



# Office of the City Clerk

City Hall  
121 N. LaSalle St.  
Room 107  
Chicago, IL 60602  
www.chicityclerk.com

## Legislation Text

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OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL

MAYOR

September 20, 2018

TO THE HONORABLE, THE CITY COUNCIL OF THE CITY  
OF CHICAGO

Ladies and Gentlemen:

*r*

At the request of the Commissioner of Planning and Development, I transmit herewith ordinance authorizing execution of a Multi-Family Loan Agreement, issuance of tax-exempt bonds and developer designation for Mark Twain NHPF, LLC.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

### ORDINANCE

WHEREAS, by virtue of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Chicago (the "City") is a home rule unit of government and as such may exercise any power and perform any function pertaining to its government and affairs; and

WHEREAS, as a home rule unit and pursuant to the Constitution, the City is authorized and empowered to issue multi-family housing revenue obligations for the purpose of financing the cost of the acquisition, construction, rehabilitation, development, and equipping of an affordable multi-family housing facility for low- and moderate-income families located in the City ("Multi-Family Housing Financing"); and

WHEREAS, New Mark Twain LLC, an Illinois limited liability company (the "Developer") whose sole member is The NHP Foundation, a District of Columbia non-profit corporation ("NHP"), is the current owner of certain property located generally at 111 W. Division Street, Chicago, Illinois, and currently known as The Mark Twain Hotel (the "Project Site"); and

WHEREAS, Mark Twain NHPF, LLC, an Illinois limited liability company (the "Borrower") desires to (i) acquire the Project Site from the Developer and (ii) obtain Multi-Family Housing Financing from the City for the purpose of financing a low-income housing development project consisting of the acquisition, rehabilitation and equipping of an approximately 148-unit multifamily housing rental apartment complex to be known as The Mark Twain located at 111 W. Division Street, Chicago, Illinois (the "Project"), located at the property (legally described in Exhibit E attached hereto and subject to final title commitment and survey, the "Property"), and to pay a portion of the costs of issuance and other costs incurred in connection therewith; and

WHEREAS, Mark Twain NHPF Manager, LLC, an Illinois limited liability company, and NHP are the current Members of the Borrower. NHP will be withdrawing as a member; and

WHEREAS, By this ordinance, the City Council of the City (the "City Council") has determined that it is necessary and in the best interests of the City to provide Multi-Family Housing Financing to the Borrower, to pay a portion of the costs of acquiring, rehabilitating and equipping the Project, by issuing a series of tax-exempt revenue bonds and using the proceeds of the sale thereof to make an additional loan to the Borrower to finance a portion of the costs of the Project; and

WHEREAS, By this ordinance, the City Council has determined that it is necessary and in the best interests of the City to borrow money for the purposes set forth above and in evidence of its limited, special obligation to repay that borrowing, to issue its Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018 (the "Bonds"); and

WHEREAS, In connection with the issuance of the Bonds, the City Council has determined by this ordinance that it is necessary and in the best interests of the City to enter into (i) a Bond Indenture (the "Bond Indenture") between the City and a trustee (the "Bond Trustee") to be selected by the Chief Financial Officer (as defined below), providing for the security for and terms and conditions of the Bonds to be issued, (ii) a Loan Agreement (the "Loan Agreement") among the City, the Borrower and the Bond Trustee providing for the use of the proceeds of the Bonds to make a loan to the Borrower, the proceeds of which will finance a portion of the costs of the Project, (iii) a Bond Purchase Agreement among the City, the

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Borrower and one or more underwriters for the Bonds, or, alternatively, another sale agreement among the City, the Borrower and one or more purchasers of the Bonds (in each case, a "Bond Purchase Agreement") providing for the sale of the Bonds and the preparation and circulation, if necessary, of a preliminary official statement for the Bonds or, alternatively, another type of disclosure document prepared in connection with the offer and sale of the Bonds (in either case, a "Preliminary Official Statement") and a final official statement or alternative disclosure document prepared in connection with the offer and sale of the Bonds (the "Official Statement"), and (iv) a Tax Regulatory Agreement and/or a tax certificate (a "Tax Agreement") between the

City and the Borrower; and

WHEREAS, The principal and interest on the Bonds will be secured by, among other Eligible Funds (as defined in the Bond Indenture), warehouse funds or other funds of the Lender (as defined in the Bond Indenture) to be advanced by the Lender to the Bond Trustee and/or proceeds, if any, received from the sale by the Lender of GNMA Securities (as defined in the Bond Indenture), which, in the aggregate, do not exceed the amount set forth in the Bond Indenture; and

WHEREAS, In connection with the issuance of the Bonds and the financing of the Project with the proceeds thereof, the City Council has determined by this ordinance that it is necessary and in the best interests of the City to enter into a Land Use Restriction Agreement between the City and the Borrower (the "Land Use Restriction Agreement"); and

WHEREAS, The Bonds and the obligation to pay interest thereon do not now and shall never constitute an indebtedness of or an obligation of the City, the State of Illinois or any political subdivision thereof, within the purview of any Constitutional limitation or statutory provision, or a charge against the general credit or taxing powers of any of them. No owner of the Bonds shall have to right to compel the taxing power of the City, the State of Illinois or any political subdivision thereof to pay any principal installment of, prepayment premium, if any, or interest on the Bonds; and

WHEREAS, There has been presented to this meeting of the City Council forms of the following documents in connection with the Bonds:

- a) the form of Bond Indenture, which includes a form of the Bonds to be issued by the City (attached as Exhibit B hereto);
- b) the form of Loan Agreement (attached as Exhibit C hereto); and

WHEREAS, There has been presented to this meeting of the City Council a form of the Land Use Restriction Agreement (attached as Exhibit D hereto) in connection with the issuance of the Bonds; and

WHEREAS, DPD has preliminarily reviewed and approved the making of a loan to the Borrower in an amount not to exceed \$5,000,000 (the "Affordable Housing Loan"), to be funded from Multi-Family Program Funds pursuant to the terms and conditions set forth in Exhibit A hereto and made a part hereof; now, therefore

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO, AS FOLLOWS:**

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Section 1. Incorporation of Recitals. The recitals contained in the preambles to this ordinance are hereby incorporated into this ordinance by this reference. All capitalized terms used in this ordinance, unless otherwise defined herein, shall have the meanings ascribed thereto in the Bond Indenture.

Section 2. Findings and Determinations. The City Council hereby finds and determines that the delegations of authority that are contained in this ordinance, including the authority to make the specific determinations described herein, are necessary and desirable because the City Council cannot itself as advantageously, expeditiously or conveniently exercise such authority and make such specific determinations. Thus, authority is granted to the Chief Financial Officer (the Chief Financial Officer, being referred to herein as

the "Authorized Officer") to determine to sell the Bonds on such terms as and to the extent such officer determines that such sale or sales is desirable and in the best financial interest of the City. Any such designation and determination by the Chief Financial Officer shall be signed in writing by the Chief Financial Officer and filed with the City Clerk and shall remain in full force and effect for all purposes of this ordinance unless and until revoked, such revocation to be signed in writing by the Chief Financial Officer and filed with the City Clerk. As used herein, the term "Chief Financial Officer" shall have the meaning given to such term in Section 1-4-090(k) of the Municipal Code of Chicago.

Section 3. Authorization of Bonds. The issuance of the Bonds in an aggregate principal amount of not to exceed Forty Million Dollars (\$40,000,000) is hereby authorized.

The Bonds shall contain a provision that they are issued under authority of this ordinance. The Bonds shall not mature later than five (5) years after the date of issuance thereof. The Bonds shall bear interest at a rate or rates not to exceed four percent (4.0%), payable on the interest payment dates as set forth in the Bond Indenture. The Bonds shall be dated, shall be subject to redemption or tender prior to maturity, shall be payable in such places and in such manner and shall have such other details and provisions as prescribed by the Bond Indenture and the form of the Bonds therein.

The provisions for execution, signatures, authentication, payment and prepayment, with respect to the Bonds shall be as set forth in the Bond Indenture and the form of the Bonds therein.

The Authorized Officer is hereby authorized to execute and deliver the Bond Indenture on behalf of the City, such Bond Indenture to be in substantially the form attached hereto as Exhibit B and made a part hereof and hereby approved with such changes therein as shall be approved by the Authorized Officer executing the same, with such execution to constitute conclusive evidence of such Authorized Officer's approval and the City Council's approval of any changes or revisions from the form of the Bond Indenture attached to this ordinance.

The Authorized Officer is hereby authorized to execute and deliver the Loan Agreement on behalf of the City, such Loan Agreement to be in substantially the form attached hereto as Exhibit C and made a part hereof and hereby approved with such changes therein as shall be approved by the Authorized Officer executing the same, with such execution to constitute conclusive evidence of such Authorized Officer's approval and the City Council's approval of any changes or revisions from the form of the Loan Agreement attached to this ordinance.

The Authorized Officer is hereby authorized to execute and deliver a Bond Tax Regulatory Agreement on behalf of the City, in substantially the form of tax regulatory agreements used in previous issuances of tax-exempt bonds pursuant to programs similar to the Bonds, with appropriate revisions to reflect the terms and provisions of the Bonds and the

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applicable provisions of the Internal Revenue Code of 1986, as amended (the "Code"), and the regulations promulgated thereunder, and with such other revisions in text as the Authorized Officer executing the same shall determine are necessary or desirable in connection with the exclusion from gross income for federal income tax purposes of interest on the Bonds. The execution of the Bond Tax Regulatory Agreement by the Authorized Officer shall be deemed conclusive evidence of the approval of the City Council of the terms provided in the Bond Tax Regulatory Agreement.

The Authorized Officer is hereby authorized to execute and deliver the Land Use Restriction Agreement on behalf of the City in connection with the issuance of the Bonds, such Land Use Restriction Agreement to be in substantially the form attached hereto as Exhibit D and made a part hereof and hereby approved with such changes therein as shall be approved by the Authorized Officer executing the same, with such execution to constitute conclusive evidence of such Authorized Officer's approval and the City Council's

approval of any changes or revisions from the form of the Land Use Restriction Agreement attached to this ordinance.

The City Clerk or Deputy City Clerk is hereby authorized to attest the signature of the Authorized Officer to any document referenced herein and to affix the seal of the City to any such document.

Section 4. Security for the Bonds. The Bonds shall be limited obligations of the City, payable solely from (i) all right, title and interest of the City in and to all revenues, derived or to be derived by the City under the terms of the Bond Indenture and the Loan Agreement (other than certain reserved rights of the City); (ii) the proceeds of the Bonds and income from the temporary investment thereof, as provided in the Bond Indenture; and (iii) all funds, monies and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Bonds by the City or by anyone on its behalf. In order to secure the payment of the principal of, premium, if any, and interest on the Bonds, such rights, proceeds and investment income are hereby pledged to the extent and for the purposes as provided in the Bond Indenture and are hereby appropriated for the purposes set forth in the Bond Indenture. The Bond Indenture shall set forth such covenants with respect to the application of such rights, proceeds and investment income as shall be deemed necessary by the Authorized Officer in connection with the sale of the Bonds.

Section 5. Sale and Delivery of Bonds. The Bonds shall be sold and delivered to, or upon the direction of, one or more underwriters (the "Underwriters") to be selected by the Authorized Officer, subject to the terms and conditions of the Bond Purchase Agreement, or, alternatively, are hereby authorized to be sold and delivered directly to one or more investors to be selected by the Authorized Officer subject to the terms and conditions of the Bond Purchase Agreement. The Authorized Officer is authorized to execute and deliver on behalf of the City, with the concurrence of the Chairman of the Committee on Finance of the City Council, the Bond Purchase Agreement in substantially the form of bond purchase agreements used in previous sales of bonds pursuant to programs similar to the Bonds, with appropriate revisions to reflect the terms and provisions of the Bonds and the fact that the Bonds may be sold to certain institutional investors, and with such other revisions in text as the Authorized Officer shall determine are necessary or desirable in connection with the sale of the Bonds. The execution of the Bond Purchase Agreement by the Authorized Officer shall be deemed conclusive evidence of the approval of the City Council of the terms provided in the Bond Purchase Agreement. The distribution of the Preliminary Official Statement and the Official Statement to prospective purchasers of the Bonds and the use thereof by the Underwriters in connection with the offering and sale of the Bonds are hereby authorized,

provided that the City shall not be responsible for the content of the Preliminary Official Statement or the Official Statement except as specifically provided in the Bond Purchase Agreement executed by the Authorized Officer, and provided further that, if the Bonds are sold directly to institutional investors, the City may forgo the use of a Preliminary Official Statement or Official Statement, but only if such institutional investors execute and deliver to the City "sophisticated investor" letters satisfactory to the Authorized Officer. The compensation paid to the Underwriters in connection with the sale of the Bonds shall not exceed three quarters of one percent (0.75%) of the aggregate principal amount of the Bonds, exclusive of legal cost in connection therewith. In connection with the offer and delivery of the Bonds, the Authorized Officer, and such other officers of the City as may be necessary, are authorized to execute and deliver such instruments and documents as may be necessary to implement the transaction and to effect the issuance and delivery of the Bonds. Any limitation on the amount of Bonds issued pursuant to this ordinance as set forth herein shall be exclusive of any original issue discount or premium.

Section 6. Notification of Sale. Subsequent to the sale of the Bonds, the Authorized Officer shall file in the Office of the City Clerk a Notification of Sale for the Bonds directed to the City Council setting forth (i) the

aggregate original principal amount of, maturity schedule, redemption provisions for and nature of the Bonds sold, (ii) the extent of any tender rights to be granted to the holder of the Bonds, including, without limitation, the right of the holder to tender the Bonds in exchange for one or more mortgage-backed securities held by the Bond Trustee under the Bond Indenture, (iii) the identity of the Bond Trustee, (iv) the interest rates on the Bonds, (v) the identity of any underwriters or institutional investors who purchase the Bonds directly from the City or through the Underwriters, and (v) the compensation paid to the Underwriters in connection with such sale. There shall be attached to such notification the final form of the Bond Indenture.

Section 7. Use of Proceeds. The proceeds from the sale of the Bonds shall be deposited as provided in the Bond Indenture and used for the purposes set forth in the fifth paragraph of the recitals of this ordinance.

Section 8. Declaration of Official Intent. A portion of the cost of the rehabilitation of the Project which the City intends to finance with the proceeds of the Bonds has been paid from available monies of NHP prior to the date of this ordinance. It is the intention of the City to utilize a portion of the proceeds of the Bonds to reimburse such expenditures which have been or will be made for those costs, to the extent allowed by the Code and related regulations. As such, the City previously adopted an inducement resolution on March 29, 2017 declaring its official intent under Section 1.150-2 of the Treasury Regulations promulgated under the Code to utilize the proceeds of the Bonds as such.

Section 9. Additional Authorization. The Mayor, the Authorized Officer, the City Treasurer and, upon the approval and availability of the additional financing as shown in Exhibit A hereto (the "Additional Financing"), the Authorized DPD Officer (as defined below) are each hereby authorized to execute and deliver and the City Clerk and the Deputy City Clerk are each hereby authorized to enter into, execute and deliver such other documents and agreements and perform such other acts as may be necessary or desirable in connection with the Bonds, including, but not limited to, the exercise following the delivery date of the Bonds of any power or authority delegated to such official under this ordinance with respect to the Bonds upon original issuance, but subject to any limitations on or restrictions of such power or authority as herein set forth.

Section 10. Proxies. The Mayor and the Authorized Officer may each designate another to act as their respective proxy and to affix their respective signatures to each

Obligation, whether in temporary or definitive form, and to any other instrument, certificate or document required to be signed by the Mayor or the Authorized Officer pursuant to this ordinance or the Bond Indenture. In each case, each shall send to the City Council written notice of the person so designated by each, such notice stating the name of the person so selected and identifying the instruments, certificates and documents which such person shall be authorized to sign as proxy for the Mayor and the Authorized Officer, respectively. A written signature of the Mayor or the Authorized Officer, respectively, executed by the person so designated underneath, shall be attached to each notice. Each notice, with signatures attached, shall be recorded in the Journal of the Proceedings of the City Council of the City of Chicago and filed with the City Clerk. When the signature of the Mayor is placed on an instrument, certificate or document at the direction of the Mayor in the specified manner, the same, in all respects, shall be as binding on the City as if signed by the Mayor in person. When the signature of the Authorized Officer is so affixed to an instrument, certificate or document at the direction of the Authorized Officer in the specified manner, the same, in all respects, shall be as binding on the City as if signed by the Authorized Officer in person.

Section 11. Volume Cap. The Bonds are obligations taken into account under Section 146 of the Code in the allocation of the City's volume cap.

Section 12. Developer Designation. The Developer and the Borrower are each hereby designated as the developer for the Project.

Section 13. Affordable Housing Loan Authorization. Upon the approval and availability of the Additional Financing, the Commissioner of DPD or a designee or successor thereof (the "Authorized DPD Officer") is hereby authorized, subject to approval by the Corporation Counsel, to enter into and execute such agreements and instruments, and perform any and all acts as shall be necessary or advisable in connection with the implementation of the Affordable Housing Loan. The Authorized DPD Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the Affordable Housing Loan which do not substantially modify the terms described in Ordinance Exhibit A hereto. Upon the execution and receipt of proper documentation, the Authorized DPD Officer is hereby authorized to disburse the proceeds of the Affordable Housing Loan to the Borrower.

Section 14. Authorization of Fees and Expenses. The following fees and expenses are hereby authorized in connection with the Bonds: (i) an Issuer Fee in an amount equal to 1.5 percent of the par amount of the Bonds, payable to the City on the date of issuance of the Bonds, (ii) a Bond Legal Reserve Fee in the amount of 0.1 percent of the par amount of the Bonds, payable to the City on the date of issuance of the Bonds (such fee to be used to pay for other legal and other fees incurred by the City in connection with private activity bonds issued by the City), and (iii) a City Administrative Fee in an amount equal to 0.15 percent of the outstanding principal of the Bonds, accruing monthly but payable to the City on a semi-annual basis.

Section 15. Separability. If any provision of this ordinance shall be held to be invalid or unenforceable for any reason, the invalidity or unenforceability of such provision shall not affect any of the remaining provisions of this ordinance.

Section 16. Inconsistent Provisions. All ordinances, resolutions, motions or orders in conflict with this ordinance are hereby repealed to the extent of such conflict.

Section 17. No Impairment. No provision of the Municipal Code or violation of any provision of the Municipal Code shall be deemed to impair the validity of this ordinance or the

instruments authorized by this ordinance or to render any agreement or instrument authorized hereby voidable at the option of the City or to impair the rights of the owners of the Bonds to receive payment of the principal of, premium, if any, or interest on the Bonds or to impair the security for the Bonds; provided further, however, that the foregoing shall not be deemed to affect the availability of any other remedy or penalty for any violation of any provision under the Municipal Code.

Section 18. Effective Date. This ordinance shall be in full force and effect immediately upon its passage.

