursements required to be made by the Fiscal Agent hereunder and other available and identified funds (as approved by the Governmental Lender Servicer), and in the event of any default hereunder (subject to any applicable notice and cure periods), the Governmental Lender Servicer shall not be required to approve any disbursement hereunder if the undisbursed proceeds of the Borrower Loan together with all other available and identified funds shall be less than the amount necessary to pay for the completion of the Improvements. If the Governmental Lender or the Governmental Lender Servicer at any time determine in their reasonable judgment from any certification, report, cost projection, work stoppage, price or wage change or from any other source or for any reason, that the Project Costs will exceed those costs and projections estimated by the Borrower or the Governmental Lender and certified to the Governmental Lender Servicer from time to time, and that the undisbursed proceeds of the Borrower Loan (plus any and all funds of the Borrower deposited with the Fiscal Agent together with all other available and identified funds, including, without limitation, funds available from the Subordinate Debt and the Borrower Equity) shall be less than the amount necessary, in the Governmental Lender's or the Governmental Lender Servicer's reasonable judgment, to pay for all work done or to be done and all other expenses for completion of the Improvements, or that any amount specified in the Budget may be less than the amount necessary (taking into account all other available and identified funds which are so approved by the Governmental Lender Servicer), in the Governmental Lender's or the Governmental Lender Servicer's reasonable judgment, to pay for all work done or to be done and all expenses incurred or to be incurred in connection with the Improvements, then in such event, the Fiscal Agent shall, if directed by the Governmental Lender, withhold further disbursements to the Borrower until the Borrower shall have provided a sufficient plan to pay for all work done or to be done and expenses incurred or to be incurred in connection with the Improvements, to the reasonable satisfaction of the Governmental Lender, including but not limited to the requirement that collateral sufficient to cover such costs be posted with or for the benefit of the Fiscal Agent.

K. Construction Contract. Except as otherwise provided herein with respect to change orders that do not require consent, the Borrower shall not amend the Construction Contract in any manner without the prior written consent of the Governmental Lender, the Funding Lender, and the Governmental Lender Servicer.

## 16. TERMINATION.

A. By the Fiscal Agent. The Fiscal Agent, with the consent of the Governmental Lender, shall have the right to terminate the Governmental Lender Servicer's rights and obligations under this Agreement, without cause, upon ten (10) days' written notice to the Governmental Lender Servicer, and with cause, upon such written notice as the Governmental Lender deems reasonable under the circumstances.

B. Automatic Termination. Upon the occurrence of any one or more of the following events, the Governmental Lender Servicer's rights and obligations under this Agreement shall be automatically terminated:

(1) The Governmental Lender Servicer shall assign or attempt to assign its rights or obligations under this Agreement.

(2) The Governmental Lender Servicer shall institute proceedings for voluntary bankruptcy or shall file a petition seeking reorganization under the Federal Bankruptcy Laws or for relief under any other law for the relief of debtors or shall consent to the appointment of a receiver of all or substantially all of its property, or make a general assignment for the benefits of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall be adjudicated bankrupt or insolvent by a court of competent jurisdiction, or if an order shall be made by a court of competent jurisdiction appointing a receiver, liquidator, or trustee of the Governmental Lender Servicer or of all or substantially all of its property or approving any petition filed against the Governmental Lender Servicer for its reorganization, and such adjudication or order shall remain in force or unstayed for a period of thirty (30) days.

(3) The Governmental Lender Servicer shall fail to perform any of its obligations hereunder and shall fail, within thirty (30) days after written notice from the Fiscal Agent or the Governmental Lender, to correct or cure such failure.

(4) The Governmental Note shall be redeemed.

(5) The amounts owed by the Borrower under the Borrower Loan Documents are paid in full.

C. Effect of Termination. In the event this Agreement is terminated pursuant to this Section 16, then the rights and obligations of the Governmental Lender Servicer and its right to compensation hereunder shall immediately terminate, the Governmental Lender Servicer shall forthwith deliver to the Governmental Lender or to whomever the Governmental Lender directs, all documents relating to the Borrower Loan and shall do such other acts as may reasonably be required by the Governmental Lender to facilitate the termination hereof.

D. Termination of Rights and Duties of Governmental Lender Servicer. Upon termination of the rights and duties of the Governmental Lender Servicer hereunder (other than pursuant to Section 16B(5) hereof), the Fiscal Agent and the Borrower shall join the Governmental Lender in entering into a substantially similar agreement with a replacement Governmental Lender Servicer designated by the Governmental Lender.

17. **AGREEMENTS RELATING TO CONTRACTORS.**

A. Rights Inferior. Neither the Fiscal Agent nor the Governmental Lender shall be liable to materialmen, contractors, subcontractors, sub-subcontractors, laborers, suppliers, or others for goods or services delivered by them in or upon the Land or employed in the construction of the Improvements, or for any debts or claims accruing to any of said parties against the Borrower or against the Land, and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between either the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer and any materialmen, contractors, sub-contractors, sub-subcontractors, craftsmen, laborers, or any person supplying any work, labor or material. The Borrower is not, and shall not be, the agent of either the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer for any purpose, nor shall any of them be the agent of Borrower for any purpose, except, as to both, as may be specifically set forth herein. It is specifically understood and agreed that no party shall be a third party beneficiary hereunder, except and unless it is specifically provided herein that any provision shall operate or inure to the use and benefit of a party, i.e., no subcontractor, sub-subcontractor or materialman, laborer, or supplier shall have any rights hereunder against the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or be entitled to the protection of any of the covenants herein contained.

B. Borrower's Rights Assigned. The Borrower hereby assigns to the Governmental Lender and Fiscal Agent, effective, however, only after an Event of Default and the expiration of applicable cure periods, all rights of the Borrower under its contract with the Contractor and under its contract with the Architect and the Governmental Lender or the Fiscal Agent shall have the option after an Event of Default, and the expiration of applicable cure periods, in its sole discretion and in addition to any other rights and remedies the Governmental Lender or the Fiscal Agent may have, to exercise their rights under this assignment. Nothing herein shall be construed, however, to require the Governmental Lender or the Fiscal Agent to exercise any rights under this Paragraph.

C. No Other Contracts. Except for items set forth and approved by the Governmental Lender Servicer in the Budget, the Borrower represents that it has not and agrees that it will not enter into any significant contract or agreement (in excess of \$50,000) relating to the construction, purchase or installation of the Improvements other than the contracts with the property manager, the Developer, the Architect and the Contractor and a contract with its surveyors or engineers, nor will the Borrower agree to any material modification or amendment in its contract with the property manager, the Contractor or the Architect without first obtaining the Governmental Lender Servicer's written approval of and consent to such contract, agreement or amendment, which consent shall not be unreasonably withheld or delayed for more than five (5) days after receipt of said notice.

D. Change Orders. The Borrower covenants and warrants that any change order of \$25,000 or more, or \$50,000 in the aggregate, shall require the prior written approval of the Governmental Lender Servicer, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Governmental Lender Servicer shall be provided with copies of all change orders, regardless of amount. Change orders that do not require the consent of the Governmental Lender Servicer shall not be deemed material.

E. No Joint Venture. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between the Borrower and the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer with respect to the Borrower Loan.

## 18. EVENTS OF DEFAULT.

A. Subject in all instances to the provisions of subparagraph B of this Section 18 and the provisions of the Funding Loan Agreement, an Event of Default under this Agreement shall, at the Governmental Lender's option, be deemed to have occurred hereunder if:

(1) Default Under Borrower Loan Documents. Any Event of Default, as defined therein, shall occur under any of the other Borrower Loan Documents which is not cured within any applicable grace or cure period; or

(2) Breach of Covenant. The Borrower shall breach or fail to perform, observe, or meet any material covenant or condition in this Agreement within thirty (30) days after written notice thereof from any other party hereto; or

(3) Filing of Liens Against the Land. Any lien for labor, materials, or taxes (except for ad valorem taxes not yet due and payable) or otherwise shall be filed against Borrower's leasehold interest in the Land and not be either released (by payment, bonding or otherwise) within the earlier of forty (40) days after the date of filing thereof or thirty (30) days after the Borrower receives actual notice thereof or properly contested as provided for in the Mortgage, except as disclosed in the pending litigation schedule attached hereto as Exhibit "C" and made a part hereof; or

(4) Judgment Against Borrower. Any final judgment shall be entered against the Borrower, its general partners, or its controlling members, which judgment has not been appealed and which could reasonably be expected to impair the ability of the Borrower to perform each and every one of its respective obligations under and by virtue of the Borrower Loan Documents; or



(5) Levy Upon The Project. A levy shall be made under any process on, or a receiver be appointed for, the Project or any part thereof; or

(6) Bankruptcy. The Borrower or its general partners or its controlling members shall commit any act of bankruptcy; or any proceeding under bankruptcy laws or other debtor-relief or similar laws shall be brought against the Borrower or its general partners or its controlling members which is not dismissed within sixty (60) days; or the Borrower or its general partners or its controlling members shall file for or take advantage of any form of reorganization or arrangement under any bankruptcy law or other debtor-relief or similar law or proceeding; or