Exhibits "A", "B", "C", "D" and "E" referred to in this ordinance read as follows:

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**Ordinance Exhibit A**

**Project and Financing**

**BORROWER:** Mark Twain NHPF, LLC, an Illinois limited liability company, a single purpose entity created for the purposes of owning the Project.

**PROJECT:** Financing a low-income housing development project consisting of the **acquisition, rehabilitation and equipping of an approximately 148-unit multifamily housing rental apartment complex to be known as Mark Twain Apartments located at 111 W. Division Street, Chicago, Illinois, as further described on Exhibit A hereto (the "Project"), located at the property (collectively, the "Project").**

**BONDS:**

**Amount:** Not to exceed \$40,000,000  
**Source:** Proceeds from Issuance of Bonds



Term: Not to exceed 4 years  
Interest: Not to exceed 4% or such other interest rate acceptable to the Authorized Officer Security FHA mortgage-backed securities issued in connection with a HUD-insured FHA Loan set forth below and cash collateral from Low Income Housing Tax Credit Equity as set forth below.

**ADDITIONAL FINANCING:**

**2. FHA Loan**

Amount: Not to exceed \$30,000,000  
Source: Bellwether Enterprise Real Estate Capital, LLC  
Term: Not to exceed 42 years  
Interest: Not to exceed 5.25% per annum (final rate to be determined after ordinance approval), or such other interest rate acceptable to the Authorized Officer  
Security: First Mortgage on the Property

**3. City Multi-Family Program Funds**

Amount: Not to exceed \$5,000,000  
Source: City Multi-Family Program Funds  
Term: Not to exceed 42 years  
Interest: 0% per annum or such other interest rate acceptable to the Authorized DPD Officer  
Security: Second Mortgage on the Property

**3. Low-Income Housing Tax Credit ("LIHTC") Proceeds**

Proceeds: Approximately \$12,297,677, or such amount as may be acceptable to the

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Authorized Officer, all or a portion of which may be paid on a delayed basis  
Source: To be derived from the syndication of the LIHTCs generated by the Property and the Project which shall be in an amount of not to exceed \$1,267,802.

**Bridge Loan for Construction Period**

Proceeds:

Source:

Term: Interest:

Security:  
Approximately \$5,250,000, or such other amount as may be acceptable to the Authorized Officer, all or a portion of which may be paid on a delayed basis  
Chicago Community Loan Fund ("CCLF") or another lender acceptable to the Authorized Officer. Not to exceed two (2) years

7% per annum or such other interest rate acceptable to the Authorized DPD Officer  
To be repaid by proceeds of Bonds as issued; or such other security acceptable to the Authorized Officer.

### 5. Sponsor Loan

Proceeds:

Source:

Term:

Interest:

Security:

Approximately \$907,760, or such amount as may be acceptable to the Authorized Officer, all or a portion of which may be paid on a delayed basis

The NHP Foundation, a District of Columbia not-for-profit corporation . Not to exceed 42 years

9% per annum or such other interest rate acceptable to the Authorized DPD Officer

Junior Mortgage on the Property

### 6. Historic Tax

#### Credit ("HTC") Proceeds

Proceeds: Approximately \$4,803,974, or such amount as may be acceptable to the Authorized Officer, all or a portion of which may be paid on a delayed basis

Source: To be derived from the syndication of the historic credits generated by the Property and the Project which shall be in an amount of not to exceed \$4,952,550.

### 7. NHP Loan

Proceeds: Approximately \$148,000 or such amount as may be acceptable to the Authorized Officer, all or a portion of which may be paid on a delayed basis

Source: The NHP Foundation, a District of Columbia not-for-profit corporation ("NHP"); an Energy Efficiency Program Grant from Commonwealth Edison to NHP.

Term: Not to exceed 42years

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Interest: 8% per annum or such other interest rate acceptable to the Authorized DPD Officer

Security: Junior Mortgage on the Property, if allowed by senior lenders, or unsecured.

### 8. Cash From On-Going Operations

Proceeds: Approximately \$130,420 or such other amount as may be acceptable to the Authorized Officer, all or a portion of which may be paid on a delayed basis

Source: Borrower will continue to operate the Project during rehabilitation and funds derived from such on-going operations will be contributed to financing rehabilitation of the Project.

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**Ordinance Exhibit B Form of Bond Indenture**

See Attached

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**BOND INDENTURE**

**Between**

**CITY OF CHICAGO, COOK COUNTY, ILLINOIS**

**and**

**As Bond Trustee With Respect to  
Multi-Family Housing Revenue Bonds  
(Mark Twain Apartments Project) Series 2018**

Dated as of                    1, 2018

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**BOND INDENTURE**

THIS BOND INDENTURE ("Bond Indenture" or "Indenture"), dated as of 1, 2018, between the CITY OF CHICAGO, a municipality and home rule unit of government duly organized and validly existing under the Constitution and the laws of the State of Illinois (the "Issuer"), and \_\_\_\_\_, as Trustee (such trustee or any of its successors in trust being the "Trustee" or "Bond Trustee").

**RECITALS**

WHEREAS, pursuant to Article VII, Section 6 of the 1970 Constitution of the State of Illinois and pursuant to the hereinafter defined Ordinance of the Issuer, the Issuer is authorized to exercise any power and perform any function pertaining to its government and affairs, including the power to issue its revenue bonds in order to aid in providing an adequate supply of residential housing for low and moderate income persons or families within the Issuer, which constitutes a valid public purpose for the issuance of revenue bonds by the Issuer;

WHEREAS, the Issuer has determined to issue, sell and deliver not to exceed \$ \_\_\_\_\_ aggregate principal amount of its Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018 (the "Bonds"), as provided herein for the purpose of making a loan to Mark Twain NHPF, LLC, a limited liability company organized under the laws of the State of Illinois, and its successors and assigns (the "Borrower") to finance all or a portion of the costs of the acquisition, construction and equipping of an approximately 148-unit multifamily housing rental apartment complex to be known as Mark Twain Apartments located at 111 W. Division Street, Chicago, Illinois (the "Project"), as more

fully described in Exhibit B attached hereto; and

WHEREAS, the Issuer will loan the proceeds of the Bonds to the Borrower by entering into a Loan Agreement dated as of \_\_\_\_\_, 2018 (the "Loan Agreement" or "Agreement"), between the Issuer and the Borrower, and the Bonds shall be payable solely from the revenues received by the Issuer from the repayment of the loan of the proceeds of the Bonds to the Borrower (the "Loan") and from other revenues derived from the Loan and the Bonds; and

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

WHEREAS, all things necessary to make the Bonds, when authenticated by the Bond Trustee and issued as in this Indenture provided, the valid, binding and legal limited obligations of the Issuer according to the import thereof, and to constitute this Bond Indenture a valid assignment and pledge of the amounts assigned and pledged to the payment of the principal of, premium, if any, and interest on the Bonds and the creation, execution and delivery of this Bond Indenture, and the creation, execution and issuance of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, that to secure the payment of Bond Service Charges on the Bonds according to their true intent and meaning, to secure the performance and observance of

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all of the covenants, agreements, obligations and conditions contained therein and herein, and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, and in consideration of the premises and the acceptance by the Trustee of the trusts created herein and of the purchase and acceptance of the Bonds by the Holders, and for other good and valuable consideration, the receipt of which is acknowledged, the Issuer has executed and delivered this Indenture and absolutely assigns hereby to the Trustee (except Reserved Rights), and to its successors in trust, and its and their assigns, all right, title and interest of the Issuer in and to:

### GRANTING CLAUSES

For the equal and proportionate benefit, security and protection of the Bonds issued under and secured by this Bond Indenture without privilege, priority or distinction as to the lien or otherwise of any of the Bonds over any of the others of the Bonds:

i) the Revenues, including, without limitation, all Loan Payments, Collateral Payments and other amounts receivable by or on behalf of the Issuer under the Loan Agreement in respect of repayment of the Loan,

ii) the Special Funds, including all accounts in those Funds and all money deposited therein and the investment earnings on such money,

iii) subject to the provisions of the Ordinance, all right, title and interest of the Issuer in the proceeds derived from the sale of the Bonds, and any securities in which money in the Special Funds are invested, and (except for money required to be rebated to the United States of America under the Code) the proceeds derived therefrom, and any and all other real or personal property of every name and nature from time

to time hereafter by delivery or by writing of any kind pledged, assigned or transferred, as and for additional security hereunder by the Issuer or by anyone on its behalf, or with its written consent, to the Trustee, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms of this Indenture,

iv) the Note, and

v) **the Loan Agreement, except for the Reserved Rights (the foregoing collectively referred to as the "Trust Estate").**

PROVIDED, HOWEVER, AND NOTWITHSTANDING THE FOREGOING, THE TRUST ESTATE SHALL NOT INCLUDE THE REBATE FUND OR ANY MONEYS OR INVESTMENTS REQUIRED TO BE DEPOSITED IN THE REBATE FUND;

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

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

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

b) for the enforcement of the payment of the principal of and interest on the Bonds, when payable, according to the true intent and meaning thereof and of this Indenture, and

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

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

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

ii) if all of the covenants, agreements, obligations, terms and conditions of the Issuer under this

Indenture shall have been kept, performed and observed and there shall have been paid to the Trustee all sums of money due or to become due to it in accordance with the terms and provisions hereof, and

- iii) this Indenture and the rights assigned hereby shall cease, determine and be void, except as provided in Section 9.02 hereof with respect to the survival of certain provisions hereof; otherwise, this Indenture shall be and remain in full force and effect.

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

## ARTICLE 1 DEFINITIONS

Section 1.01 Definitions. The terms defined in this Section 1.01 or in the Recitals hereto (except as herein otherwise expressly provided or unless the context otherwise requires)

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for all purposes of this Bond Indenture and of any indenture supplemental hereto shall have the respective meanings specified in this Section 1.01 or in the Recitals hereto.

"Act of Bankruptcy" means the filing of a petition in bankruptcy (or other commencement of a bankruptcy, insolvency or similar proceeding) by or against the Borrower under any applicable bankruptcy, insolvency, reorganization or similar law, as now or hereafter in effect.

"Additional Payments" means the amounts required to be paid by the Borrower pursuant to the provisions of Section 4.04 of the Loan Agreement.

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

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

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

"Authorized Issuer Representative" means any person or persons specifically authorized by the Ordinance to take the action intended.

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

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

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

"Bond Counsel" means Ice Miller LLP or any attorney at law or firm of attorneys, of nationally recognized standing in matters pertaining to the federal tax exemption of interest on

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bonds issued by states and political subdivisions, and duly admitted to practice law before the highest court of any state of the United States of America or the District of Columbia.

"Bond Fund" means the Bond Fund created in Section 4.01 hereof.

"Bond Indenture" or "Indenture" means this Bond Indenture and all indentures supplemental hereto.

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

"Bond Purchase Agreement" means the Bond Purchase Agreement, dated \_\_\_\_\_, 2018, among the Underwriter, the Issuer and the Borrower.

"Bond Trustee" means \_\_\_\_\_, until a successor Bond Trustee shall have become such pursuant to the applicable provisions of this Indenture, and thereafter, "Bond Trustee" shall mean the successor Bond Trustee.

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

"Bond Year" means each annual period of twelve months ending on \_\_\_\_\_ as applicable; provided, however, that the first annual period commences on the date of the original issuance and delivery of the Bonds and ends on \_\_\_\_\_, 2019 and the last of which ends on the maturity of the Bonds.

"Bonds" means the Issuer's Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018 in the aggregate principal amount of not to exceed \$ issued under and secured by this Bond Indenture.

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

"Borrower" means Mark Twain NHPF, LLC, a limited liability company organized under the laws of the State of Illinois, and its successors and assigns.

"Borrower Documents" when used with respect to the Borrower, means all documents and agreements executed and delivered by the Borrower as security for or in connection with the issuance of the Bonds, including but not limited to, the Financing Documents and the Mortgage

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Loan Documents. The Borrower Documents do not include any documents or agreements to which the Borrower is not a direct party, including the Bonds or this Indenture.

"Borrower's Tax Certificate" means the Borrower's Tax Certificate, dated the Closing Date, executed and delivered by the Borrower in connection with the issuance of the Bonds.

"Business Day" means any day of the year on which (i) banks located in the City of Chicago and the city in which the principal office of the Bond Trustee is located, are not required or authorized to remain closed and (ii) The New York Stock Exchange is not closed.

"Cash Flow Projection" means a cash flow projection prepared by an Independent firm of certified public accountants, a financial advisory firm, a law firm or other Independent third party qualified and experienced in the preparation of cash flow projections for structured finance transactions similar to the Bonds, designated by the Borrower and acceptable to the Remarketing Agent and the Rating Agency, establishing, to the satisfaction of the Remarketing Agent and the Rating Agency, the sufficiency of (a) the amount on deposit in the Special Funds, (b) projected investment income to accrue on amounts on deposit in the Special Funds during the applicable period and (c) any additional Eligible Funds delivered to the Trustee by or on behalf of the Borrower to pay Bond Service Charges and the Administrative Expenses, in each instance, when due and payable, including, but not limited to, any cash flow projection prepared in connection with (i) the initial issuance and delivery of the Bonds, (ii) a proposed remarketing of the Bonds, as provided in Section 3.07 hereof, and (iii) the release of Eligible Funds from the Negative Arbitrage Account, as provided in Section 4.03 hereof.

"Certificate of the Issuer, " "Statement of the Issuer, " "Request of the Issuer" and "Requisition of the Issuer" mean, respectively, a written certificate, statement, request or requisition, with, or without the seal of the Issuer, signed in the name of the Issuer by an Authorized Issuer Representative. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and if so combined shall be read and construed as a single instrument.

"City Administrative Fee " means the City Administrative Fee to be paid by the Trustee on behalf of the Borrower to the Issuer, described in Section 4.15 of this Bond Indenture.

"Closing Date" means the initial date of delivery of the Bonds in exchange for the purchase price of the Bonds sized as set forth in Section 2.13(b).

"Code" means the Internal Revenue Code of 1986, as amended, and any regulations thereunder applicable to the Bonds.

"Collateral Fund" means the Collateral Fund created in Section 4.01 hereof.

"Collateral Payments" means Eligible Funds paid by or for the benefit of the Borrower in respect to the repayment of the Loan, to the Trustee for deposit into the Collateral Fund pursuant to Section 4.02 of the Loan Agreement and Section 4.06 hereof as a prerequisite to the advance of money held in the Project Fund.

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"Completion Certificate" means the certificate attached as Exhibit C to the Loan Agreement.

"Completion Date" means the date of the completion of the rehabilitation of the Project, as that date shall be certified as provided in Section 3.09 of the Loan Agreement.

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

"Continuing Disclosure Agreement" means the Continuing Disclosure Agreement, dated the date of issuance of the Bonds, between the Borrower and the Bond Trustee, as dissemination agent, as the same may amended, restated or supplemented from time to time.

"Controlling Holders " means, in the case of consent or direction to be given hereunder, the Holders of the majority in aggregate principal amount of the Outstanding Bonds.

"Controlling HUD and GNMA Requirements " means the National Housing Act and any applicable HUD or GNMA regulations, and related HUD or GNMA administrative requirements and prohibitions.

"Costs of Issuance " means the "issuance costs" with respect to the Bonds within the meaning of

Section 147(g) of the Code.

"Costs of Issuance Fund" means the Costs of Issuance Fund created in Section 4.01 hereof.

"Disbursement Agreement" means \_\_\_\_\_ j \_\_\_\_\_, relating to the funding of the Mortgage Loan by the Lender. i

"Dissemination Agent" means Digital Assurance Certification, LLC, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

"Dissemination Agent Fee" means the fee payable to the Dissemination Agent as compensation for its services and expenses in performing its obligations under the Continuing Disclosure Agreement; provided, however, the amount of the Dissemination Agent Fee payable under this Indenture is limited to money withdrawn from the Expense Fund and the Borrower will be responsible to pay the remaining amount of the Dissemination Agent Fee pursuant to Section 4.04 of the Loan Agreement.

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

"DTC Participant " means any participant contracting with DTC under its book-entry system and includes securities brokers and dealers, banks and trust companies and clearing corporations.

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"Eligible Funds" means, as of any date of determination, any of:

- a) the proceeds of the Bonds (including any additional amount paid to the Trustee as the purchase price thereof by the Underwriter);
- b) Lender Funds;
- c) amounts drawn by the Trustee on a letter of credit;
- d) remarketing proceeds of the Bonds (including any additional amount paid to the Trustee as the remarketing price thereof by the Remarketing Agent) received from the Remarketing Agent or any purchaser of Bonds (other than funds provided by the Borrower, the Issuer or any Affiliated Party of either the Borrower or the Issuer);
- e) any other amounts, including the proceeds of refunding bonds, for which the Trustee has received an Opinion of Counsel (which opinion may assume that no Holder or Beneficial Owner of Bonds is an "insider" within the meaning of the Bankruptcy Code) to the effect that (A) the use of such amounts to make payments on the Bonds would not violate Section 362(a) of the Bankruptcy Code or that relief from the automatic stay provisions of such Section 362(a) would be available from the bankruptcy court and (B)



payments of such amounts to Holders would not be avoidable as preferential payments under Section 547 or 550 of the Bankruptcy Code should the Issuer or the Borrower become a debtor in proceedings commenced under the Bankruptcy Code;

- f) any payments made by the Borrower and held by the Trustee for a continuous period of 123 days, provided that no Act of Bankruptcy has occurred during such period; and
- g) investment income derived from the investment of the money described in (a) through (f) above.

"Eligible Investments " means to the extent authorized under State law any of the following investments which mature (or are redeemable at the option of the Trustee) at such time or times as to enable disbursements to be made from the fund in which such investment is held or allocated in accordance with the terms of this Indenture:

- a) Government Obligations; and

b) to the extent permitted in Section 4.10 hereof, shares or units in any money market mutual fund rated "AAAm" by S&P (or if S&P is not the Rating Agency or a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Trustee or its affiliates or for which the Trustee or an affiliate thereof serves as investment advisor or provides other services to such mutual fund and receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose

investment portfolio consists solely of direct obligations of the government of the United States of America.

"Eligible Investments" shall not include the following: (1) any investment with a final maturity or any agreement with a term ending later than the earliest of (i) the current Mandatory Tender Date in effect at the time of investment, (ii) the Maturity Date, and (iii) the Optional Redemption Date (except (A) obligations that provide for the optional or mandatory tender, at par, by the holder of such obligations at any time and (B) Government Obligations irrevocably deposited with the Trustee for payment of Bonds pursuant to Article IX hereof), and (2) any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

"Event of Default" means (a) with respect to this Indenture, any of the events described as an Event of Default in Section 6.01 hereof and (b) with respect to the Loan Agreement, any of the events described as an Event of Default in Section 8.01 of the Loan Agreement.

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

"Extension Payment" means the amount due, if any, to provide adequate additional funds for the payment of Bond Service Charges and Administrative Expenses during a Remarketing Period in connection with the change or extension of the Mandatory Tender Date pursuant to Section 3.07 hereof, and (a) which shall be determined by a Cash Flow Projection approved in writing by the Rating Agency and (b) must consist

of Eligible Funds other than the proceeds of the Bonds.