(7) Assignment for the Benefit of Creditors. The Borrower or its general partners or its controlling members shall make a general assignment for the benefit of creditors; or

(8) Abandonment or Cessation of Construction. Construction of the Improvements shall cease and not be resumed within sixty (60) days thereafter, unless the Borrower is prevented from resuming same as a result of Force Majeure, or shall be abandoned for more than thirty (30) days; or

(9) Denial of Inspection. The Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer or representatives shall not be permitted, at all reasonable times and after reasonable notice, to enter upon the Land, to inspect the Improvements and the construction thereof and all materials, fixtures, and articles used or to be used in the construction of the Improvements, and to examine all detailed plans, shop drawings, specifications, and other records which relate to the Improvements, or the Borrower shall fail to furnish to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer or to their authorized representatives, when reasonably requested, copies of such plans, shop drawings, specifications, and records; or

(10) Improper Materials. Any of the materials, fixtures, machinery, equipment, articles, and/or personal property used in the construction of the Improvements or the appurtenances thereto, or to be used in the operation thereof, shall not, in the reasonable opinion of the Governmental Lender Servicer or the Governmental Lender, confirmed by the Inspecting Engineer, substantially comply with the Plans and Specifications as approved by the Governmental Lender and such default is not cured by the Borrower within forty-five (45) days after the Governmental Lender Servicer or the Fiscal Agent has given notice to the Borrower to cure same; or

(11) Materials Not Free and Clear. The Borrower shall not, except in the case of leased washing machines, dryers, vending machines, office telephones, office equipment, office communications equipment and model furniture, and other items normally used in common by tenants, execute (other than to the Governmental Lender or the Fiscal Agent or in connection with a permitted encumbrance) any conditional bill of sale, chattel mortgage, security agreement, or other Mortgage covering any materials, fixtures, machinery, equipment, articles, and/or personal property intended to be incorporated in the Improvements or the appurtenances thereto, or placed in the Improvements, or if a financing statement publishing notice of such Mortgage shall be filed, or if any of such materials, fixtures, machinery, equipment, articles, and/or personal property shall not be purchased so that the ownership thereof will vest unconditionally in the Borrower, free from encumbrances other than those in favor of the Governmental Lender and the Fiscal Agent and the permitted encumbrances, on delivery at the Land, or if the Borrower shall not produce to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer upon demand the contracts, bills of sale, statements, receipted vouchers, or agreements, or any of them, under which the Borrower claims title to any thereof; or

(12) Failure to Complete Improvements. The Improvements, in the reasonable judgment of the Governmental Lender Servicer or the Governmental Lender, are not, or cannot reasonably be, completed on or before the Completion Date, subject, however, to force majeure; or

(13) False Representation or Warranty. At any time any representation, warranty or statement made by the Borrower in any Borrower Loan Document shall be incorrect or misleading in any material respect when made and such matter not be cured within thirty (30) days of the giving of notice thereof to the Borrower by the Governmental Lender or the Fiscal Agent.

Notwithstanding anything herein to the contrary, this section shall in no way be construed to limit the Governmental Lender's, the Fiscal Agent's, or the Governmental Lender Servicer's right to seek specific performance of this Agreement against the Borrower or to enforce its remedies under Paragraph 18 hereof or to withhold approval of a Requisition until the Borrower is in compliance with this Agreement.

B. Notice of Default; Opportunity to Cure. Except as set out below no default under the preceding Section shall constitute an Event of Default hereunder until:

(1) The Governmental Lender Servicer and/or the Fiscal Agent, by registered or certified mail, shall give notice to the Governmental Lender, the Funding Lender, the Borrower, the Investor Limited Partner, and the Fiscal Agent

of such default specifying the same and stating that such notice is a "Notice of Default"; and

(2) The Borrower shall have had thirty (30) days (or such extended period as permitted (approved in writing with notice to the Fiscal Agent and the Governmental Lender Servicer) by the Governmental Lender when curative action is being diligently pursued) after receipt of such notice to correct the default and shall not have corrected it or, if such default cannot be corrected within thirty (30) days, shall have failed to initiate and diligently pursue (in the sole reasonable judgment of the Governmental Lender) appropriate corrective action. The Investor Limited Partner shall have the right, but not the obligation to cure any default.

Notwithstanding the foregoing, notice of and opportunity to cure any default arising from a default under the other Borrower Loan Documents shall be governed by the terms of such agreements, and no additional notices of or opportunity to cure any default under such agreements shall be required hereunder to complete the notice and cure procedure provided in such agreements.

#### 19. MISCELLANEOUS PROVISIONS.

A. No Waiver. Nothing herein shall be construed to waive or diminish any right or security of the Governmental Lender or the Fiscal Agent under the Borrower Loan Agreement and the Mortgage. It is the purpose and intent hereof to provide safeguards, protections, and rights for the Governmental Lender and the Fiscal Agent in addition to those provided in the Borrower Loan Agreement and the Mortgage.

B. Cumulative Remedies. The remedies provided herein shall be in addition to and not a substitution for the rights and remedies which would otherwise be vested under any Borrower Loan Document or in law or equity, all of which rights and remedies are specifically reserved. The remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer shall be cumulative and may be exercised separately or concurrently and as often as the occasion therefor may arise. The failure to exercise any of the remedies herein shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent use of any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer shall continue and be each and all available until all sums due by reason of the Borrower Loan Agreement or the Mortgage are paid in full and all obligations incurred by the Borrower in connection with the construction or operation of the Improvements have been fully discharged.

C. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns. The Borrower may be released from obligations and agreements hereunder only by a written instrument of the Fiscal Agent and the Governmental Lender specifically providing for such release. The Borrower shall be released from any and all liability hereunder, upon payment of the Borrower Loan in full and the expiration of the Qualified Project Period (as defined in the Land Use Restriction Agreement).

D. Assignability. This Agreement shall not be assignable by the Borrower or the Governmental Lender Servicer without the prior written consent of the Governmental Lender and the Fiscal Agent. If the Governmental Lender and the Fiscal Agent approve an assignment hereof by the Borrower, the Fiscal Agent shall be entitled to make advances to such assignee and such advances shall be secured by the Borrower Loan Documents.

E. Governing Law. This Agreement shall be construed under the laws of the State of Florida, regardless of where it may have been executed or delivered.

F. Construction. Whereas this Agreement was negotiated with input from all parties hereto, this Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

G. Costs and Legal Fees. In the event that any party shall be required to enforce this Agreement and whether or not suit be brought, the prevailing parties shall be entitled to recover from the losing parties all reasonable legal fees and costs incurred in connection therewith, whether incurred in collection, at trial, on appeal, in bankruptcy or other similar proceedings affecting creditors' rights or otherwise.

H. Invalid Provisions. All rights, powers, and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby, nor shall such terms be invalid or unenforceable under other, dissimilar facts and circumstances.

I. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

J. Amendments. This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement.

K. Time of Essence. Time is of the essence of this Agreement.

L. Right to Publicize. The Governmental Lender and the Governmental Lender Servicer shall have the right to publicize its involvement in the financing of the Project and may require the Borrower to name the Governmental Lender as its lender in all publicity releases and promotional materials issued in connection with the Project.

M. Dealings with the Governmental Lender Servicer. The Governmental Lender Servicer shall be protected and shall incur no liability in acting or proceeding in good faith upon resolution, notice, telegram, consent, waiver, certificate, affidavit, voucher, bond, or other paper or document which it shall in good faith reasonably believe (1) to be genuine and, (2) to have been passed or prepared and furnished pursuant to the provisions of the Funding Loan Agreement, the Land Use Restriction Agreement, the Mortgage, or the Borrower Loan Agreement, and the Governmental Lender Servicer shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements unless the instrument on its face reasonably indicated that the Governmental Lender Servicer should inquire further or unless the Governmental Lender Servicer has actual knowledge or information which reasonably should cause the Governmental Lender Servicer to inquire further. The Governmental Lender Servicer shall not be held liable under this Agreement except for its own negligence or willful misconduct or gross negligence. The Borrower shall indemnify and hold the Governmental Lender Servicer harmless from any claim, action or liability of any kind or character whatsoever arising from or in any way related to acts or omissions of the Borrower or any of its agents, employees, consultants, counsel, or independent contractors. This Paragraph shall in no way be construed to relieve the Governmental Lender Servicer of the normal and usual duties of a reasonably prudent loan servicer or monitoring agent.

N. Terms. Wherever used herein, the terms utilized shall include masculine, feminine, neuter, singular, and/or plural, as the context admits or requires.

O. Conflicts. Notwithstanding anything herein to the contrary, the terms and conditions of the Borrower Note and the Borrower Loan Agreement and the Mortgage shall govern, control, and prevail, in the event of any conflict between the terms and conditions hereof and those contained in the Borrower Note and the Borrower Loan Agreement and the Mortgage.

P. Remedies. Subject to the terms of the Land Use Restriction Agreement upon the occurrence of any Event of Default which is not cured within the applicable cure period, the Governmental Lender (or the Fiscal Agent or the Governmental Lender Servicer), shall be entitled to seek specific performance hereof against the Borrower, and/or in addition to any other right or remedy available to it in law or equity. It is

specifically agreed by the Borrower that a violation of this Agreement or the Land Use Restriction Agreement could cause harm for which no damages could be calculated, therefore entitling the Governmental Lender to immediate equitable relief, including without limitation a temporary restraining order or mandatory injunction without notice.