"Federal Tax Status " means, as to the Bonds, the status of the interest on the Bonds as excludable from gross income for federal income tax purposes of the Holders of the Bonds .(except on Bonds while held by a substantial user or related person, each as defined in the Code).

"FHA " means the Federal Housing Administration, an organizational unit within HUD, and may refer to the Commissioner thereof, any authorized representative thereof or the successor thereof.

"FHA Commitment" means the Commitment for Insurance of Advances issued by FHA with respect to FHA Insurance on the Mortgage Loan, as the same may be amended.

"FHA Insurance " means the mortgage insurance for the Mortgage Loan by FHA under the provisions of Section 220 of the National Housing Act and the regulations promulgated thereunder.

"Financing Documents " means this Indenture, the Bonds, the Loan Agreement, the Note, the Disbursement Agreement, the Borrower's Tax Certificate, the Issuer's Tax Certificate, the Tax Regulatory Agreement, the Bond Purchase Agreement, the Continuing Disclosure Agreement, the Remarketing Agreement and any other instrument or document executed in connection with the Bonds, together with all modifications, extensions, renewals and replacements thereof, but excluding the GNMA Documents and the Mortgage Loan Documents.

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"Force Majeure" means any of the causes, circumstances or events described as constituting Force Majeure in Section 8.01 of the Loan Agreement.

"GNMA " means the Government National Mortgage Association, and its successors and assigns.

"GNMA Certificate " means a mortgage backed security issued by the Lender, guaranteed as to timely payment of principal and interest by GNMA pursuant to the National Housing Act and the regulations thereunder, and issued with respect to and backed by the Mortgage Loan.

"GNMA Documents " means any GNMA Certificate, the commitment issued by GNMA to the Lender to guarantee the GNMA Certificate or GNMA Certificates and all other documents, certifications and assurances executed and delivered by the Lender, GNMA or the Borrower in connection with the GNMA Certificate or GNMA Certificates.

"Government Obligations" means direct obligations of the United States of America (including obligations issued or held in book-entry form on the books of the Department of Treasury), and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by the United States of America.

"Holder" or "Bondholder" when used with respect to any Bond, means the Person in whose name such Bond is registered.

"HUD" means the United States Department of Housing and Urban Development, and its successors.

"HUD Regulatory Agreement" means the Regulatory Agreement for Insured Multifamily Housing Projects between the Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

"Indenture" means this Bond Indenture, dated as of \_\_\_\_\_, 2018, between the Issuer and the Bond Trustee, as amended or supplemented from time to time.

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

"Inducement Ordinance " means the inducement ordinance adopted by the City Council of the Issuer on September 24, 2015 with respect to the Project.

"Initial Borrower Deposit" means funds in the amount of \$ \_\_\_\_\_ provided by or on behalf of the Borrower, which is to be deposited as provided in Section 4.02(b) hereof.

"Initial Interest Rate " means \_\_\_\_\_ % per annum.

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"Initial Mandatory Tender Date " means June 1, 2020.

"Initial Remarketing Date" means the Initial Mandatory Tender Date, but only if the conditions for remarketing the Bonds on such date as provided in Section 3.07 hereof are satisfied.

"Interest Payment Date " means (a) June 1 and December 1 of each year beginning June 1, 2019, (b) each Redemption Date and (c) each Mandatory Tender Date. In the case of insufficient funds to pay the purchase price on the Bonds following Mandatory Tender on the Initial Mandatory Tender Date, "Interest Payment Date" also means the first Business Day of each month as provided in the second paragraph of Section 2.02 hereof. In the case of a payment of defaulted interest, "Interest Payment Date" also means the date of such payment established pursuant to Section 2.03 hereof.

"Interest Period" means, initially, the period from the Closing Date to and including June 1, 2019, and thereafter, the period commencing on each succeeding Interest Payment Date and ending on the last day of the month preceding the next Interest Payment Date.

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

"Interest Rate for Advances" means the rate per annum which is two percent plus that interest rate

announced by the Trustee in its lending capacity as a bank as its "Prime Rate" or its "Base Rate."

"Investor Member" means \_\_\_\_\_, and its permitted successors and assigns.

"Issuer Documents " means the Financing Documents to which the Issuer is a party.

"Issuer Fee" means the amount of \$ \_\_\_\_\_, which represents 1.5% of the par amount of the Bonds, paid by the Trustee on behalf of the Borrower to the Issuer on the Closing Date in connection with, and as consideration for, the issuance of the Bonds.

["Issuer's Tax Certificate" means the Issuer's Tax Certificate, dated the Closing Date, from the Issuer.]

"Land Use Restriction Agreement" means the Land Use Restriction Agreement dated as of \_\_\_\_\_, 2018, between the Issuer and the Borrower with respect to the Project and the Bonds.

"Lender" means Bellwether Enterprise Real Estate Capital, LLC, an Ohio limited liability company.

"Lender Funds" means warehouse funds or other funds of the Lender to be advanced by the Lender to the Trustee and/or proceeds, if any, received from the sale by the Lender of GNMA Securities, which, in the aggregate, do not exceed \$ \_\_\_\_\_, and which do not represent an advance of Mortgage Loan funds.

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"Loan " means the loan by the Issuer to the Borrower of the proceeds received from the sale of the Bonds.

"Loan Agreement" means the Loan Agreement dated as of the date hereof among the Issuer, the Borrower and the Bond Trustee, as the same may be amended, restated or supplemented from time to time.

"Loan Payments" means the amounts required to be paid by the Borrower in repayment of the Loan pursuant to the provisions of the Note and Section 4.01 of the Loan Agreement.

"Local Time " means Eastern time (daylight or standard, as applicable) in Indianapolis, Indiana.

\* "Mandatory Tender " means a tender of Bonds required by Section 3.05 hereof.

"Mandatory Tender Date " means (a) the Initial Mandatory Tender Date and (b) if the Bonds Outstanding on the Initial Mandatory Tender Date or on any subsequent Mandatory Tender Date are remarketed pursuant to Section 3.07 hereof for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

"Maturity Date " means December 1, 2021.

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

"Mortgage Loan" means the mortgage loan to be made from the Lender to the Borrower in the principal amount of \$[27,900,000] with respect to the Project, as described and provided for in the FHA Commitment.

"Mortgage Loan Documents" means the mortgage, the mortgage note, the HUD Regulatory Agreement and all other documents required by the Lender and/or FHA in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Negative Arbitrage Account" means the Negative Arbitrage Account of the Bond Fund created in Section 4.01 hereof.

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

"Notice Address" means with respect to each of the Persons listed below the address set forth below until such time as such Person shall have notified each of the other Persons listed below of a new Notice Address.

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If to the Issuer: City of Chicago  
Department of Housing and Economic Development City Hall  
121 N. LaSalle Street, Room 1006 Chicago, IL 60602

With copies to:

City of Chicago  
Office of the Corporation Counsel City Hall - Room  
600 121 North LaSalle Street Chicago, Illinois 60602  
Attention: Finance and Economic Development Division

and to:

City of Chicago  
Department of Finance - Financial Policy 33 North LaSalle Street,  
Suite 600 Chicago, Illinois 60602 Attention: Deputy Comptroller

If to the Borrower: Mark Twain NHPF, LLC

Attention:

with a copy to:

Attention:

If to the Lender:

Bellwether Enterprise Real Estate Capital, LLC  
1360 East 9<sup>th</sup> Street, Suite 300 Cleveland, Ohio 44114 Attention:  
FHA Loan Servicing Department

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with a copy to:

Krooth & Altman LLP Suite 400  
1850 M Street, NW Washington, DC  
20036 Attention: Harrison Smith

If to the Bond Trustee:

Attention: Trust Department

If to the Remarketing Agent:

Stifel, Nicolaus & Company, Incorporated  
3630 Peachtree Road NE Atlanta,  
Georgia 30326 Attention: Cody Wilson

If to the Investor Member:

Attn:

With a copy to:

Attention:

If to the Rating Agency: S&P Global Ratings  
55 Water Street, 38<sup>th</sup> Floor New York, New York  
10041 Attention: Public Finance Surveillance Pubfin  
housing@spRlobal.com  
<mailto:housing@spRlobal.com>

"Notice by Mail" or "notice" of any action or condition "by Mail" shall mean a written notice meeting the requirements of this Bond Indenture mailed by first-class mail to the Holders of specified registered Bonds at the addresses shown in the Bond Register.

"Optional Redemption Date " means , 20 .

"Ordinance" means the ordinance adopted by the City Council of the Issuer on September , 2018, authorizing the issuance, sale and delivery of the Bonds.

"Organizational Documents" means the Borrower's Operating Agreement dated

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"Outstanding" when used with respect to the Bonds, means all Bonds theretofore authenticated and delivered under this Bond Indenture, except:

- a) Bonds theretofore cancelled by the Bond Trustee or theretofore delivered to the Bond Trustee for cancellation;
- b) Bonds for the payment or redemption of which money or obligations shall have been theretofore deposited with the Bond Trustee in accordance with Article IX hereof; and
- c) Bonds in exchange for or in lieu of which other Bonds have been authenticated and delivered under this Bond Indenture.

"Participant" when used with respect to any Securities Depository means any participant of such Securities Depository.

"Paying Agent" or "paying agent" means the Bond Trustee and its successors designated pursuant to this Bond Indenture.

"Person" or "Persons" means one or more natural persons, firms, associations, partnerships, corporations, limited liability companies or public bodies.

"Plans and Specifications" means the plans and specifications describing the Project as now prepared and as they may be changed as provided in the Loan Agreement.

"Predecessor Bond" of any particular Bond means every previous Bond evidencing all or a portion of the same debt as that evidenced by the particular Bond. For the purposes of this definition, any Bond authenticated and delivered under Section 2.09 hereof in lieu of a lost, stolen or destroyed Bond shall, except as otherwise provided in Section 2.09, be deemed to evidence the same debt as the lost, stolen or destroyed Bond.

"Project" means

"Project Costs " means, to the extent authorized by the Code, any and all costs incurred by the Borrower with respect to the acquisition, rehabilitation, construction and equipping of the Project, including, without limitation, costs for site preparation, the planning of housing and related facilities and improvements, the acquisition of property, the removal, demolition or rehabilitation of existing structures, the construction of housing and related facilities and improvements, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors' and Borrower's overhead and supervisors' fees and costs directly allocable to the Project, administrative and other expenses necessary or incident to the Project and the financing thereof (including reimbursement to any municipality, county or entity for expenditures made for the Project), and interest accrued during construction and prior to the Completion Date.

"Project Fund" means the Project Fund created in Section 4.01 hereof

"Qualified Project Costs" means Project Costs (excluding Costs of Issuance) paid (i) after the date which is 60 days prior to the adoption of the Inducement Ordinance or (ii) prior to such date which are nevertheless eligible for reimbursement under the Code, which either constitute land or property of a character subject to the allowance for depreciation under Section 167 of the Code or are chargeable to a capital account with respect to the Project for federal income tax and financial accounting purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts within the meaning of Code Regulation 1.103-8(a)(1)(i); provided, however, that only such portion of interest accrued during construction of the Project shall constitute a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all Project Costs; and provided, further, that interest accruing after the Completion Date shall not be a Qualified Project Cost; and provided still further that, if any portion of the Project is being constructed by an Affiliated Party (whether as a general contractor or a subcontractor), "Qualified Project Costs" shall include only (a) the actual out-of-pocket costs incurred by such Affiliated Party in constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Affiliated Party and (c) any overhead expenses incurred by the Affiliated Party which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the construction of the Project or payments received by such Affiliated Party due to early completion of the Project (or any portion thereof).

"Rating Agency" means S&P Global Ratings, a business of Standard & Poor's Financial Services LLC, or its successor, if such rating agency is then maintaining a rating on the Bonds, and any other nationally recognized securities rating agency to which the Issuer has applied for a rating on any Outstanding Bonds and



which rating is currently in effect.

"Rating Category" means one of the generic rating categories of the Rating Agency.

"Rebate Amount " means the amount required to be rebated to the United States pursuant to Section 148 of the Code.

"Rebate Analyst" means a certified public accountant, financial analyst or attorney, or any firm of the foregoing, or a financial institution (which may include the Bond Trustee) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code and selected by the Issuer at the expense of the Borrower to calculate the Rebate Amount or, in the event that the Issuer fails to so select a Rebate Analyst and the Borrower fails to pay such fee one month prior to any date on which calculations are required to be made, any qualified person retained by the Bond Trustee to calculate the Rebate Amount. The initial Rebate Analyst shall be Tiber Hudson LLC.

"Rebate Analyst Fee" means the fee of the Rebate Analyst in an amount to be paid from moneys in the Rebate Fund and other funds provided by the Borrower for such purpose.

"Rebate Fund" means the Rebate Fund created in Section 4.01 hereof

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"Redemption Date" means any date fixed by the Bond Trustee on which Bonds are redeemed in accordance with this Bond Indenture, including (a) the Maturity Date, (b) the date of acceleration of the Bonds and (c) pursuant to Sections 3.01 and 3.05 hereof.

"Register" means the books kept and maintained by the Trustee for registration and transfer of Bonds pursuant to Section 2.10 hereof.

"Regular Record Date" means, with respect to any Bond, the fifteenth day of the calendar month next preceding an Interest Payment Date.

"Rehabilitation Expenditures" shall mean, unless otherwise provided in Section 147(d)(3) of the Code and the Regulations, any amount, whether or not financed with the net proceeds of the Bonds, that is:

properly chargeable to the capital account of the Project;

incurred by the Borrower, or by the seller of such building pursuant to applicable contract of sale, after the inducement date and prior to the date that is 2 years after the later of the issue date or the acquisition of such building by the Borrower;

incurred for property (or additions or improvements to property) in connection with the rehabilitation of a building comprising a part of the Project and, in the case of an integrated operation contained in such a building before its acquisition by the Borrower, the rehabilitation of existing equipment in such building or the replacement of such equipment with equipment having substantially the same function; and

not an expenditure described in Section 47(c)(2)(B) of the Code.

"Remarketing Agent" means Stifel, Nicolaus & Company, Incorporated or any successor as Remarketing Agent designated in accordance with Section 7.17 hereof.

"Remarketing Agent's Fee " means the fee of the Remarketing Agent for its remarketing services.

"Remarketing Agreement" means the Remarketing Agreement, dated as of \_\_\_\_\_ 1, 2018, by and between the Borrower and the Remarketing Agent, as amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor.

"Remarketing Date " means the Initial Remarketing Date and, if the Bonds Outstanding on such date or on any subsequent Remarketing Date are remarketed pursuant to Section 3.07 for a Remarketing Period that does not extend to the final maturity of the Bonds, the day after the last day of the Remarketing Period.

"Remarketing Expenses" means the costs and expenses, other than Administrative Expenses, incurred by the Trustee and its counsel, the Remarketing Agent and its counsel, the Issuer and its counsel, and Bond Counsel in connection with the remarketing of the Bonds, including bond printing and registration costs, costs of funds advanced by the Remarketing Agent, registration and filing fees, rating agency fees, the costs of any cash flow verification

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

"Remarketing Notice Parties" means the Borrower, the Issuer, the Trustee, the Remarketing Agent and the Lender.

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

"Remarketing Proceeds Account" means the Remarketing Proceeds Account of the Bond Fund created in Section 4.01 hereof.

"Remarketing Rate" means the interest rate or rates established pursuant to the third paragraph of Section 2.02 and borne by the Bonds then Outstanding from and including each Remarketing Date to, but not including, the next succeeding Remarketing Date or the final Maturity Date of the Bonds, as applicable.

"Reserved Rights" of the Issuer means (a) the right of the Issuer to amounts payable to it pursuant to Section 4.04 of the Loan Agreement, (b) all rights which the Issuer or its members, directors, officers, officials, agents or employees may have under this Indenture and the Financing Documents to indemnification by the Borrower and by any other persons and to payments for expenses incurred by the Issuer itself, or its members, directors, officers, officials, agents or employees, (c) the right of the Issuer to receive notices, reports or other information, make determinations and grant approvals hereunder and under the other Financing Documents, (d) all rights of the Issuer to enforce the representations, warranties, covenants and agreements of the Borrower

pertaining in any manner or way, directly or indirectly, to the requirements of the Act or of the Issuer, and set forth in any of the Financing Documents or in any other certificate or agreement executed by the Borrower, (e) all inspection rights of the Issuer, (f) all rights of the Issuer in connection with any amendment to or modification of the Financing Documents, and (g) all enforcement remedies with respect to the foregoing.

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

"Securities Depository" means any securities depository registered as a clearing agency with the Securities and Exchange Commission pursuant to Section 17A of the Securities Exchange Act of 1934, as amended, and appointed as a securities depository for the Bonds.

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

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"Special Record Date " means the date and time established by the Bond Trustee for the determination of which Holders shall be entitled to receive overdue interest or principal on the Bonds pursuant to Section 2.03 hereof.

"State" means the State of Illinois.

"Supplemental Indenture " means a supplement to this Bond Indenture being authorized and executed pursuant to Section 8.01 or Section 8.02 hereof

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

"Tax Regulatory Agreement" means the Tax Regulatory Agreement, dated the Closing Date, between the Borrower and the Issuer relating to the Bonds.

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

"Trust Estate" means the property rights, money, securities and other amounts pledged and assigned pursuant to the Granting Clauses of this Bond Indenture.

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

"Underwriter" means Stifel, Nicolaus & Company, Incorporated.

Section 1.02 Interpretation. Reference to Articles, Sections, and other subdivisions are to the designated Articles, Sections, and other subdivisions of this Bond Indenture. The headings of this Bond Indenture are for convenience only and do not define or limit the provisions hereof Words of any gender shall be deemed and construed to include correlative words of the other genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate.

## **ARTICLE 2 THE BONDS**

Section 2.01 Issuance of Bonds. The Bonds shall be issued in the maximum aggregate principal amount of \$ \_\_\_\_\_; shall be designated "Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018"; and shall be in the Authorized Denominations requested by the Holder (provided, however, that each Bond shall have only one principal maturity date, unless the Trustee shall be directed to authenticate and deliver a Bond of more than one maturity). Unless the Issuer shall otherwise direct, the Bonds shall be numbered from R-1 upward.

Each Bond shall be (i) in the form attached as Exhibit A to this Bond Indenture, (ii) dated \_\_\_\_\_, 2018, (iii) issued only as fully registered bonds, and, except as provided in Section 2.07 hereof the Holder of a Bond shall be regarded as the absolute owner thereof for all purposes of this Indenture.

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Section 2.02 Maturity and Interest. The Bonds shall bear interest on the principal amount Outstanding from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or provided for, from their date of initial delivery, payable on each Interest Payment Date. The Bonds shall bear interest for each Interest Period at the Interest Rate all as more specifically set forth hereinafter. Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months. The Bonds shall mature on the Maturity Date, subject to prior redemption as set forth in Section 3.01 hereof and subject to Mandatory Tender for purchase as set forth in Section 3.05 hereof.