20. **EXERCISE OF RIGHTS BY GOVERNMENTAL LENDER.** Notwithstanding any provision herein to the contrary, the Governmental Lender Servicer shall approve or disapprove all advances requested hereunder by the Borrower except that the Governmental Lender Servicer is hereby permitted to disapprove any such request by the Borrower for advances hereunder which is not in substantial compliance with the credit underwriting guidelines of the Governmental Lender.

1. **NOTICES.** Any notice required to be given hereunder shall be given by personal delivery, by registered U.S. mail or by expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt of sent by registered U.S. Mail.

The Governmental Lender: Housing Finance Authority of Leon County, Florida  
615 Paul Russell Road  
Tallahassee, Florida 32301  
Attention: Chair  
Telephone: 850-606-1900

The Fiscal Agent: U.S. Bank Trust Company, National Association  
500 West Cypress Creek Road, Suite 460  
Fort Lauderdale, Florida 33309  
Attention: Amanda Kumar  
Telephone: (954) 938-2475  
Email: amanda.kumar@usbank.com

The Borrower: ECG Ridge Road, LP  
c/o Elmington Capital  
118 16th Avenue South, Suite 200  
Nashville, Tennessee 37203  
Telephone: (615) 922-2218  
Attention: John Shepard  
Email: jshepard@elmingtoncapital.com

with a copy to: Reno & Cavanaugh PLLC  
424 Church Street, Suite 2910  
Nashville, Tennessee 37219  
Attention: Dwayne Barrett, Esq.  
Telephone: (615) 866-3224  
Email: dbarrett@renocavanaugh.com

and to: Stearns Weaver Miller Weissler Alhadeff & Sitterson, P.A.  
150 West Flagler Street  
Miami, Florida 33130  
Attention: Brian McDonough, Esq.  
Telephone: (305) 789-3350  
Email: bmcdonough@stearnsweaver.com

To Investor Limited  
Partner: U.S. Bancorp Community Development Corporation  
1307 Washington Avenue, Suite 300  
Mail Code: SL MO RMCD  
St. Louis, Missouri 63103  
Attention: Director of LIHTC Asset Management  
Email: curt.ridge@usbank.com

with a copy to: Kutak Rock LLP  
1650 Farnam Street  
Omaha, Nebraska 68102  
Attention: Jill Goldstein, Esq.  
Email: jill.goldstein@kutakrock.com

The Compliance  
Monitoring Agent: First Housing Development Corporation of Florida  
107 South Willow Avenue  
Tampa, Florida 33606  
Attention: Ed Busansky  
Phone: (813) 283-1043  
Email: ebusansky@firsthousingfl.com

21. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent, and the Borrower as to the subject matter hereof, and all prior agreements, negotiations, and understandings with respect thereto are merged into and superseded by this Agreement.

22. **WAIVER OF TRIAL BY JURY. THE BORROWER, THE GOVERNMENTAL LENDER, THE FISCAL AGENT, AND THE GOVERNMENTAL LENDER SERVICER**

**KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER BORROWER LOAN DOCUMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF PARTIES, WHETHER IN CONNECTION WITH THE MAKING OF THE BORROWER LOAN, COLLECTION OF THE BORROWER LOAN, OR OTHERWISE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE GOVERNMENTAL LENDER TO MAKE THE BORROWER LOAN EVIDENCED BY THE BORROWER LOAN AGREEMENT.**

[Remainder of page intentionally left blank]



**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Governmental Lender**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

**FIRST HOUSING DEVELOPMENT  
CORPORATION OF FLORIDA**, a Florida  
corporation

By: \_\_\_\_\_  
Name: Edward Busansky  
Title: Senior Vice President

**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Vice President

**EXHIBIT "A"**

**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**BUDGET AND CONSTRUCTION DRAW SCHEDULE**

**EXHIBIT "C"**

**PENDING LITIGATION SCHEDULE**

[NONE]

**EXHIBIT F**

**FORM OF FINANCIAL MONITORING AGREEMENT**



## FINANCIAL MONITORING AGREEMENT

**THIS FINANCIAL MONITORING AGREEMENT** (this "Agreement") is made as of \_\_\_\_\_ 1, 2023, by and among the **HOUSING FINANCE AUTHORITY OF LEON COUNTY, FLORIDA**, a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Governmental Lender"), **FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA**, a Florida corporation, its successors and assigns, (the "Monitoring Agent"), **U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION**, a national banking association, in its capacity as fiscal agent (the "Fiscal Agent"), and **ECG RIDGE ROAD, LP**, a Florida limited partnership (the "Borrower").

### WITNESSETH:

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Funding Loan Agreement"), by and among the Governmental Lender, Allianz Life Insurance Company Of North America (the "Funding Lender"), and the Fiscal Agent, and the Borrower Loan Agreement, dated as of \_\_\_\_\_ 1, 2023 (the "Borrower Loan Agreement"), by and between the Governmental Lender and the Borrower; and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Florida Housing Finance Authority Law, Sections 159.601 through 159.623, Part IV, Florida Statutes, as amended, Chapter 2, Article III, Division 3, Sections 2-71 et seq., Leon County Code of Laws, as supplemented and amended, and other applicable provisions of law (the "Act"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe, and sanitary housing for persons or families of low, moderate, or middle income in Leon County, Florida (the "County"); and

**WHEREAS**, the Act authorizes the Governmental Lender; (a) to make loans to finance residential developments located within the County, and intended to be occupied to the extent required by applicable state or federal tax law by persons or families of low, moderate, and middle income; (b) to issue revenue bonds for the purpose of obtaining monies to make such loans and provide such financing and to pay administrative costs and other costs incurred in connection with the issuance of such bonds; and (c) pledge all or any part of the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge, or grant security interests in such loans in order to secure the payment of the principal or redemption price of and interest on such bonds; and

**WHEREAS**, pursuant to resolutions of the Governmental Lender adopted on October 14, 2021 (as amended on January 13, 2022) and \_\_\_\_\_, 2023, the Governmental Lender has authorized, approved, and issued \$51,000,000 principal amount of its Housing Finance Authority of Leon County, Florida Multifamily Mortgage Revenue Note (Ridge Road), Series 2023 (the "Governmental Note"), pursuant to the Funding Loan Agreement; and

**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender, the Fiscal Agent, and the Borrower have entered into the Borrower Loan Agreement, by the terms of which the Governmental Lender has agreed to loan the proceeds of the Governmental Note to the Borrower (the "Borrower Loan") for the purpose of providing funds to acquire, construct, and equip a multifamily rental housing development located on property within the County, to be known as Ridge Road (the "Project"); and

**WHEREAS**, the Governmental Lender has contracted with the Monitoring Agent for the Project pursuant to the terms and conditions of this Agreement.

**NOW THEREFORE**, for the consideration contained herein, the Governmental Lender, the Borrower, the Fiscal Agent, and the Monitoring Agent agree as follows:

1. First Housing Development Corporation of Florida, and its successors and assigns, is designated the Monitoring Agent for the Project until the Governmental Note and all obligations thereunder and under the Financing Documents are paid in full, or until terminated in accordance with this Agreement.

2. The duties of the Monitoring Agent shall be to:

A. Perform financial monitoring of the Borrower Loan.

B. Obtain and maintain certain financial information for the Governmental Lender with regard to the Project.

C. Provide the Governmental Lender with written reports in a form approved by the Governmental Lender.

D. Provide the Governmental Lender with a report on the Project's annual budget within 60 days after the beginning of the Project's Fiscal Year.

E. Provide the Governmental Lender with a report on the Project's mid-year operating results within 90 days after the Project's mid-year.

F. Provide the Governmental Lender with a report on the Project's year-end operating results within 90 days after the Project's year-end.

G. Provide the Governmental Lender with a report summarizing the Project's audited financial performance within 160 days after the end of the Project's Fiscal Year.

H. Provide the Governmental Lender with an annual Executive Summary Report within 160 days after the end of the Project's Fiscal Year.

3. For the purposes of this Agreement, Financial Monitoring shall mean:

A. Obtain the Project's mid-year operating results in a form approved by the Governmental Lender. The Monitoring Agent will review the interim operating results and annualize the numbers, the Monitoring Agent shall compare the annualized results to projections. The Monitoring Agent shall report any unusual variances or trends and provide a copy of the analysis to the Governmental Lender.

B. Obtain the Project's annual audited financial statements when due. The Monitoring Agent shall provide an analysis of the Project's balance sheet, income statement, and any other schedules, in a form approved by the Governmental Lender. The Monitoring Agent shall compare actual year end results to projections and budget (if applicable).

C. Provide a written report to the Governmental Lender summarizing the results of the financial statement analysis within 160 days after the end of the Project's fiscal year end. This assumes that the Project submits its annual audited financial statements within 120 days after year end, thus allowing the Monitoring Agent 40 days for which to complete the analysis.