From the date of their initial delivery to, but not including, the Initial Mandatory Tender Date, the interest rate on the Bonds shall be the Initial Interest Rate. On the Initial Mandatory Tender Date, the Bonds shall be subject to Mandatory Tender pursuant to Section 3.05 hereof. If insufficient funds are available to pay the purchase price on the Bonds following such Mandatory Tender on the Initial Mandatory Tender Date, the Bonds shall accrue interest at the Maximum Interest Rate until funds are available for payment of the purchase price, with interest being paid monthly on the first Business Day of each month.

The Remarketing Agent shall establish the interest rate on the Bonds Outstanding for each Remarketing Period at the Remarketing Rate in accordance with this Section 2.02. Not less than ten (10) Business Days preceding each Remarketing Date, the Remarketing Agent, taking into consideration prevailing market conditions, shall, using its best professional judgment, determine the minimum rate(s) of interest which, if borne by the Bonds then Outstanding for the Remarketing Period specified by the Remarketing Agent at the direction of the Borrower as provided in Section 3.05 hereof, would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds that would not exceed the Maximum Interest Rate. The rate of interest determined in accordance with the previous sentence shall be the Remarketing Rate for the

specified Remarketing Period; provided that if the rate of interest so determined for such period would exceed the Maximum Interest Rate, the Bonds Outstanding shall be remarketed for the longest Remarketing Period for which the minimum rate of interest that would enable such Bonds to be remarketed at a price equal to 100% of the principal amount of such Bonds would not exceed the Maximum Interest Rate. Notwithstanding the foregoing, if the rate of interest so determined for any Remarketing Period would exceed the Maximum Interest Rate, the Bonds Outstanding shall not be remarketed and shall be redeemed from funds available to pay the tender price thereof in accordance with Section 3.05(e) hereof.

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

Section 2.03 Payment and Ownership of Bonds. To the extent provided in and except as otherwise permitted by this Indenture, the Bonds shall be special limited obligations of the Issuer and the Bond Service Charges thereon shall be payable equally and ratably solely from and secured solely by the Trust Estate. Notwithstanding anything herein contained to the

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contrary, any obligation which the Issuer may incur under this Indenture or under any instrument executed in connection herewith which shall entail the expenditure of money shall not be a general obligation of the Issuer but shall be a limited obligation payable solely from amounts assigned to the Trustee pursuant to this Indenture.

Bond Service Charges shall be payable in lawful money of the United States of America without deduction for the services of the Trustee. Subject to the provisions of Section 2.12 hereof, (a) the principal of any Bond shall be payable when due to a Holder by the Trustee, and (b) interest on any Bond shall be paid on each Interest Payment Date by check or draft which the Trustee shall cause to be mailed on that date to the Person in whose name the Bond (or one or more Predecessor Bonds) is registered at the close of business on the Regular Record Date applicable to that Interest Payment Date on the Register at the address appearing therein.

If and to the extent, however, that the Issuer shall fail to make payment or provision for payment of interest on any Bond on any Interest Payment Date, that interest shall cease to be payable to the Person who was the Holder of that Bond (or of one or more Predecessor Bonds) as of the applicable Regular Record Date. In that event, except as provided below in this Section, when money becomes available for payment of the interest, (a) the Trustee shall, pursuant to Section 6.06Cd) hereof, establish a Special Record Date for the payment of that interest which shall be not more than 15 nor fewer than 10 days prior to the date of the proposed payment, and (b) the Trustee shall cause notice of the proposed payment and of the Special Record Date to be mailed by first-class mail, postage prepaid, to each Holder at its address as it appears on the Register not fewer than 10 days prior to the Special Record Date and, thereafter, the interest shall be payable to the Persons who are the Holders of the Bonds (or their respective Predecessor Bonds) at the close of business on the Special Record Date.

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

Except as provided in this Section and Section 2.09 hereof, (a) the Holder of any Bond shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, (b) payment of or on account of the Bond Service Charges on any Bond shall be made only to or upon the order of that Holder or its duly authorized attorney in the manner permitted by this Indenture, and (c) neither the Issuer nor the Trustee shall, to the extent permitted by law, be affected by notice to the contrary. All of those payments shall be valid and effective to satisfy and discharge the liability upon that Bond, including without limitation, the interest thereon, to the extent of the amount or amounts so paid.

Section 2.04 Restriction on Issuance of Bonds. No Bonds may be issued under the provisions of this Bond Indenture except in accordance with this Article. The total principal amount of Bonds that may be issued hereunder, other than Bonds issued pursuant to the provisions of Section 2.09 hereof or in substitution for other Bonds, is expressly limited to the amount set forth in Section 2.01.

Section 2.05 Limited Obligations. The Bonds and the interest thereon are limited obligations of the Issuer, payable solely from the revenues, receipts and security pledged therefor

in the Granting Clauses hereof. The Bonds, together with premium, if any, and interest thereon, do not constitute an indebtedness, liability, general or moral obligation or a pledge of the full faith or loan of credit of the Issuer, the State, or any political subdivision of the State within the meaning of any constitutional or statutory provisions. None of the Issuer, the State or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto except from the payments pledged with respect thereto and certain reserve funds established in connection therewith. Neither the faith and credit nor the taxing power of the United States of America, the Issuer, the State or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds are not a debt of the United States of America or any agency thereof, and are not guaranteed by the United States of America or any agency thereof.

Section 2.06 Bond Indenture Constitutes Contract. In consideration of the purchase and acceptance of the Bonds issued hereunder by those who shall hold them from time to time, the provisions of this Indenture shall be deemed to be a part of, and continue to be, a contract between the Issuer and the Holders of the Bonds from time to time.

Section 2.07 Execution. The Bonds shall be executed on behalf of the Issuer by the manual or facsimile signature of its Mayor, attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk, under the official seal, or a facsimile thereof, of the Issuer. Any facsimile signatures shall have the same force and effect as if said officers had manually signed said Bonds. Any reproduction of the official seal of the Issuer on the Bonds shall have the same force and effect as if the official seal of the Issuer had been impressed on the Bonds.

In case any officer whose manual or facsimile signature shall appear on any Bonds shall cease to be such officer before the delivery of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if he had remained in office until delivery, and also any Bond may bear the facsimile signatures of, or may be signed by, such persons as at the actual time of the execution of such Bond shall be the proper officers to sign

such Bond although at the date of such Bond such persons may not have been such officers.

Section 2.08 Authentication. Only such Bonds as shall have endorsed thereon a certificate of authentication substantially in the form on the attached Exhibit A duly executed by the Bond Trustee shall be entitled to any right or benefit under this Bond Indenture. No Bond shall be valid or obligatory for any purpose unless and until such certificate of authentication shall have been duly executed manually by the Bond Trustee; and such executed certificate upon any such Bond shall be conclusive evidence that such Bond has been authenticated and delivered under this Bond Indenture. The Bond Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer of the Bond Trustee, but it shall not be necessary that the same person sign the certificate of authentication of all of the Bonds.

Section 2.09 Mutilated, Lost, Stolen or Destroyed Bonds. In the event any Bond is mutilated, lost, stolen or destroyed, the Issuer shall execute and the Bond Trustee shall authenticate a new Bond, of like date, interest rate, maturity and denomination as that mutilated, lost, stolen or destroyed. Any mutilated Bond shall first be surrendered to the Bond Trustee; and in the case of any lost, stolen or destroyed Bond, there shall first be furnished to the Issuer and

the Bond Trustee evidence of such loss, theft or destruction reasonably satisfactory to them together with indemnity reasonably satisfactory to them. In the event any such Bond shall have matured, instead of issuing a duplicate Bond or Bonds the Bond Trustee may pay the same without surrender thereof. The Issuer and the Bond Trustee may charge the holder or owner of such Bond with their reasonable fees and expenses, including the cost of printing replacement Bonds.

Every new Bond issued pursuant to this Section shall, with respect to such Bond, constitute an additional contractual obligation of the Issuer, whether or not the mutilated, lost, stolen or destroyed Bond shall be found at any time, and shall be entitled to all the benefits of this Bond Indenture equally and proportionately with any and all other Bonds duly issued hereunder. All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, stolen or destroyed Bonds and shall preclude any and all rights or remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 2.10 Transfer and Exchange of Bonds; Persons Treated as Holders. The Bond Trustee as Registrar shall cause a bond register (herein sometimes referred to as the "Bond Register") to be kept for the registration of transfers of Bonds. Any Bond may be transferred only upon an assignment duly executed by the registered Holder or his or her duly authorized representative in such form as shall be satisfactory to the Registrar, and upon surrender of such Bond to the Bond Trustee for cancellation. Whenever any Bond or Bonds shall be surrendered for transfer, the Issuer shall execute and the Bond Trustee shall authenticate and deliver to the transferee a replacement fully registered Bond or Bonds of Authorized Denomination in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest at the same rate and maturing on the same date or dates as, the Bonds being presented and surrendered for transfer.

Any Bond may, in accordance with its terms, be exchanged, at the office of the Bond Trustee, for a new fully registered Bond or Bonds, of the same maturity, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed principal amount of, and bearing interest

at the same rate as, the Bonds being exchanged. In the event of a partial redemption of a Bond, the Bond Trustee shall authenticate and deliver to the Owner thereof a new Bond of like date, interest rate, maturity and denomination as the partially redeemed Bond in the amount of the unredeemed principal thereof.

In all cases in which Bonds shall be transferred or exchanged hereunder, the Bond Trustee may make a charge sufficient to reimburse it for any tax, fee or other governmental charge required to be paid with respect to such transfer or exchange.

All Bonds issued upon any transfer or exchange of Bonds shall be the valid limited obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Bond Indenture, as the Bonds surrendered upon transfer or exchange. Neither the Issuer nor the Bond Trustee shall be required to make any exchange or transfer of a Bond during a period beginning at the opening of business 15 days before (i) any Interest Payment Date (including any special interest payment date described in Section 2.02 hereof), or (ii) the day of the mailing of a

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notice of redemption of Bonds and ending at the close of business on the day of such mailing or such Interest Payment Date, or to transfer or exchange any Bonds selected for redemption, in whole or in part.

The Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes and payment of or on account of the principal of and premium and interest on any such Bond shall be made only to or upon the order of the registered Holder thereof or his legal representative, and neither the Issuer nor the Bond Trustee shall be affected by any notice to the contrary. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond to the extent of the sum or sums to be paid.

Section 2.11 Safekeeping and Cancellation of Bonds. Any Bond surrendered for the purpose of payment or retirement, or for exchange, or for replacement or payment pursuant to Section 2.09, shall be cancelled upon surrender thereof to the Bond Trustee. Certification of such surrender and cancellation shall be made to the Issuer by the Bond Trustee. Cancelled Bonds, or unissued Bond inventory held in blank by the Bond Trustee upon the maturity or total redemption of the Bonds, shall be destroyed by shredding or cremation by the Bond Trustee, and certificates of such destruction (describing the manner thereof) shall be provided by the Bond Trustee to the Issuer.

Section 2.12 Book-Entry Provisions. The provisions of this Section shall apply so long as the Bonds are maintained in book-entry form with The Depository Trust Company or another Securities Depository, any provisions of this Bond Indenture to the contrary notwithstanding.

a) Payments. The Bonds shall be payable to the Securities Depository, or its nominee, as the registered owner of the Bonds, on each date on which the principal of, interest on, and premium, if any, on the Bonds is due as set forth in this Indenture and in the Bonds. Such payments shall be made to the offices of the Securities Depository specified by the Securities Depository to the Issuer and the Bond Trustee in writing. Without notice to or the consent of the beneficial owners of the Bonds, the Issuer and the Securities Depository may agree in writing to make payments of principal, premium, if any, and interest in a manner different from that set forth herein. If such different manner of payment is agreed upon, the Issuer shall give the Bond Trustee notice thereof, and the Bond Trustee shall make



payments with respect to the Bonds in the manner specified in such notice as set forth herein. Neither the Issuer nor the Bond Trustee shall have any obligation with respect to the transfer or crediting of the principal of, interest on, and premium, if any, on the Bonds to Participants or the beneficial owners of the Bonds or their nominees.

b) Replacement of the Securities Depository. The Issuer may, and in the case of subparagraph (ii) or (iii) below shall, discontinue use of a Securities Depository as the depository of the Bonds if (i) the Issuer, in its sole discretion, determines that (A) such Securities Depository is incapable of discharging its duties with respect to the Bonds, or (B) the interest of the beneficial owners of the Bonds might be adversely affected by the continuation of the book-entry system with such Securities Depository as the depository for the Bonds, (ii) the beneficial owners of 100% of the Bonds Outstanding direct the

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Issuer to do so, or (iii) such Securities Depository determines not to continue to act as a depository for the Bonds or is no longer permitted to act as such depository. Notice of any determination pursuant to clauses (i), (ii) or (iii) shall be given to such Securities Depository at least 30 days prior to any such determination (or such fewer number of days as shall be acceptable to such Securities Depository). The Issuer shall have no obligation to make any investigation to determine the occurrence of any events that would permit the Issuer to make any determination described in this paragraph.

c) Discontinuance of Book-Entry or Change of Securities Depository. If, following a determination or event specified in paragraph (b) above, the Issuer discontinues the maintenance of the Bonds in book-entry form with the then current Securities Depository, the Issuer will issue replacement Bonds to the successor Securities Depository, if any, or, if no replacement Securities Depository is selected for the Bonds, directly to the Participants as shown on the records of the former Securities Depository or, to the extent requested by any Participant or if directed to do so by the beneficial owners of 100% of the Bonds Outstanding pursuant to subparagraph (b)(ii) above, to the beneficial owners of the Bonds shown on the records of such Participant. Replacement Bonds shall be in fully registered form and in authorized denominations, be payable as to interest on the Interest Payment Dates of the Bonds by check or draft mailed to each registered owner at the address of such owner as it appears on the bond registration books maintained by the Bond Registrar for such purpose at the principal corporate trust office of the Bond Trustee or at the option of any registered owner of not less than \$1,000,000 principal amount of Bonds, by wire transfer to any address in the continental United States of America on such Interest Payment Date to such registered owner as of the Regular Record Date relating to such Interest Payment Date, if such registered owner provides the Bond Trustee with written notice of such wire transfer address not later than such Regular Record Date (which notice may provide that it will remain in effect with respect to subsequent Interest Payment Dates unless and until changed or revoked by subsequent notice). Principal and redemption premium, if any, on the replacement Bonds are payable only upon presentation and surrender of such replacement Bond or Bonds at the principal corporate trust office of the Bond Trustee.

d) Effect of Book-Entry System. The Securities Depository and its Participants and the beneficial owners of the Bonds, by their acceptance of the Bonds, agree that the Issuer and the Bond Trustee shall not have liability for the failure of such Securities Depository to perform its obligations to the Participants and the beneficial owners of the Bonds, nor shall the Issuer or the Bond Trustee be liable for the failure of any Participant or other nominee of the beneficial owners to perform any obligation of the Participant to a beneficial owner of the Bonds.

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Section 2.13 Delivery of the Bonds. Upon execution and delivery of this Bond Indenture, and satisfaction of the conditions established by the Issuer in the Bond Resolution and in the Bond Purchase Agreement for delivery of the Bonds, the Issuer shall execute the Bonds and deliver them to the Trustee with written directions to authenticate them. The Bond Trustee shall authenticate and deliver the Bonds as provided in this Bond Indenture, but only upon the receipt of the following:

i) An order of the Issuer directing the Bond Trustee to authenticate and deliver the Bonds (a form of which is attached hereto as Exhibit A) against receipt of the initial purchase price therefor;

ii) A certified copy of the Ordinance;

iii) Executed counterparts of this Indenture and the other Financing Documents specifically listed in the definition of Financing Documents;

iv) An opinion of Counsel to the Issuer to the effect that the Bonds have been duly authorized, executed and delivered and that the Bond Documents have been duly executed and delivered by the Issuer and constitute valid and binding obligations of the Issuer, enforceable against the Issuer in accordance with their respective terms, subject to bankruptcy, insolvency or other laws affecting creditors' rights generally and, with respect to certain remedies which require, or may require, enforcement by a court of equity, such principles of equity as the court having jurisdiction may impose;

v) An opinion of Bond Counsel, substantially to the effect that this Indenture and the Bonds constitute legal, valid and binding obligations of the Issuer, subject to customary exceptions relating to bankruptcy and insolvency, and to the further effect that the interest on the Bonds is excludable from the gross income of the holders thereof for federal income tax purposes under existing law, subject to customary exceptions and this Indenture creates a lien on the Trust Estate;

vi) An opinion of counsel for the Borrower to the effect that the Borrower Documents have been duly authorized, executed and delivered by the Borrower and are legal, valid and binding agreements of the Borrower in accordance with their respective terms subject to customary qualifications and exceptions;

vii) Funds the Trustee is required to receive for deposit pursuant to Section 4.02

hereof;

viii) Reimbursement of all fees and expenses due to Trustee hereunder;

ix) A request and authorization signed by an Authorized Issuer Representative authorizing the Trustee to authenticate and to deliver the Bonds to the Underwriter upon payment to the Trustee for the account of the Issuer of the

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amount specified in such request and authorization plus accrued interest, if any, thereon to the date of delivery;

x) Evidence of recordation of the Land Use Restriction Agreement (which may be in the form of a title company certified copy); and;

xi) Any other documents or opinions which the Trustee, the Issuer or Bond Counsel may reasonably require, which requirement shall be deemed to be satisfied upon the delivery of the Opinion of Bond Counsel.

Section 2.14 Special Agreement with Holders. Notwithstanding any provision of this Indenture or of any Bond to the contrary, with the approval of the Borrower, the Trustee may, but shall not be obligated to, enter into an agreement with any Holder providing for making all payments to that Holder of principal of and interest on that Bond or any part thereof (other than any payment of the entire unpaid principal amount thereof) at a place and in a manner other than as provided in this Indenture and in the Bond, without presentation or surrender of the Bond, upon any conditions which shall be satisfactory to the Trustee and the Borrower; provided, that payment in any event shall be made to the Person in whose name a Bond shall be registered on the Register, with respect to payment of principal, on the date such principal is due, and, with respect to the payment of interest, as of the applicable Regular Record Date or Special Record Date, as the case may be.

The Trustee will furnish a copy of each of those agreements, certified to be correct by an officer of the Trustee, to the Issuer and the Borrower. Any payment of principal or interest pursuant to such an agreement shall constitute payment thereof pursuant to, and for all purposes of, this Indenture.

### ARTICLE 3 REDEMPTION OF BONDS

Section 3.01 Redemption of Bonds. The Bonds are subject to redemption prior to their stated maturity as follows:

a) Optional Redemption. The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on any date on or after the later to occur of (a) the date that the Project is placed in service, as certified in writing by the Borrower to the Trustee, and (b) the Optional Redemption Date at a redemption price equal to 100% of the principal amount of the Bonds plus accrued interest to the Redemption Date.

b) Reserved.

c) **Mandatory Redemption.** The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the Redemption Date, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has previously elected not to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in this Indenture have not been met by the dates and times set forth in Section 3.07(b) or Section 3.07(d) hereof, or (iii) the

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proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

**Section 3.02 Partial Redemption.** In the case of a partial redemption of Bonds when Bonds of denominations greater than \$5,000 are then Outstanding, each \$5,000 unit of face value of principal thereof shall be treated as though it were a separate Bond of the denomination of \$5,000. If it is determined that one or more, but not all of the \$5,000 units of face value represented by a Bond are to be called for redemption, then upon notice of redemption of a \$5,000 unit or units, the Holder of that Bond shall surrender the Bond to the Bond Trustee (a) for payment of the redemption price of the \$5,000 unit or units of face value called for redemption (including without limitation, the interest accrued to the date fixed for redemption and any premium), and (b) for issuance, without charge to the Holder thereof, of a new Bond or Bonds of the same series, of any Authorized Denomination or Denominations in an aggregate principal amount equal to the unmatured and unredeemed portion of, and bearing interest at the same rate and maturing on the same date as, the Bond surrendered.

If less than all of an Outstanding Bond of one maturity in a Book-Entry System is to be called for redemption, the Trustee shall give notice to the Depository or the nominee of the Depository that is the Holder of such Bond, and the selection of the Beneficial Ownership Interests in that Bond to be redeemed shall be at the sole discretion of the Depository and its participants.

**Section 3.03 Notice of Redemption.** Unless waived by any Holder of Bonds to be redeemed, official notice of redemption shall be given by the Trustee on behalf of the Issuer by mailing a copy of an official redemption notice by first-class mail, postage prepaid, to the Holder of each Bond to be redeemed, at the address of such Holder shown on the Register at the opening of business on the fifth day prior to such mailing, not less than 20 days nor more than 30 days prior to the date fixed for redemption. A second notice of redemption shall be given, as soon as practicable, by first-class mail to the Holder of each Bond which has been so called for redemption (in whole or in part) but has not been presented and surrendered to the Trustee within 30 days following the date fixed for redemption of that Bond.

All notices of redemption shall state:

- a) the Redemption Date;
- b) the redemption price;

c) if less than all Outstanding Bonds are to be redeemed, the identification by designation, letters, numbers or other distinguishing marks (and, in the case of partial redemption, the respective principal amounts) of the Bonds to be redeemed;

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d) that on the redemption date the redemption price will become due and payable upon each such Bond or portion thereof called for redemption, and that interest thereon shall cease to accrue from and after said date;

e) the place where such Bonds are to be surrendered for payment of the redemption price, which place of payment shall be the Designated Office of the Trustee, and;

f) that the notice of redemption is conditioned upon there being deposited with the Bond Trustee on or prior to the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed and, in the case of any redemption premium on Bonds, that there be on deposit Eligible Funds sufficient to pay such redemption premium; and

g) such other information as the Bond Trustee deems advisable.

Notices of redemption shall be revocable in the event that there is not on deposit with the Bond Trustee by 10:00 a.m. Central time on the date of redemption money sufficient to pay the redemption price of the Bonds to be redeemed or, in the case of any redemption premium on Bonds, there is not on deposit Eligible Funds sufficient to pay such redemption premium.

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

a) Each further notice of redemption given hereunder shall contain the information required above for an official notice of redemption plus (i) the CUSIP numbers of all Bonds being redeemed; (ii) the date of issue of the Bonds as originally issued; (iii) the rate of interest borne by each Bond being redeemed; (iv) the maturity date of each Bond being redeemed; and (v) any other descriptive information deemed necessary in the sole discretion of the Trustee to identify accurately the Bonds being redeemed.

b) Each further notice of redemption shall be sent at least 15 days before the redemption date by electronic mail, registered or certified mail or overnight delivery service to the Electronic Municipal Market Access ("EMMA") or if EMMA is not in existence, to one or more national information services that disseminate notices of redemption of obligations such as the Bonds.

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

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

Notice of any redemption hereunder with respect to Bonds held under a Book-Entry System shall be given by the Trustee only to the Depository, or its nominee, as the Holder of such Bonds. Selection of Beneficial Ownership Interests in the Bonds called for redemption is

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the responsibility of the Depository and any failure of such Depository to notify the Beneficial Owners of any such notice and its contents or effect will not affect the validity of such notice of any proceedings for the redemption of such Bonds.

Section 3.04 Payment of Redeemed Bonds. Notice of Redemption having been given in the manner provided in this Article III, the Bonds and portions thereof called for redemption shall become due and payable on the Redemption Date, and upon presentation and surrender thereof at the place or places specified in that notice, shall be paid at the redemption price, including interest accrued to the Redemption Date.

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

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

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

**Section 3.05 Mandatory Tender.**

a) Mandatory Tender for Purchase. All Outstanding Bonds shall be subject to Mandatory Tender by the Holders for purchase in whole and not in part on each Mandatory Tender Date. The purchase price for each such Bond shall be payable in lawful money of the United States of America by check or draft, shall equal 100% of the principal amount to be purchased and accrued interest, if any, to the Mandatory Tender Date, and shall be paid in full on the applicable Mandatory Tender Date.

b) Mandatory Tender Dates. The Mandatory Tender Dates shall consist of (i) the Initial Mandatory Tender Date and (ii) any subsequent dates for mandatory tender of the Bonds established by the Borrower with the consent of the Remarketing Agent in connection with a remarketing of the Bonds pursuant to Section 3.07 hereof.

c) Holding of Tendered Bonds. While tendered Bonds are in the custody of the Trustee pending purchase pursuant hereto, the tendering Holders thereof shall be deemed the owners thereof for

all purposes, and interest accruing on tendered Bonds through the day preceding the applicable Mandatory Tender Date is to be paid as if such Bonds had not been tendered for purchase.

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d) Effect of Prior Redemption. Notwithstanding anything herein to the contrary, any Bond tendered under this Section 3.05 will not be purchased if such Bond matures or is redeemed on or prior to the applicable Mandatory Tender Date.

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

f) Undelivered Bonds. Bonds shall be deemed to have been tendered for purposes of this Section 3.05 whether or not the Holders shall have delivered such Undelivered Bonds to the Trustee, and subject to the right of the Holders of such Undelivered Bonds to receive the purchase price of such Bonds on the Mandatory Tender Date, such Undelivered Bonds shall be null and void. If such Undelivered Bonds are to be remarketed, the Trustee shall authenticate and deliver new Bonds in replacement thereof pursuant to the remarketing of such Undelivered Bonds.

### **Section 3.06 Mandatory Tender Notice.**

(a) Notice to Holders. Not less than 30 days preceding a Mandatory Tender Date, the Trustee shall give written notice of mandatory tender to the Holders of the Bonds then Outstanding (with a copy to the Borrower, the Managing Member, and the Remarketing Agent) by Electronic Means or by first class mail, postage prepaid, at their respective addresses appearing on the Register stating:

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

ii) the address of the Designated Office of the Trustee at which Holders should deliver their Bonds for purchase;

iii) that all Outstanding Bonds will be purchased on the Mandatory Tender Date at a price equal to the principal amount of the Outstanding Bonds plus interest accrued to, but not including, the Mandatory Tender Date; and

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

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b) Second Notice. In the event that any Bond required to be delivered to the Trustee for payment of the purchase price of such Bond shall not have been delivered to the Trustee on or before the 30<sup>th</sup> day following a Mandatory Tender Date, the Trustee shall mail a second notice to the Holder of the Bond at its address as shown on the Register setting forth the requirements set forth in this Indenture for delivery of the Bond to the Trustee and stating that delivery of the Bond to the Trustee (or compliance with the provisions of this Indenture concerning payment of lost, stolen or destroyed Bonds) must be accomplished as a condition to payment of the purchase price or redemption price applicable to the Bond.

c) Failure to Give Notice. Neither failure to give or receive any notice described in this Section 3.06, nor the lack of timeliness of such notice or any defect in any notice (or in its content) shall affect the validity or sufficiency of any action required or provided for in this Section 3.06.

**Section 3.07 Remarketing of Bonds.**

a) Notice of Mandatory Tender. No later than 11:00 a.m. Local Time on the 30<sup>th</sup> day prior to each Mandatory Tender Date, the Trustee shall give notice to the Borrower and the Remarketing Agent by telephone or electronic mail, confirmed on the same day in writing, which states the aggregate principal amount of Bonds which are to be tendered or deemed to be tendered pursuant to Section 3.05 hereof, which shall be all Outstanding Bonds.

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

i) Notice by the Borrower to the Remarketing Agent of the Remarketing Period pursuant to Section 3.10 of the Loan Agreement, which period shall be approved in writing by the Remarketing Agent;

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

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

c) Remarketing. Not less than 10 days before each Remarketing Date, the Remarketing Agent shall offer for sale and use its best efforts to sell the Bonds Outstanding on the Remarketing Date at a price equal to 100% of the principal amount of such Bonds plus, if such Remarketing Date is a date other than an Interest Payment Date,



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accrued interest on such Bonds from the preceding Interest Payment Date to which interest has been paid. No later than the Business Day following the day on which the Remarketing Agent makes its determination of the Remarketing Rate, the Remarketing Agent shall give notice, by telephone or electronic mail, promptly confirmed in writing, to the Remarketing Notice Parties specifying the principal amount of Bonds, if any, it has remarketed (including Bonds to be purchased by the Remarketing Agent on the Remarketing Date for its own account), the Remarketing Rate(s) and the Remarketing Period applicable to the Bonds.

The Remarketing Agent shall have the right to remarket the Bonds tendered pursuant to Section 3.05 hereof; provided, however, that no such Bond shall be remarketed unless all of the Bonds are remarketed and all such Bonds shall be remarketed at a price of not less than an amount equal to 100% of the principal amount thereof plus accrued interest (if any). The Remarketing Agent shall have the right to purchase any Bond tendered or deemed tendered pursuant to Section 3.05 hereof at 100% of the principal amount thereof, and to thereafter sell such Bond. Any such purchase shall constitute a remarketing hereunder.

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

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

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

ii) If, not less than four (4) Business Days, the Trustee shall have received written notice from the Remarketing Agent that the Remarketing Agent has received written confirmation from the Rating Agency that the then current rating assigned to the Outstanding Bonds will continue to be effective on the Remarketing Date;

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

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(iv) If, not less than two (2) Business Days, there shall be on deposit with the Trustee, from Eligible Funds provided by the Borrower an amount sufficient to pay the estimated Remarketing Expenses for deposit in the Expense Fund, or provision for the payment of the estimated Remarketing Expenses shall have been made to the satisfaction of the Trustee and the Remarketing Agent;

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

e) Failure to Satisfy Final Conditions. If, (1) not less than four (4) Business Days or two (2) Business Days, as applicable, preceding a Remarketing Date, any condition set forth in paragraph (d) of this Section 3.07 has not been satisfied, or (2) by 11:00 a.m. Local Time on the fifteenth (15<sup>th</sup>) day prior to the Mandatory Tender Date then in effect, any condition set forth in paragraph (b) of this Section 3.07 has not been satisfied, or (3) by 11:00 a.m. Local Time on the Remarketing Date, there is a failure to remarket the Bonds or proceeds from the remarketing of the Bonds are insufficient to pay the purchase price of all of the Bonds then Outstanding, then the Remarketing Agent shall not sell any of the Outstanding Bonds on the Remarketing Date and all of the Bonds shall be purchased on the Mandatory Tender Date then in effect as provided in Section 3.05(e) hereof. In such event and in accordance with Section 3.08, the Trustee shall immediately cancel all such Bonds.

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

g) Delivery of Purchased Bonds. On or before the Business Day next preceding each Remarketing Date, the Remarketing Agent, by telephonic advice, shall notify the Trustee of (i) the principal amount of Bonds to be sold by the Remarketing Agent pursuant to Section 3.07 hereof and the purchase price, and, unless the Bonds are

then in the Book-Entry System, the names, addresses and social security numbers or other tax identification numbers of the proposed purchasers thereof and (ii) the principal amount of Bonds

tendered for purchase on such Remarketing Date which will not be sold by the Remarketing Agent pursuant to Section 3.07 hereof. Such telephonic advice shall be confirmed by written notice delivered or electronically communicated at the same time as the telephonic advice.

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

Section 3.08 Cancellation of Bonds. The Trustee shall immediately cancel Bonds if the tender price of the Bonds is paid from amounts other than proceeds derived from the remarketing of the Bond.

#### **ARTICLE 4 FUNDS; INVESTMENTS**

Section 4.01 Establishment of Funds. The following funds are hereby established and shall be maintained by the Bond Trustee under this Bond Indenture and held in trust by the Bond Trustee for the benefit of the Bonds:

- a) the Bond Fund, and therein the Negative Arbitrage Account and the Remarketing Proceeds Account (but only at such times as money is to be deposited or held in such Accounts as provided in this Indenture);
- b) Project Fund;
- c) Costs of Issuance Fund;
- d) Collateral Fund;
- e) Rebate Fund; and
- f) Expense Fund.

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

The Trustee shall, at the written direction of an Authorized Borrower Representative and may, in its discretion, establish such additional accounts within any fund, and subaccounts within any of the accounts, as the Issuer or the Trustee may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that fund and its

accounts, or for the purpose of complying with the requirements of the Code, but the establishment of any such account or subaccount shall not alter or modify any of the requirements of this Indenture with respect to a

deposit or use of money in the Special Funds or the Rebate Fund, or result in commingling of funds not permitted hereunder.

**Section 4.02 Application of Bond Proceeds.**

- a) The proceeds of the Bonds in the amount of \$ \_\_\_\_\_ shall be allocated, deposited or delivered by the Trustee to the Project Fund.
- b) On the Closing Date, the Trustee shall receive the Initial Borrower Deposit from or on behalf of the Borrower, which the Trustee shall deposit to the Costs of Issuance Fund.
- c) On the Closing Date, the Trustee shall deposit Eligible Funds in the \_\_\_\_\_
- c) amount of \$ \_\_\_\_\_ for deposit to the Negative Arbitrage Account of the Bond Fund.

**Section 4.03 Bond Fund.**

On the Closing Date, there shall be deposited in the Bond Fund, from the proceeds of the sale of the Bonds, any accrued interest paid with respect to the Bonds, and in the Negative Arbitrage Account of the Bond Fund the amount set forth in Section 4.02(c) hereof. The portion of any Extension Payment received by the Trustee in connection with a remarketing in accordance with Section 3.07 hereof designated for the payment of Bond Service Charges shall also be deposited in the Negative Arbitrage Account.

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

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

Bond Service Charges shall be payable, as they become due, in the following order: (a) from money on deposit in the Negative Arbitrage Account of the Bond Fund (but only to pay the interest portion of Bond Service Charges), (b) from the money on deposit in the Bond Fund, other than the Negative Arbitrage Account thereof, (c) from money on deposit in the Collateral Fund and transferred as necessary to the Bond Fund, (d) from money on deposit in the Project Fund and transferred as necessary to the Bond Fund, and (e) from money on deposit in the Negative Arbitrage Account of the Bond Fund (to pay all Bond Service Charges).

Upon receipt by the Trustee of (a) a Confirmation of Rating provided by the Rating Agency and (b) a Cash Flow Projection provided on behalf of the Borrower, but no more than once prior to the Optional Redemption Date, the Trustee is hereby authorized to release from the

Negative Arbitrage Account the amount set forth in the Cash Flow Projection to or at the direction of the Borrower.

#### **Section 4.04 Project Fund.**

Money in the Project Fund shall be disbursed in accordance with the provisions of Section 3.06 of the Loan Agreement and this Section 4.04. Upon the deposit of Collateral Payments in the Collateral Fund as provided in Section 4.06 hereof, and subject to the provisions of this Section 4.04, the Trustee shall disburse the Bond proceeds on deposit in the Project Fund to or at the direction of the Lender, to the extent of Collateral Payments made by the Lender, which Bond proceeds shall be used by the Lender to fund a Mortgage Loan advance, or to the Borrower to the extent of other Collateral Payments, for use by the Borrower to pay Costs of the Project in accordance with [Section 3.06] of the Loan Agreement. Upon receipt of such Collateral Payments, the Trustee shall be unconditionally and irrevocably obligated to disburse an equal amount from the Project Fund, or if the Trustee is unable for any reason to make such disbursement, to return such Collateral Payment to the party that provided it. The Trustee shall cause to be kept and maintained adequate records pertaining to the Project Fund and all disbursements therefrom. If requested in writing by the Issuer, the Managing Member or the Borrower, after the Project has been completed and a Completion Certificate is filed as provided in Section 4.07 hereof, the Trustee shall file copies of the records pertaining to the Project Fund and disbursements therefrom with the Issuer and the Borrower and the Managing Member. The Trustee shall satisfy this obligation by providing trust statements for all periods in which there are funds in the Project Fund.

Notwithstanding any provision of the Loan Agreement or any other provision of this Indenture to the contrary, the Trustee shall not disburse money from the Project Fund, other than to pay Bond Service Charges on the Bonds, unless and until Collateral Payments or other Eligible Funds in an amount equal to or greater than the requested disbursement amount have been deposited in the Collateral Fund. Prior to making any disbursement (except to the extent necessary to pay Bond Service Charges), the Trustee shall determine that the aggregate principal amount that will be held in (a) the Collateral Fund and (b) the Project Fund, after the anticipated disbursement, is at least equal to the then-Outstanding principal amount of the Bonds; provided, however, to the extent money on deposit in the Project Fund is invested in Eligible Investments, the Trustee is hereby authorized to make the following allocations and exchanges, which allocations and exchanges shall occur prior to the disbursement of amounts on deposit in the Project Fund to pay Project Costs: (i) allocate all or a portion of the Eligible Investments in the Project Fund, in the amount specified in the request for disbursement, to the Collateral Fund and (ii) transfer a like amount from the Collateral Fund to the Project Fund. To the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund or the Collateral Fund, the Trustee shall transfer from the Project Fund to the Bond Fund sufficient money to pay Bond Service Charges on each Interest Payment Date without further written direction.

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

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

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

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

#### **Section 4.06 Collateral Fund.**

. The Trustee shall deposit into the Collateral Fund all Collateral Payments received pursuant to Section 4.02 of the Loan Agreement and any other Eligible Funds received by the Trustee for deposit into the Collateral Fund. Section 4.02 of the Loan Agreement requires the Borrower to cause the Lender to make Collateral Payments to the Trustee for deposit into the Collateral Fund in an amount equal to, and as a prerequisite to the disbursement of, the amount of Bond proceeds on deposit in the Project Fund to be disbursed by the Trustee to pay Costs of the Project.

The Trustee shall transfer money in the Collateral Fund as follows: (a) on each Bond Payment Date, to the Bond Fund the amount necessary to pay Bond Service Charges on the Bonds on such Bond Payment Date (to the extent money is not otherwise available to the Trustee, including money on deposit in the Bond Fund); (b) on the Mandatory Tender Date, to the Bond Fund, the amount necessary to pay the purchase price of the Bonds, to the extent the Bonds are not remarketed on any Mandatory Tender Date or amounts on deposit in the Remarketing Proceeds Account of the Bond Fund are insufficient therefor; and (c) on the Maturity Date of the Bonds, to the Bond Fund the amount necessary to pay all amounts due on the Bonds on such date.