4. The Borrower hereby agrees to provide the Monitoring Agent reasonable access to the Project and Project records at reasonable times and upon reasonable notice so as to allow the Monitoring Agent to fulfill its obligations to the Governmental Lender. The Borrower further agrees to provide the Monitoring Agent on behalf of the Governmental Lender the following documents:

A. Annual budget for the Project not later than 30 days prior to the beginning of each Fiscal Year of the Project. The annual budget should be in the form attached hereto as Exhibit A.

B. Interim operating results within 45 days after the end of the Project's mid-year. Mid-year Operating Statements should be in the form attached hereto as Exhibit B.

C. End of year operating results within 45 days after the Project's year-end. End of year Operating Statements should be in the form attached hereto as Exhibit C.

D. Annual Audited Financial Statements for the Project within 120 days of the end of the Borrower's Fiscal Year.

E. Certified rent roll as of the last day of the last month of the Project's Fiscal Year.

F. Month by month occupancy reports on a monthly basis shall be provided commencing on the first month following the issuance of the Project's first certificate of occupancy.

G. Schedule of Capital Repairs/Improvements for the current Fiscal Year and for any projected Fiscal Years beyond the current Fiscal Year to the extent not contained in the Annual Budget.

5. Upon request, the Borrower agrees to provide the Monitoring Agent with an updated Project description including unit mix information, with similar income and expense projections which were provided to the Monitoring Agent in conjunction with the underwriting of the Borrower Loan.

6. This Agreement may be terminated by the Governmental Lender, with or without cause, upon 10 days' written notice to the Monitoring Agent. Such termination does not relieve the Borrower from its obligation to pay any fees described herein through the date of such termination.

7. The Borrower shall provide compensation for the services rendered by the Monitoring Agent hereunder in accordance with the following provisions:

A. The annual compensation of the Monitoring Agent for the monitoring services specified herein shall be paid by the Fiscal Agent, from corresponding fees paid by the Borrower to the Fiscal Agent, pursuant to an invoice prepared by the Monitoring Agent and delivered to the Borrower and the Fiscal Agent, in an amount of 1.5 basis points per annum (0.015%) on the principal amount of the Governmental Note outstanding on the Project, with a minimum of \$2,182.00 per annum, payable on each \_\_\_\_\_ 1 and \_\_\_\_\_ 1, commencing on \_\_\_\_\_ 1, 2023. On January 1st of each year, the minimum fee shall be adjusted, but not decreased, based on the South Region Consumer Price Index for the 12-month period ending each November 30th. This automatic increase shall not exceed 3% of the prior year's fees.

B. The Monitoring Agent's rights to compensation hereunder for monitoring services shall cease upon the occurrence of any of the following events:

(1) until the Governmental Note and all obligations thereunder and under the Project Loan Documents are paid in full;

(2) notification by the Fiscal Agent to the Monitoring Agent that its services or this Agreement shall be terminated by the Governmental Lender or the Fiscal Agent with the Governmental Lender's consent, with or without cause.

C. No termination fee shall be due the Monitoring Agent in the event this Agreement is terminated (with or without cause) by the Governmental Lender or the Fiscal Agent.

D. Any fees not paid by the Borrower may be paid upon written direction from the Governmental Lender, by the Fiscal Agent (from amounts available under the Funding Loan Agreement), and charged against the Borrower Loan unless Borrower gives the Governmental Lender and the Fiscal Agent written notice that such fees are disputed prior to such fee being paid by the Fiscal Agent.

8. The parties hereto acknowledge that other persons or parties may have access to the reports described herein in that they may become public records of the Governmental Lender.

9. The persons executing this Agreement acknowledge and represent that they have the legal authority to execute this document and to commit the party for which they are executing to the terms of this Agreement.

10. This Agreement and the information provided to the Governmental Lender hereunder are solely for the information, benefit, and use of the Governmental Lender and the Governmental Lender undertakes no responsibility or obligation hereby to any third party, including, without limitation, the Noteholders, to monitor, assure or enforce the performance by the Borrower of its obligations with respect to the Borrower Loan or the Project. No other party, including without limitation, the Noteholders, shall be entitled to rely on the information and services of the Monitoring Agent hereunder.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**ECG RIDGE ROAD, LP**, a Florida limited partnership

By: ECG RIDGE ROAD GP, LLC, a Tennessee limited liability company, its general partner

By: \_\_\_\_\_  
C. Hunter Nelson  
Managing Member

**HOUSING FINANCE AUTHORITY OF LEON  
COUNTY, FLORIDA, as Governmental Lender**

By: \_\_\_\_\_  
Name: Jeffrey Sharkey  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Charles A. White  
Title: Secretary