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

Amounts on deposit in the Collateral Fund in excess of the amount required to pay Bond Service Charges after payment in full of the Bonds shall be transferred to the Borrower.

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

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

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

The completion of the Project and payment of all costs and expenses incident thereto shall be evidenced by the filing with the Trustee of the Completion Certificate required by Section 3.09 of the Loan Agreement. As soon as practicable after the filing with the Trustee of the Completion Certificate, any balance remaining in the Project Fund (other than the amounts retained by the Trustee as described in the Completion Certificate) shall be deposited or applied in accordance with the direction of the Authorized Borrower Representative pursuant to Section 3.06 of the Loan Agreement. Provided however that if the Mortgage Loan has been assigned to FHA

(with notice of such assignment to be delivered to the Trustee by an Authorized Borrower Representative), any such balance shall be paid to the Lender.

#### **Section 4.08 Expense Fund.**

The portion of any Extension Payment received by the Trustee in connection with an extension of the Mandatory Tender Date pursuant to Section 3.07 hereof designated for the payment of Administrative Expenses shall be deposited in the Expense Fund. The Trustee shall apply money on deposit in the Expense Fund solely for the following purposes, on the dates specified below, in the following order of priority:

- a) to transfer money to the Rebate Fund to the extent necessary to pay the Rebate Amount (if any) pursuant to Section 4.09 hereof;
- b) to pay the Ordinary Trustee's Fees and Expenses when due;
- c) to pay the Ordinary Issuer Fees when due;
- d) to pay the Dissemination Agent Fee when due; and
- e) to pay the costs associated with the remarketing of the Bonds on the Initial Mandatory Tender Date.

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

#### **Section 4.09 Rebate Fund.**

Any provision hereof to the contrary notwithstanding, amounts credited to the Rebate Fund shall be free and clear of any lien hereunder.

The Trustee shall furnish to the Issuer, the Borrower and the Managing Member all information reasonably requested in writing by the Issuer, the Borrower or the Managing Member with respect to the Bonds and investments of the Funds and accounts maintained by the Trustee hereunder. The purpose of the Rebate Fund is to facilitate compliance with Section 148(f) of the Code. Any Rebate Amount (as defined in the Tax Regulatory Agreement) deposited in such Fund shall be for the sole benefit of the United States of America and shall not be subject to the lien of the Bond Indenture or to the claim of any other Person, including, without limitation, the Bondholders and the Issuer. The requirements of this Section 4.09 are subject to, and shall be interpreted in accordance with, Section 148(f) of the Code and the Treasury

Regulations applicable thereto (the "Regulations" and shall apply except to the extent the Bond Trustee is furnished with an opinion of Bond Counsel or other satisfactory evidence that the Regulations contain an applicable exception. The Bond Trustee shall make all payments, and file all forms, under the direction of the Borrower and pursuant to the Tax Regulatory Agreement.

Promptly at the end of each five-year period after the dated date of the Bonds and also upon the retirement of the Bonds, the Bond Trustee shall provide the Borrower with a statement of earnings on funds

and accounts held under this Bond Indenture during any period not covered by a prior statement. Each statement shall include the purchase and sale prices of each investment, if any (including any commission paid thereon which shall be separately stated if such information is available), the dates of each investment transaction, information as to whether such transactions were made at a discount or premium and such other information known or reasonably available to the Bond Trustee as the Borrower or rebate analyst shall reasonably require. If so requested by the Borrower at any time, the Bond Trustee shall create within the Bond Fund separate accounts for purposes of accounting for earnings on amounts attributable to the Bonds.

The Bond Trustee shall promptly transfer to the Rebate Fund each amount required to be deposited therein pursuant to the written direction of the Borrower or the rebate analyst pursuant to the Tax Regulatory Agreement, first from earnings in the Project Fund, and, second, to the extent amounts in the Project Fund are insufficient, from revenues which have been deposited into the Bond Fund and earnings thereon. To the extent that the amount to be deposited into the Rebate Fund exceeds the amount which can be transferred from such Funds, the Bond Trustee shall promptly notify the Borrower and an amount equal to such deficiency shall be paid promptly by the Borrower to the Bond Trustee for deposit into the Rebate Fund.

The Borrower and the Bond Trustee, on behalf of the Issuer, shall keep such records as will enable them to fulfill their respective responsibilities under this Section 4.09 and Section 148(f) of the Code, and the Borrower shall engage a rebate analyst as may be necessary in connection with such responsibilities. The Bond Trustee, to the extent furnished to it, will retain records of all calculations performed by the rebate analyst until six years after the retirement of the, last obligation of the Bonds. The fees and expenses of the rebate analyst shall be paid by the Borrower pursuant to the Loan Agreement to the extent amounts provided hereunder and available in the Rebate Fund are insufficient for such purpose. For purposes of the computation of the Rebate Amount required under the Tax Regulatory Agreement, the Bond Trustee shall make available to the Borrower and the Issuer during normal business hours all information in the Bond Trustee's control which is necessary to such computations.

#### **Section 4.10 Investment of Special Funds and Rebate Fund.**

Except as otherwise set forth in this Section, money in the Special Funds and the Rebate Fund shall be invested and reinvested by the Trustee in Eligible Investments at the written direction of the Authorized Borrower Representative. At no time shall the Borrower direct that any funds constituting gross proceeds of the Bonds (including, without limitation, moneys deposited in or credited to the Collateral Fund and the Negative Arbitrage Account) be used in any manner as would constitute failure of compliance with Section 148 of the Code.

Except as provided in the following paragraph, investments of money in the Bond Fund, the Project Fund and the Collateral Fund shall be invested in Government Obligations at the written directions of the Authorized Borrower Representative.

Money in the Bond Fund, the Project Fund, and the Collateral Fund may be invested in an investment described in clause (b) of the definition of Eligible Investments at the written directions of the Authorized Borrower Representative to the extent that (a) it is impractical to invest such money in Government Obligations because the amount to be invested is too small or Government Obligations are not available at that



time for purchase, (b) such money is being held in the Remarketing Proceeds Account, (c) such money has been received less than 30 days prior to date on which Bonds are to mature or be paid upon redemption or mandatory tender, or (d) the Borrower has directed the Trustee that such money will be needed to make a disbursement from the Project Fund prior to the date on which available Government Obligations would mature.

In the absence of written directions of the Authorized Borrower Representative as provided in the immediately preceding paragraph above, funds shall be held uninvested.

Investments of money in the Bond Fund and the Collateral Fund shall mature or be redeemable at the direction of the Borrower at the times and in the amounts necessary to provide money to pay Bond Service Charges on the Bonds as they become due on each Interest Payment Date. Each investment of money in the Project Fund shall mature or be redeemable at the direction to the Trustee at the times and in the amounts as may be necessary to make anticipated payments from the Project Fund. Any of those investments may be purchased from or sold to the Trustee, or any bank, trust company, securities firm or savings and loan association which is an Affiliated Party of the Trustee. The Trustee shall sell or redeem investments credited to the Bond Fund to produce sufficient money applicable hereunder to, and at the times required for the purposes of paying, Bond Service Charges when due as aforesaid, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any order. Anything herein to the contrary notwithstanding, amounts on deposit in the Collateral Fund shall not be invested at a yield in excess of the yield of the Bonds.

An investment made from money credited to the Special Funds shall constitute part of that respective Fund. All investment earnings from amounts on deposit in the Project Fund and the Collateral Fund shall be allocated to the Bond Fund. All gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Special Funds shall be credited to and become part of the Bond Fund. All investment earnings, gains resulting from the sale of, or income from, any investment made from amounts on deposit in the Rebate Fund shall be retained therein. Any investment losses from moneys credited to a Fund shall be charged against the respective Fund. The Trustee shall not be liable for losses on investments made in \ compliance with the provisions of this Indenture.

Ratings of Eligible Investments shall be determined at the time of purchase of such Eligible Investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including cash sweep account fees. Although each of the Issuer and the Borrower recognizes that it may obtain a broker confirmation or written statement containing comparable information at no additional

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

The Bond Trustee may make any and all investments permitted by this Section through its own bond or

investment department, unless otherwise directed in writing by the Authorized Borrower Representative.

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

The funds created under this Bond Indenture shall be in the custody of the Bond Trustee in its trust capacity hereunder; and the Issuer authorizes and directs the Bond Trustee to withdraw moneys from said funds for the purposes specified herein, which authorization and direction the Bond Trustee hereby accepts. All moneys required to be deposited with or paid to the Bond Trustee under any provision of this Article IV shall be held by the Bond Trustee in trust, and except for moneys held in the Rebate Fund or deposited with or paid to the Bond Trustee for the redemption of Bonds, notice of redemption of which has been duly given, shall while held by the Bond Trustee constitute part of the security for the Holders and be subject to the lien hereof.

#### **Section 4.12 Valuation.**

For the purpose of determining the amount on deposit to the credit of any Special Fund, the value of obligations in which money in such Fund shall have been invested shall be computed (i) in the case of Government Obligations held in the Special Funds, at the maturity or redemption value (as applicable) as of the maturity or next redemption date and (ii) in the case of all other Eligible Investments, at the then market value thereof. The Trustee shall have no liability for the accuracy of any such valuation.

The Eligible Investments shall be valued by the Trustee as of the end of each calendar month.

#### **Section 4.13 Nonpresentment of Bonds.**

In the event any Bond shall not be presented for payment when the principal thereof becomes due in whole or in part, whether at maturity, at the Redemption Date or otherwise, or a check or draft for interest is uncashed, if funds sufficient to pay such Bonds shall have been made available to the Bond Trustee for the benefit of the Holder or Holders thereof, all liabilities of the Issuer to the Holder thereof for the payment of such Bond, as the case may be, shall thereupon cease and be completely discharged, and it shall be the duty of the Bond Trustee to hold such funds for a period of six years after maturity of all Bonds, without liability for interest thereon, in a separate account in the Bond Fund for the benefit of the Holder of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on his part under this Bond Indenture or on, or with respect to, said Bond. After the expiration of such six-year period, the Bond Trustee shall return said funds to the Issuer upon its written request

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and the Holder or Holders of any such unrepresented Bond shall be entitled to payment of said Bond only from said funds held by the Issuer. The obligation of the Bond Trustee under this Section to pay any such funds to the Issuer shall be subject to any provisions of law applicable to the Bond Trustee or to such funds providing other requirements for disposition of unclaimed property.

#### **Section 4.14 Repayment to the Borrower from the Bond Fund.**

On any Mandatory Tender Date, any amounts in the Bond Fund in excess of the amount necessary to cover any negative arbitrage (assuming 0.00% interest earnings on all deposits) and after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture shall, upon written

instruction to the Trustee from the Borrower, be paid to or at the direction of the Borrower. Except as provided in Section 4.09 and Section 4.13 hereof, any amounts remaining in the Special Funds (a) after all of the Outstanding Bonds shall be deemed paid and discharged under the provisions of this Indenture, and (b) after payment of all fees, charges and expenses of the Trustee and the Issuer and of all other amounts required to be paid under this Indenture, the Loan Agreement, the Borrower's Tax Certificate, the Land Use Restriction Agreement and the Note, shall be paid to the Borrower to the extent that those amounts are in excess of those necessary to effect the payment and discharge of the Outstanding Bonds. Provided however that if the FHA Loan is in default, such excess shall be paid to the Lender.

Section 4.15 Payment of Fees.

In connection with the issuance of the Bonds and with the Project, the Borrower will pay the following fees in the following manner:

The Bond Trustee will pay the following fees on behalf of the Borrower:

- i) To the Issuer, an Issuer Fee in an amount equal to [1.5]% of the par amount of the Bonds, payable on the Closing Date from Borrower equity;
- ii) To the Issuer, a Bond Legal Reserve Fee in an amount equal to [0.10]% of the par amount of the Bonds, payable on the Closing Date from Borrower equity; and
- iii) To the Bond Trustee, an upfront fee in the amount of \$[5,000] and a first year administration fee of \$[3,600], both payable on the Closing Date, from Borrower equity; and
- iv) To the Issuer, a City Administrative Fee in an amount equal to [0.15]% of the outstanding principal amount of the Bonds, accruing monthly and payable to the Issuer semi-annually; and
- v) To the Bond Trustee, an annual fee in an amount equal to [0.06]% of the amount of Bonds outstanding, accruing monthly and payable to the Bond Trustee semi-annually.

**ARTICLE 5  
GENERAL COVENANTS AND REPRESENTATIONS**

**Section 5.01 Payment of Principal or Redemption Price of and Interest on Bonds.**

The Issuer shall promptly pay or cause to be paid the principal or redemption price of, and the interest on, every Bond issued hereunder according to the terms thereof, but shall be required to make such payment or cause such payment to be made only out of revenues available therefor under this Bond Indenture. The Issuer hereby designates the principal corporate trust office of the Bond Trustee as the place of payment for the Bonds.

Section 5.02 Instruments of Further Assurance. The Issuer and the Bond Trustee shall do, execute, acknowledge and deliver, such indentures supplemental hereto, and such further acts, instruments and transfers as the Bond Trustee may reasonably require for the better assuring, transferring, conveying, pledging, assigning

and confirming unto the Bond Trustee all its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds paid solely from the Trust Estate. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Issuer or the Bond Trustee, become and be subject to the lien of this Bond Indenture as fully and completely as though specifically described herein, but nothing contained in this sentence shall be deemed to modify or change the obligations of the Issuer under this Section.

Section 5.03 Recordation and Filing. Pursuant to the Loan Agreement, the Borrower shall cause financing statements with respect to the Trust Estate described in this Bond Indenture to be at all times filed in such manner and in such places if required by law in order to fully preserve and protect the rights of the Issuer and the Bond Trustee hereunder and to perfect the security interest created by this Indenture in the Trust Estate described herein. To the extent possible under applicable law, as in effect in the jurisdiction(s) in which the Trust Estate is located, the Borrower will maintain the priority of the security interest herein created in the Trust Estate as a first lien thereon, and warrant, protect, preserve and defend its interest in the Trust Estate and the security interest of the Bond Trustee herein and all rights of the Bond Trustee under this Bond Indenture against all actions, proceedings, claims and demands of all Persons, all paid for by the Borrower.

Section 5.04 No Modification of Security. The Issuer shall not, without the written consent of the Bond Trustee, alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement which relates to or affects the security for the Bonds. The Bond Trustee shall not consent to any change in the maturity of the GNMA Security or the Mortgage Note, except as provided in Sections 4.03(c), 4.03(d), 5.07 and Article VIII hereof.

Section 5.05 Reports. The Bond Trustee shall furnish annually, to the Borrower (which shall furnish copies thereof to HUD), the GNMA Issuer and any Bondholder who requests copies thereof and furnishes an address to which such reports and statements are to be sent, copies of (a) any reports furnished to the Bond Trustee with regard to the Project and (b) annual statements of the Bond Trustee with regard to fund balances. The Bond Trustee shall be reimbursed by the Borrower for its reasonable costs in preparing any such statements.

**Section 5.06 Tax Covenants.**

a) The Issuer, to the extent that it has control over any of the following proceeds or payments, and the Bond Trustee, to the extent that it has discretion with respect to investment of such proceeds, covenant and agree that they will not take any action or fail to take any action with respect to the investment of the proceeds of any Bonds issued under this Bond Indenture or with respect to the payments derived from the security pledged hereunder or from the Loan Agreement which would result in constituting the Bonds "arbitrage bonds" within the meaning of such term as used in Section 148 of the Code. The Issuer and the Bond Trustee further covenant and agree that they will comply with and take all actions required by the Tax Regulatory Agreement. The Bond Trustee shall cause to be prepared all rebate calculations required to be performed pursuant to the Tax Regulatory Agreement.

b) The Issuer covenants that it shall not use or cause the use of any proceeds of Bonds or any other funds of the Issuer, directly or indirectly, in any manner, and shall not take or cause to be

taken any other action or actions, or fail to take any action or actions, which would result in interest on any of the Bonds becoming includable in gross income of any Holder thereof. The Issuer further covenants that it shall at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Issuer on the Bonds shall be excluded from the gross income of the recipients thereof for federal income tax purposes.

## ARTICLE 6

### DEFAULT PROVISIONS AND REMEDIES OF BOND TRUSTEE AND HOLDERS Section 6.01 Events

of Default. Each of the following shall be an "Event of Default":

- a) default in the due and punctual payment of any interest on any Bond; or
- b) default in the due and punctual payment of the principal of or premium, if any, on any Bond whether at the stated maturity thereof, or on proceedings for redemption thereof, or on the maturity thereof by declaration; or  
/
- c) **[[Failure by the Issuer to observe or perform any other covenant, agreement or obligation on its part to be observed or performed contained in this Indenture or in the Bonds, which failure shall have continued for a period of 30 days after written notice, by registered or certified mail, to the Issuer and the Borrower specifying the failure and requiring that it be remedied, which notice may be given by the Trustee in its discretion and shall be given by the Trustee at the written request of the Holders of a majority in aggregate principal amount of Bonds then Outstanding (unless, notwithstanding any attempt to cure such failure, it cannot be cured within 30 days and, notwithstanding, is cured within 180 days); or]]**
- d) the occurrence and continuation of an event of default under the Loan Agreement of which the Bond Trustee has actual notice or of which the Bond Trustee is deemed to have notice pursuant to Section 7.04(i) hereof.

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The Bond Trustee and the Issuer agree that notwithstanding the provisions hereof, no default under the terms of this Bond Indenture shall be construed as resulting in a default under the Mortgage Loan Documents unless such event also constitutes a default thereunder.

Section 6.02 Acceleration. [[Upon the occurrence of an Event of Default described in Section 6.01(a) or (b) hereof, the Trustee may, and upon the written request of the Holders of not less than a majority in aggregate principal amount of Bonds then Outstanding shall, by written notice delivered to the Borrower and the Issuer, declare the principal of all Bonds then Outstanding (if not then due and payable), and the interest accrued thereon, to be due and payable immediately; provided, however, that the Trustee shall make such declaration only if the Trustee has determined that it will have sufficient funds available to pay the full amount of the principal and accrued but unpaid interest to the Holders of the Bonds as of the date of acceleration. If the Trustee is unable to determine that sufficient funds will be available, the Trustee shall declare the principal of the Bonds immediately due and payable only upon written direction of all Holders of the Bonds then Outstanding. Upon the occurrence of any Event of Default other than those described in Sections 6.01(a) and

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

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

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

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

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

The Investor Member shall be entitled (but not obligated) to cure any Event of Default hereunder within the time frame provided to the Borrower hereunder. The Issuer and the Trustee agree that cure of any default or Event of Default made or tendered by the Investor Member shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.]]

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Section 6.03 Rights of Holders. If any Event of Default shall have occurred and be continuing, then the Trustee may and, if requested so to do by the Holders of not less than 25% in aggregate principal amount of Bonds affected by such default, and if indemnified as provided herein, the Bond Trustee shall:

a) by mandamus or other suit, action or proceeding at law or in equity require the Issuer to perform its covenants and duties under this Bond Indenture;

b) bring suit upon the Bonds;

c) by action or suit in equity require the Issuer to account for its actions as if it were the trustee of an express trust for the Holders of the Bonds;

d) by action or suit in equity enjoin any acts or things that may be unlawful or in violation of the rights of the Holders of the Bonds;

e) take any action to enforce its remedies under the Loan Agreement; or

f) take such other steps to protect and enforce its rights and the rights of the Holders of the Bonds, whether by action, suit or proceeding in aid of the execution of any power herein granted or for the enforcement of any other appropriate legal or equitable remedy.

Section 6.04 Rights of Holders to Direct Proceedings. Subject to the provisions of Section 6.08 hereof, the Holders of a majority in principal amount of the Bonds shall have the right at any time, by an instrument in writing executed and delivered to the Bond Trustee, 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 Bond Indenture for the benefit of the Bonds, or for the appointment of a receiver or any other proceedings hereunder for the benefit of the Bonds, in accordance with the provisions of law and of this Bond Indenture.

Section 6.05 Waiver by Issuer. Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Issuer nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or redemption laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Bond Indenture; and the Issuer, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and redemption to which it may be entitled under the laws of the State.

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

After payment of any costs, expenses, liabilities and advances paid, incurred or made by the Trustee in the collection of money and to all fees of the Trustee for Ordinary and

Extraordinary Expenses pursuant to any right given or action taken under the provisions of this Article or the provisions of the Loan Agreement, the Land Use Restriction Agreement or the Note (including without limitation, reasonable attorneys' fees and expenses, except as limited by law or judicial order or decision entered in any action taken under this Article VI), all money received by the Trustee, shall be applied as follows, subject to Section 2.05 hereof and any provision made pursuant to Section 4.10 or 4.11 hereof:

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

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

Second: To the payment to the Holders entitled thereto of the unpaid principal of any of the Bonds

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

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

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

d) Whenever money is to be applied pursuant to the provisions of this Section, such money shall be applied at such times, and from time to time, as the Trustee shall determine, having due regard to the amount of money available for application and the likelihood of additional money becoming available for application in the future. Whenever the Trustee shall

direct the application of such money, it shall fix the date upon which the application is to be made, and upon that date, interest shall cease to accrue on the amounts of principal, if any, to be paid on that date, provided the money is available therefor. The Trustee shall give notice of the deposit with it of any money and of the fixing of that date, all consistent with the requirements of Section 2.05 hereof for the establishment of, and for giving notice with respect to, a Special Record Date for the payment of overdue interest. The Trustee shall not be required to make payment of principal of a Bond to the Holder thereof, until the Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if it is paid fully.

Section 6.07 Remedies Vested in Trustee. All rights of action, including the right to file proof of claims, under this Bond Indenture or under any of the Bonds may be enforced by the Bond Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceedings relating thereto and any such suit or proceeding instituted by the Bond Trustee shall be brought in its name as Bond Trustee without the necessity of joining as plaintiffs or defendants any Holders of the Bonds, and any recovery of judgment shall be for the benefit as provided herein of Holders of the Outstanding Bonds.

Section 6.08 Remedies of Holders. No Holder of any Bonds shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision of this Bond Indenture or for the execution of any trust hereunder or for the appointment of a receiver or any other remedy hereunder, unless: (a) a default shall have occurred of which the Bond Trustee shall have been notified as provided herein; (b) such



default shall have become an Event of Default; (c) the Holders of at least 25% in aggregate principal amount of the Outstanding Bonds shall have made written request to the Bond Trustee and shall have offered reasonable opportunity either to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name; (d) such Holders shall have offered to the Bond Trustee indemnity as provided herein; and (e) the Bond Trustee shall within 60 days thereafter fail or refuse to exercise the powers hereinbefore granted, or to institute such action, suit or proceeding, and such notification, request and offer of indemnity are hereby declared in every case at the option of the Bond Trustee to be conditions precedent to the execution of the powers and trusts under this Article VI, and to any action or cause of action for the enforcement of this Bond Indenture, or for any other remedy hereunder; it being understood and intended that no one or more Holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the lien of this Indenture or the rights of any other Holders of the Bonds or to obtain priority or preference over any other Holders (other than as provided herein) or to enforce any right under this Bond Indenture, except in the manner herein provided and for the equal and ratable benefit of all Holders of Bonds. Nothing contained in this Bond Indenture shall, however, affect or impair the right of any Holder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Issuer to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective Holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

Section 6.09 Termination of Proceedings. In case the Bond Trustee shall have proceeded to enforce any right under this Bond Indenture by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely, then and in every such case the Issuer and the

Bond Trustee shall be restored to their former positions and rights hereunder with respect to the Trust Estate herein conveyed, and all rights, remedies and powers of the Bond Trustee shall continue as if no such proceedings had been taken.

Section 6.10 Waivers of Events of Default. The Bond Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Bonds upon the written request of the Holders of a majority of the Outstanding Bonds; provided, however, that there shall not be waived (a) any default in the payment of the principal of any Bonds at the date of maturity specified therein, or upon proceedings for mandatory redemption, or (b) any default in the payment when due of the interest or premium on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all fees, costs, and expenses of the Bond Trustee, in connection with such default shall have been paid or provided for, and in case of any such waiver or rescission, or in case any proceeding taken by the Bond Trustee on account of any such default shall have been discontinued or abandoned or determined adversely, then and in every such case the Issuer, the Bond Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

Section 6.11 Notice of Defaults; Opportunity to Cure Defaults. If an Event of Default shall occur, the Trustee shall give written notice of the Event of Default, by Electronic Means or by registered or certified mail, to the Issuer, the Borrower, the Investor Member and the Remarketing Agent, within five days after the Trustee has notice of the Event of Default pursuant to Section 5.02(f) hereof. If an Event of Default occurs of which the Trustee has notice pursuant to this

Indenture, the Trustee shall give written notice thereof, within 30 days after the Trustee's receipt of notice of its occurrence, to the Holders of all Bonds then Outstanding as shown by the Register at the close of business 15 days prior to the mailing of that notice; provided, that except in the case of a default in the payment of the principal of or interest on any Bond, the Trustee shall be protected in withholding such notice if the Trustee in good faith determines that the withholding of notice to the Holders is in the interests of the Holders.

**ARTICLE 7**  
**THE BOND TRUSTEE AND REMARKETING AGENT**

Section 7.01 Certain Duties and Responsibilities. Except during the continuance of an Event of Default:

i) The Bond Trustee undertakes to perform such duties and only such duties as are specifically set forth in this Bond Indenture, and no implied covenants or obligations shall be read into this Bond Indenture against the Bond Trustee; and

ii) in the absence of bad faith on its part, the Bond Trustee may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon certificates or opinions furnished to the Bond Trustee and conforming to the requirements of this Bond Indenture; but in the

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case of any such certificates or opinions which by any provision hereof are specifically required to be furnished to the Bond Trustee, the Bond Trustee shall be under a duty to examine the same to determine whether they conform to the requirements of this Bond Indenture.

b) In case an Event of Default has occurred and is continuing, the Bond Trustee shall exercise such of the rights and powers vested in it by this Bond Indenture, and use the same degree of care and skill in their exercise, as a prudent person would exercise or use under the circumstances in the conduct of his or her own affairs.

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

i) This subsection (c) shall not be construed to limit the effect of subsection (a) of this Section;

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

iii) The Bond Trustee shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with directions received pursuant to Section 6.04 or the direction of the Holders of a majority in principal amount of Outstanding Bonds relating to the time, method and place of conducting any proceeding for any remedy available to the Bond Trustee, or exercising any trust or power conferred upon the Bond Trustee, under this Bond Indenture.

d) No provisions of this Bond Indenture shall require the Bond Trustee to expend or risk its own funds or otherwise incur any financial liability in the performance of any of its duties hereunder, or in the exercise of any of its rights or powers.

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

Section 7.02 Notice of Default. Within 30 days after the occurrence of any default hereunder of which the Bond Trustee is deemed to have notice hereunder, the Bond Trustee shall transmit by first class mail, to the Holders of all Bonds then Outstanding notice of such default hereunder known to the Bond Trustee, unless such default shall have been cured or waived prior thereto; provided, however, that, except in the case of a default in the payment of the principal of (or premium, if any) or interest on any Bond when due, the Bond Trustee shall be protected in withholding such notice if and so long as the Bond Trustee in good faith determines that the withholding of such notice is in the interests of the Holders of the Bonds. For the purpose of this Section the term "default" means any event which is, or after notice or lapse of time or both would become, an Event of Default.

**Section 7.03 Reserved.**

Section 7.04 Certain Rights of Bond Trustee. Except as otherwise provided in Section 10.01 hereof:

a) the Bond Trustee may rely and shall be protected in acting or refraining from acting upon any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document conforming to the requirements, if any, of this Bond Indenture, and believed by it to be genuine, and to have been signed or presented by the proper party or parties;

b) any Request or Statement of the Issuer mentioned herein shall be sufficiently evidenced by an order or Request of the Issuer signed by an Authorized Issuer Representative and any resolution or ordinance of the governing body of the Issuer may be sufficiently evidenced by a Certificate of the Issuer;

c) any notice, request, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by an Authorized Borrower Representative (unless other evidence in respect thereof be herein specifically prescribed);

d) whenever in the administration of this Bond Indenture the Bond Trustee shall deem it desirable that a matter be proved or established prior to taking, suffering or omitting any action hereunder, the Bond Trustee (unless other evidence be herein specifically prescribed) may, in the absence of bad faith on its part, rely upon a Certificate of the Issuer;

e) the Bond Trustee may consult with counsel, architects and engineers and other experts, and the written advice of such counsel, architects or engineers and other experts shall be full and

complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in reliance thereon;

f) the Bond Trustee shall be under no obligation to exercise any of the rights or powers vested in it by this Bond Indenture at the request or direction of any of the Holders of the Bonds pursuant to this Indenture, unless such Holders shall have offered to the Bond Trustee reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in compliance with such request or direction;

g) the Bond Trustee shall not be bound to make any investigation into the facts or matters stated in any resolution, certificate, statement, instrument, opinion, report, notice, request, direction, consent, order or other paper or document, but the Bond Trustee, in its discretion, may make such further inquiry or investigation into such fact or matters as it may see fit, and, if the Bond Trustee shall determine to make such further inquiry or investigation, it shall be entitled to examine the books, records and premises of the Issuer and the Borrower, including the Project, personally or by agent or attorney;

h) the Bond Trustee may execute any of the trusts or powers hereunder or perform any duties hereunder whether directly or by or through agents or attorneys, but

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the Bond Trustee shall be responsible for any misconduct or negligence on the part of any agent or attorney so appointed;

(i) the Bond Trustee shall not be required to take notice or be deemed to have notice of any default hereunder (except for any default due to the Bond Trustee's failure to make any of the payments required to be made by Article IV hereof) unless the Bond Trustee shall be specifically notified in writing of such default by the Issuer or the Holders of at least 25% in principal amount of Bonds affected thereby; and

(j) all notices or other instruments required by this Bond Indenture to be delivered to the Bond Trustee must, in order to be effective, be delivered at the principal corporate trust office of the Bond Trustee at the Notice Address referred to in Section 1.01 hereof.

Section 7.05 Not Responsible for Recitals or Issuance of Bonds. The recitals contained herein and in the Bonds, except the certificates of authentication, shall be taken as the statements of the Issuer, and the Bond Trustee assumes no responsibility for their correctness. The Bond Trustee makes no representations as to the validity or sufficiency of this Bond Indenture or of the Bonds.

Section 7.06 Bond Trustee May Hold Bonds. The Bond Trustee in its individual or any other capacity may become the owner or pledgee of Bonds and may otherwise deal with the Issuer with the same rights it would have if it were not Bond Trustee.

Section 7.07 Compensation. The Bond Trustee shall on each Interest Payment Date reimburse itself as provided in Section 4.04(b) hereof for all reasonable expenses, disbursements and advances incurred or made by the Bond Trustee in performing its obligations in accordance with any provision of this Bond Indenture (including the compensation and the expenses and disbursements of any Paying Agent, separate Bond Trustee

or co-Bond trustee, its agents and counsel) provided, however, that the Bond Trustee's semi-annual compensation under this Section 7.07 shall be limited to one-half (1/2) of 0.06% of the outstanding aggregate principal amount of the Bonds for the preceding calendar month (payable monthly as provided in Section 4.04 (b) hereof), including its services as dissemination agent under the Continuing Disclosure Agreement.

Any amounts payable to the Bond Trustee in excess of the amounts specified in the preceding paragraph shall be paid by the Borrower in accordance with Section 4.7 of the Loan Agreement.

Section 7.08 Successor Bond Trustee. Any corporation or association into which the Bond Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, ipso facto, be and become successor Bond Trustee hereunder and vested with all title to the whole property or Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the

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execution or filing of any instruments or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 7.09 Resignation by the Bond Trustee. The Bond Trustee and any successor Bond Trustee may at any time resign from the trusts hereby created by giving 60 days' written notice by registered or certified mail to the Issuer and to each Holder of the Bonds then Outstanding; provided that no such resignation shall take effect until a successor Bond Trustee shall have been appointed and shall have accepted such appointment as provided in Section 7.11. If no successor Bond Trustee shall have been appointed and have accepted appointment within 60 days following the giving of all required notices of resignation, the resigning Bond Trustee may petition any court of competent jurisdiction for the appointment of a successor Bond Trustee.

Section 7.10 Removal of the Bond Trustee. The Trustee may be removed at any time by an instrument or document or concurrent instruments or documents in writing delivered to the Trustee, with copies thereof mailed to the Issuer, the Remarketing Agent and the Borrower and Managing Member, and signed by or on behalf of the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding.

The Trustee also may be removed at any time for any breach of trust or for acting or proceeding in violation of, or for failing to act or proceed in accordance with, any provision of this Indenture with respect to the duties and obligations of the Trustee by any court of competent jurisdiction upon the application of the Issuer or the Holders of not less than a majority in aggregate principal amount of the Bonds then Outstanding under this Indenture.

The removal of the Trustee under this Section 7.10 shall take effect upon the appointment of a successor Trustee as provided for in Section 7.11 of this Indenture.

Section 7.11 Appointment of Successor Bond Trustee by the Holders; Temporary Bond Trustee. [[If (a) the Trustee shall resign, shall be removed, shall be dissolved, or shall become otherwise incapable of acting hereunder, (b) the Trustee shall be taken under the control of any public officer or officers, or (c) a receiver shall be appointed for the Trustee by a court, then a successor Trustee shall be appointed by the Issuer, with the

written consent of the Borrower and Managing Member; provided, that if a successor Trustee is not so appointed within 10 days after (i) a notice of resignation or an instrument or document of removal is received by the Issuer, as provided in Sections 7.09 and 7.10 hereof, respectively, or (ii) the Trustee is dissolved, taken under control, becomes otherwise incapable of acting or a receiver is appointed, in each case, as provided above, then, so long as the Issuer shall not have appointed a successor Trustee, the Holders of a majority in aggregate principal amount of Bonds then Outstanding may designate a successor Trustee by an instrument or document or concurrent instruments or documents in writing signed by or on behalf of those Holders. If no appointment of a successor Trustee shall be made pursuant to the foregoing provisions of this Section, the Holder of any Bond Outstanding hereunder or any retiring Trustee may apply to any court of competent jurisdiction to appoint a successor Trustee. Such court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.]]

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Section 7.12 Concerning Any Successor Bond Trustee. Every successor Trustee appointed pursuant to this Section (a) shall be a trust company or a bank having the powers of a trust company, (b) shall be in good standing within the State, (c) shall be duly authorized to exercise trust powers within the State, (d) shall have a reported capital, surplus and retained <sup>n</sup> earnings of not less than \$100,000,000, and (e) shall be willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute and acknowledge, and shall deliver to its predecessor, the Issuer and the Borrower and Managing Member an instrument or document in writing accepting the appointment. Thereupon, without any further act, the successor shall become vested with all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of its predecessor. Upon the written request of its successor, the Issuer or the Borrower or Managing Member, and payment of all fees and expenses owed to it, the predecessor Trustee (a) shall execute and deliver an instrument or document transferring to its successor all of the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens of the predecessor Trustee hereunder, and (b) shall take any other action necessary to duly assign, transfer and deliver to its successor all property (including without limitation, all securities and moneys) held by it as Trustee. Should any instrument or document in writing from the Issuer be requested by any successor Trustee for vesting and conveying more fully and certainly in and to that successor the trusts, properties, remedies, powers, rights, duties, obligations, discretions, privileges, claims, demands, causes of action, immunities, estates, titles, interests and liens vested or conveyed or intended to be vested or conveyed hereby in or to the predecessor Trustee, the Issuer shall execute, acknowledge and deliver that instrument or document.

Section 7.13 Bond Trustee as Paying Agent and Bond Registrar; Additional Paying Agents. The Bond Trustee is hereby designated and agrees to act as Paying Agent and Registrar for and in respect to the Bonds.

The Issuer from time to time may appoint one or more additional Paying Agents and, in the event of the resignation or removal of any Paying Agent, successor Paying Agents. Any such additional Paying Agent or successor Paying Agent shall signify its acceptance of the duties and obligations imposed upon it by this Bond Indenture by executing and delivering to the Issuer and the Bond Trustee a written acceptance thereof

Section 7.14 Successor Bond Trustee as Trustee, Paying Agent and Bond Registrar. In the event of a change in the office of Bond Trustee, the predecessor Bond Trustee which shall have resigned or shall have been removed shall cease to be Bond Trustee and Paying Agent on the Bonds and Bond Registrar, and the successor Bond Trustee shall become such Bond Trustee, Paying Agent and Bond Registrar.

Section 7.15 Representations by Bond Trustee. The Bond Trustee hereby represents and warrants that as of the date of execution of this Bond Indenture:

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a) It is duly organized and validly existing in good standing under the laws of the jurisdiction of its organization and has the power and authority to enter into and perform its obligations under this Bond Indenture;

b) this Bond Indenture has been duly authorized, executed and delivered by it; and

c) to the best of the Bond Trustee's knowledge, the execution of this Bond Indenture by the Bond Trustee does not violate laws, statutes, ordinances, regulations or agreements which are binding on the Bond Trustee.

Section 7.16 Concerning the Remarketing Agent. The Remarketing Agent identified in Section 1.01 hereof shall serve as the Remarketing Agent for the Bonds. The Remarketing Agent shall designate to the Trustee its Designated Office and signify its acceptance of the duties and obligations imposed upon it hereunder by a written instrument of acceptance delivered to the Issuer, the Borrower, the Managing Member and the Trustee. In addition, the Remarketing Agent will agree particularly to:

(a) Keep such records relating to its computations of interest rates for the Bonds as shall be consistent with prudent industry practice and to make such records available for inspection by the Issuer, the Trustee and the Borrower and the Managing Member at all reasonable times; and

(b) perform all of its functions and duties under this Indenture.