**FIRST HOUSING DEVELOPMENT  
CORPORATION OF FLORIDA**, a Florida  
corporation

By: \_\_\_\_\_  
Name: Edward Busansky  
Title: Senior Vice President



**U.S. BANK TRUST COMPANY, NATIONAL  
ASSOCIATION, as Fiscal Agent**

By: \_\_\_\_\_  
Name: Amanda Kumar  
Title: Vice President

**EXHIBIT A**  
**FORM OF ANNUAL BUDGET**

**EXHIBIT B**

**FORM OF MID-YEAR OPERATING STATEMENT**

**EXHIBIT C**

**FORM OF YEAR-END OPERATING STATEMENT**

**EXHIBIT G**

**FORM OF ASSIGNMENT OF MORTGAGE AND FUNDING LOAN DOCUMENTS**

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**ASSIGNMENT OF MORTGAGE AND FUNDING LOAN DOCUMENTS**

**from**

**HOUSING FINANCE AUTHORITY OF LEON COUNTY**

**to**

**U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, as fiscal agent**

**with the consent of**

**ECG RIDGE ROAD, LP**

**Dated as of February 1, 2023**

**Relating to:**

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

**Housing Finance Authority of Leon County  
Multifamily Housing Revenue Note  
(Ridge Road Apartments), Series 2023**

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This instrument prepared by and  
when recorded return to:

Kutak Rock LLP  
Two Logan Square  
100 N. 18<sup>th</sup> Street, Suite 1920  
Philadelphia, Pennsylvania 19103  
Attention: Andrew P. Schmutz, Esquire

## ASSIGNMENT OF MORTGAGE AND FUNDING LOAN DOCUMENTS

This **ASSIGNMENT OF MORTGAGE AND FUNDING LOAN DOCUMENTS**, dated as of February 1, 2023 (as the same may be amended, modified or supplemented from time to time, “Assignment”) from HOUSING FINANCE AUTHORITY OF LEON COUNTY, a public body corporate and politic existing under the laws of the State of Florida (together with its successors and assigns, the “Assignor”), to U.S. BANK TRUST COMPANY, NATIONAL ASSOCIATION, a national banking association organized under the laws of the United States of America (together with its successors and assigns, the “Assignee”) under the Funding Loan Agreement dated as of February 1, 2023 (as the same may be amended, modified or supplemented from time to time, the “Funding Loan Agreement”), among the Assignor as Governmental Lender, the Assignee as Fiscal Agent and ALLIANZ LIFE INSURANCE COMPANY OF NORTH AMERICA, a Minnesota corporation (the “Funding Lender”),

### WITNESSETH:

**WHEREAS**, ECG Ridge Road, LP, a Florida limited partnership (the “Borrower”) has applied to the Governmental Lender for a loan (the “Borrower Loan”), to finance the acquisition, construction and equipping of a multifamily apartment housing facility consisting of total of 250 units and related personal property and equipment, located in Tallahassee, Florida and known as “Ridge Road” (the “Project Facilities”); all capitalized terms used herein and not otherwise defined shall have the meanings given to them in the Funding Loan Agreement;

**WHEREAS**, the Borrower has requested the Governmental Lender to enter into the Funding Loan Agreement between Governmental Lender, Funding Lender and U.S. Bank Trust Company, National Association, as fiscal agent (the “Fiscal Agent”) dated as of February 1, 2023 (the “Funding Loan Agreement”) under which the Funding Lender will make a loan (the “Funding Loan”) to the Governmental Lender, the proceeds of which will be loaned to Borrower pursuant to a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the “Borrower Loan Agreement”) to finance the acquisition, construction, rehabilitation, development, equipping and/or operation of the Project Facilities;

**WHEREAS**, pursuant to the Borrower Loan Agreement, the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under the Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due;

**WHEREAS**, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Promissory Note dated the Closing Date (the “Borrower Note”) which will be secured by that certain Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Mortgage”) on the Project Facilities;

**WHEREAS**, the rights of the Governmental Lender under the Mortgage, the Borrower Note and the other Funding Loan Documents (collectively, the “Assigned Documents”) are being assigned contemporaneously with the execution and delivery hereof to the Fiscal Agent for the benefit of the Funding Lender as set forth in the Funding Loan Agreement

**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 Assigned 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 the Funding Loan 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 Funding Loan Agreement 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 Assigned Documents, excluding the Reserved Rights of the Assignor. 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 Florida, without reference to its conflicts of laws and principles.









**EXHIBIT A**

**LEGAL DESCRIPTION OF PROPERTY**

[\_\_\_\_\_]