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

The Remarketing Agent shall be entitled to appoint additional co-Remarketing Agents to assist in the performance of the Remarketing Agent's obligations under this Indenture, and any such appointment shall be effective without any action by the Issuer or the Borrower being necessary; provided that any such co-

Remarketing Agent, shall have a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, shall be in conformity with all standards and requirements of the Municipal Securities Rulemaking Board and the Securities and Exchange Commission, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. The Remarketing Agent shall take responsibility for any co-Remarketing Agent it appoints.

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Section 7.17 Qualification of Remarketing Agent. The Remarketing Agent shall be a member in good standing of the Financial Industry Regulatory Authority having a capitalization of at least \$5,000,000, or shall have a line of credit with a commercial bank in the amount of at least \$5,000,000, and shall be authorized by law to perform all the duties imposed upon it by this Indenture. Subject to the terms of the Remarketing Agreement, the Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least 30 days' notice of such resignation to the Issuer, the Borrower, Managing Member and the Trustee. The Remarketing Agent may be removed, with prior notice to the Issuer, at any time by the Borrower, with at least 30 days' notice of such removal to the Remarketing Agent.

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

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

Section 7.18 Information for Rating Agency and Notice of Certain Events. The Trustee shall provide the Rating Agency upon its written request such information within the Trustee's possession as the Rating Agency shall reasonably require from time to time in order to maintain the rating on the Bonds;

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



## ARTICLE 8 SUPPLEMENTAL BOND INDENTURE

Section 8.01 Supplemental Bond Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee, without the consent of or notice to any of the Bondholders, may enter into a bond indenture or bond indentures supplemental to this Bond Indenture as shall not be inconsistent with the terms and provisions hereof or materially adverse to the interest of the Holders of the Bonds for any one or more of the following reasons:

(a) to cure any ambiguity or formal defect or omission in this Bond Indenture:

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b) to subject to the lien and pledge of this Bond Indenture additional revenues, properties or collateral;

c) to grant to or confer upon the Bond Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may lawfully be granted to or conferred upon the Bondholders or the Bond Trustee or any of them;

d) to modify, amend or supplement this Bond Indenture or any bond indenture supplemental hereto in such manner as to permit the qualification hereof and thereof under the Trust Indenture Act of 1939 or any similar federal statute hereafter in effect or under any state securities laws;

e) to permit the Bond Trustee to comply with any obligations imposed upon it by law;

f) to achieve compliance of this Bond Indenture with any applicable federal securities or tax laws or state securities laws;

g) to maintain the exclusion from gross income for federal income taxation of interest on the Bonds;

h) to obtain, improve or maintain the rating on the Bonds from any nationally recognized securities rating agency so long as such change does not affect the interest rates, maturities or redemption provisions of the Bonds and does not, in the opinion of Bond Counsel, adversely affect the exclusion from gross income for federal income taxation of interest on the Bonds; or

(i) in connection with any other change in this Bond Indenture which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee or the Bondholders.

The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that execution and delivery of a supplemental bond indenture have been effected in compliance with the provisions of this Article.

**Section 8.02 Supplemental Bond Indentures Requiring Consent of Bondholders.**

Exclusive of Supplemental Indentures to which reference is made in Section 7.02 hereof and subject to the terms, provisions and limitations contained in this Section, and not otherwise, with the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, evidenced as provided in this Indenture, and with the consent of the Borrower if required by Section 7.04 hereof, the Issuer and the Trustee may execute and deliver Supplemental Indentures adding any provisions to, changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the Holders. Nothing in this Section or Section 7.02 hereof shall permit, however, or be construed as permitting:

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- a) without the consent of the Holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond or (ii) a reduction in the principal amount of any Bond or the rate of interest thereon, or
- b) without the consent of the Holders of all Bonds then Outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds, or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to a Supplemental Indenture.

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

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

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

Any consent shall be binding upon the Holder of the Bond giving the consent and, anything herein to the contrary notwithstanding, upon any subsequent Holder of that Bond and of any Bond issued in exchange therefor (regardless of whether the subsequent Holder has notice of the consent to the Supplemental Indenture). A consent may be revoked in writing, however, by the Holder who gave the consent or by a subsequent Holder of the Bond by a revocation of such consent received by the Trustee prior to the execution and delivery by the Trustee of the Supplemental Indenture. At any time after the Holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Holders of the required percentage of Bonds have filed those consents. That written statement shall be conclusive evidence that the consents have been so filed.

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

Section 8.03 Amendments to Loan Agreement Not Requiring Consent of the Bondholders. The Issuer and the Borrower, without the consent of the Bondholders, may enter into any amendment, change or modification to the Loan Agreement as shall not be inconsistent with the terms of the Loan Agreement or materially adverse to the interests of the Holder of the Bonds for any one or more of the following purposes:

- a) to cure any ambiguity or formal defect or omission in the Loan Agreement;
- b) to grant to or confer upon the Issuer or the Bond Trustee for the benefit of the Bondholders any additional rights, remedies, powers or authority that may be lawfully granted to or conferred upon the Issuer or the Bond Trustee or either of them;
- c) to maintain the exclusion from gross income for federal income taxation of interest of the Bonds;
- d) to obtain, improve or maintain the rating on the Bonds so long as such change does not affect the interest rates, maturities or redemption provisions of the Bonds and does not, in the opinion of Bond Counsel, adversely affect the exclusion from gross income for federal income taxation of interest on the Bonds; or
- e) in connection with any other change which, in the judgment of the Bond Trustee, is not to the prejudice of the Bond Trustee or the Bondholders.

The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that such amendment, change or modification has been effected in compliance with the provisions of this Article.

**Section 8.04 Amendments to Loan Agreement Requiring Consent of Bondholders.**

With the consent of the Holders of not less than a majority in aggregate principal amount of the Bonds at the time Outstanding, the Issuer, the Bond Trustee and the Borrower may from time to time enter into

amendments, changes and modifications to the Loan Agreement for the purpose of modifying, altering, amending, adding to or rescinding any of the terms or provisions contained therein; provided, however, that no such amendment, change or modification shall permit or be construed as permitting: (a) any adverse effect on the security for the Bonds, (b) a reduction in the amount of Bonds, the Holders of which are required to approve any such amendment, change or modification without the consent of Holders of all Bonds at the time Outstanding which would be affected by the action to be taken; or (c) any action which may result in the denial of the exclusion of the interest on the Bonds from gross income for federal income tax purposes.

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If at any time, the Borrower or the Issuer shall request the consent of the Bond Trustee to any such amendment, change or modification of the Loan Agreement, the Bond Trustee shall, upon being satisfactorily indemnified by the Borrower with respect to expenses, cause notice of such proposed amendment, change or modification to be given in the same manner as provided above with respect to supplemental bond indentures. Such notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the corporate trust office of the Bond Trustee for inspection by all Bondholders. If, within 60 days following the giving of such notice the Holders of not less than two-thirds in aggregate principal amount of Outstanding Bonds at the time of the execution of any such amendment, change or modification shall have consented to and approved the execution thereof as described above, no Holder of any Bond shall have any right to object to the terms and provisions contained therein, or to the operation thereof, or in any manner to question the propriety of the execution thereof or to enjoin or to restrain the Issuer or the Bond Trustee from consenting to the execution thereof. The Bond Trustee may rely upon an opinion of counsel as conclusive evidence that such amendment, change or modification has been effected in compliance with the provisions of this Article.

Section 8.05 Consent of Borrower and Investor Member. Anything contained herein to the contrary notwithstanding, any Supplemental Indenture executed and delivered in accordance with this Article VII which affects in any material respect any rights or obligations of the Borrower shall not become effective unless and until the Borrower and Investor Member shall have consented in writing to the execution and delivery of that Supplemental Indenture.

Section 8.06 Responsibilities of Trustee. Notwithstanding anything else contained herein, the Trustee shall not be required to enter into any Supplemental Indenture which affects the Trustee's own rights, duties or immunities under this Indenture or otherwise.

### **Section 8.07 Authorization to Trustee; Effect of Supplement.**

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

- a) That Supplemental Indenture shall form a part of this Indenture;
- b) All terms and conditions contained in that Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be a part of the terms and conditions of this Indenture for any and all purposes;
- c) This Indenture shall be deemed to be modified and amended in accordance with the Supplemental Indenture; and

d) The respective rights, duties and obligations under this Indenture of the Issuer, the Borrower, the Trustee, the Remarketing Agent and all Holders of Bonds then Outstanding shall be determined, exercised and enforced hereunder in a manner which is subject in all respects to those modifications and amendments made by the Supplemental Indenture.

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

Section 8.08 Opinion of Counsel. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, the opinion of any counsel approved by it as conclusive evidence that (a) any proposed Supplemental Indenture complies with the provisions of this Indenture, and (b) it is proper for the Trustee to join in the execution of that Supplemental Indenture under the provisions of this Article. That counsel may be counsel for the Issuer or the Borrower.

Before the Issuer and the Trustee shall enter into any Supplemental Indenture, there shall have been delivered to the Trustee an Opinion of Bond Counsel to the effect that such Supplemental Indenture will not adversely affect the Federal Tax Status of the Bonds.

Section 8.09 Modification by Unanimous Consent. Notwithstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the Holders, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of (a) the Issuer, (b) the Holders of all of the Bonds then Outstanding, (c) the Borrower and the Investor Member and (d) if such modification or alteration contains provisions adverse to the Trustee, the Trustee.

## **ARTICLE 9 SATISFACTION AND DISCHARGE OF BOND INDENTURE**

Section 9.01 Discharge of Lien. If (a) the Issuer shall pay all of the Outstanding Bonds, or shall cause them to be paid and discharged, or if there otherwise shall be paid to the Holders of the Outstanding Bonds, all Bond Service Charges due or to become due thereon, and (b) provision also shall be made for the payment of all other sums payable hereunder or under the Loan Agreement, the Land Use Restriction Agreement and the Note, then this Indenture shall cease, determine and become null and void (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02 hereof), and the covenants, agreements and obligations of the Issuer hereunder shall be released, discharged and satisfied.

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

a) the Trustee shall release this Indenture (except for those provisions surviving by reason of Section 8.03 hereof in the event the Bonds are deemed paid and discharged pursuant to Section 8.02

hereof), and shall execute and deliver to the Issuer any instruments or documents in writing, prepared by or on behalf of the Issuer, as shall be requisite to evidence that release and discharge or as reasonably may be requested by the Issuer;

b) the Trustee shall release and satisfy the Note and deliver such release and satisfaction to the Borrower; and

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

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

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

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

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

If any Bonds shall be deemed paid and discharged pursuant to this Section 8.02, then within 15 days after such Bonds are so deemed paid and discharged the Trustee shall cause a written notice to be given to each Holder as shown on the Register on the date on which such Bonds are deemed paid and discharged. Such notice shall state the numbers of the Bonds deemed paid and discharged or state that all Bonds are deemed paid and discharged, and shall set forth a description of the obligations held pursuant to subparagraph (b) of the first paragraph of this Section 8.01.

Section 9.02 Survival of Certain Provisions. Notwithstanding the foregoing, any provisions of this Bond Indenture which relate to the maturity of Bonds, interest payments and dates thereof, optional and mandatory redemption provisions, credit against mandatory sinking fund requirements, exchange, transfer and registration of Bonds, replacement of mutilated, destroyed, lost or stolen Bonds, the safekeeping and cancellation of Bonds,

non-presentment of Bonds, the holding of moneys in trust, and repayments of moneys in funds held hereunder, and the duties of the Bond Trustee and the Bond Registrar in connection with all of the foregoing,

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shall remain in effect and be binding upon the Bond Trustee, the Bond Registrar, the Paying Agent and the Holders notwithstanding the release and discharge of this Bond Indenture. The provisions of this Article shall survive the release, discharge and satisfaction of this Bond Indenture.

## **ARTICLE 10 MISCELLANEOUS**

Section 10.01 Consents and Other Instruments of Bondholders. Any consent, request, direction, approval, waiver, objection, appointment or other instrument required by this Bond Indenture to be signed and executed by the Bondholders may be signed and executed in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such instrument, if made in the following manner, shall be sufficient for any of the purposes of this Bond Indenture and shall be conclusive in favor of the Trustee with regard to any action taken under such instrument, namely:

a) The fact and date of the execution by any Person of any such instrument may be proved by the affidavit of a witness of such execution or by the certificate of any notary public or other officer of any jurisdiction, authorized by the laws thereof to take acknowledgments of deeds, certifying that the Person signing such instrument acknowledged to him the execution thereof. Where such execution is by an officer of a corporation or association or a member of a limited liability company or a partner of a partnership on behalf of such corporation, association, limited liability company or partnership, such affidavit or certificate shall also constitute sufficient proof of his authority.

b) The ownership of Bonds shall be proven by the Bond Register.

c) Any request, consent or vote of the Holder of any Bond shall bind every future Holder of any Bond issued in exchange therefor or in lieu thereof, in respect of anything done or permitted to be done by the Trustee or the Issuer pursuant to such request, consent or vote.

d) In determining whether the Holders of the requisite amount of the principal amount of the Bonds then Outstanding have concurred in any demand, request, direction, consent or waiver under this Bond Indenture, Bonds which are owned by the Issuer or the Borrower or by any Person directly or indirectly controlling or controlled by, or under direct or indirect common control with the Issuer or the Borrower shall be disregarded and deemed not to be Outstanding for the purpose of determining whether the Bond Trustee shall be protected in relying on any such demand, request, direction, consent or waiver. Only Bonds which the Bond Trustee knows to be so owned shall be disregarded. Bonds so owned which have been pledged in good faith may be regarded as Outstanding for the purposes of this Section if the pledgee shall establish to the satisfaction of the Bond Trustee the pledgee's right to vote such Bonds. In case of a dispute as to such right, any decision by the Bond Trustee taken upon the advice of counsel shall be full protection to the Bond Trustee.

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Section 10.02 Limitation of Rights. With the exception of rights conferred expressly in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any Person other than the parties hereto, the Remarketing Agent, the Borrower, the Managing Member and the Holders of the Bonds any legal or equitable right, remedy, power or claim under or with respect to this Indenture or any covenants, agreements, conditions and provisions contained herein. This Indenture and all of those covenants, agreements, conditions and provisions are intended to be, and are, for the sole and exclusive benefit of the parties hereto, the Remarketing Agent, the Borrower, the Managing Member and the Holders of the Bonds, as provided herein.

Section 10.03 Severability. If any provision of this Bond Indenture shall be held or deemed to be or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstances, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever.

The invalidity of any one or more phrases, sentences, clauses or sections in this Bond Indenture contained shall not affect the remaining portions of this Bond Indenture or any part thereof

Section 10.04 Notices. All notices, certificates or other communications hereunder shall be sufficiently given and shall be deemed given three days after deposit by first-class mail, except any notice specifically required to be given by certified or registered mail shall be deemed given three days after being mailed by certified or registered mail, postage prepaid, and any notice dispatched by messenger, facsimile or telegram, addressed to the Notice Address of the <sup>J</sup> person to whom such notices, certificates or other communications are given shall be deemed given when delivered.

Section 10.05 Payments Due on Saturdays, Sundays and Holidays. In any case where the date of maturity of interest on or principal of the Bonds, or the date fixed for redemption of any Bonds, shall be a Saturday, Sunday, legal holiday or a day on which banking institutions are authorized by law to close, then payment of interest or principal need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after such date.

Section 10.06 Priority of this Indenture. This Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

Section 10.07 Counterparts. This Bond Indenture may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 10.08 Governing Law. The laws of the State shall govern the construction of this Bond Indenture and of all Bonds issued hereunder, without reference to its conflict of laws principles.



Section 10.09 No Recourse. No recourse shall be had for the principal of, redemption premium, if any, and interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Bond Indenture or the, Loan Agreement against any past, present or future official, officer or employee of the Issuer, as such, either directly or through the Issuer or any successor, under any rule of law, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability is hereby expressly waived and released as a condition of and consideration for the execution of the Bond Indenture and the Loan Agreement and the issuance of the Bonds.

Section 10.10 Successors and Assigns. All the covenants and representations contained in this Bond Indenture, by or on behalf of the Issuer, shall bind and inure to the benefit of its successors and assigns, whether or expressed or not.

Section 10.11 Books, Records and Accounts. The Bond Trustee agrees to keep proper books, records and accounts in which complete and correct entries shall be made of all transactions relating to the receipt, disbursements, investment, allocation and application of the proceeds received from the sale of the Bonds, the revenues received from the Funds created pursuant to this Bond Indenture and all other money held by the Bond Trustee hereunder. The Bond Trustee shall make such books, records and accounts available for inspection by the Issuer or the Holder of any Bond during reasonable hours and under reasonable conditions.

**Section 10.12 Mortgage Loan Documents and Regulations Control.**

a) In the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this Indenture and the provisions of the Controlling HUD and GNMA Requirements or the Mortgage Loan Documents, the Controlling HUD and GNMA Requirements and Mortgage Loan Documents will be deemed to be controlling, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the Controlling HUD and GNMA Requirements and Mortgage Loan Documents, as applicable. Notwithstanding any provision of this Indenture to the contrary, the parties hereto acknowledge and agree that all of their respective rights and powers to any assets or properties of the Borrower are subordinate and subject to the liens created by the Mortgage, together with any and all amounts from time to time secured thereby, and interest thereon, and to all of the terms and provisions of the Mortgage, and any and all other documents executed by the Borrower as required by HUD or GNMA in connection therewith.

b) Enforcement of the covenants in this Indenture will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Project, the Mortgage Loan proceeds, any reserves or deposits required by HUD in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project other than available "Surplus Cash" as defined in the HUD Regulatory Agreement.

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

d) The Bonds are not a debt of the United States of America, MUD, FHA, GNMA or any

other agency or instrumentality of the federal government, and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

e) There is no pledge hereunder of the gross revenues or any of the assets of the Project.

f) Nothing contained herein shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any Mortgage Loan Documents.

g) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Mortgage Loan Documents.

h) Notwithstanding anything to the contrary in the event of an assignment or conveyance of the Mortgage Loan Documents to the Federal Housing Commissioner, subsequent to the issuance of the Bonds, all money remaining in all Special Funds and any other funds remaining under this Indenture after payment or provision for payment of debt service on the Bonds and the fees and expenses of the Issuer, Trustee and other such parties unrelated to the Borrower (other than amount in the Rebate Fund and any funds originally deposited by the Borrower or related parties on or before the date of issuance of the Bonds) shall be returned to the Lender.

IN WITNESS WHEREOF, the parties hereto have caused this Bond Indenture to be duly executed and their respective corporate seals to be hereunto affixed and attested, all as of the date and year first above written.

**CITY OF CHICAGO**

By: Chief Financial Officer

(Seal) Attest:

Deputy City Clerk

as Bond Trustee »

By: Authorized Officer

Attest:

Authorized Officer

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**EXHIBIT A FORM OF  
BOND**

UNITED STATES OF AMERICA STATE OF ILLINOIS CITY OF CHICAGO

Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018

MAXIMUM PRINCIPAL AMOUNT:

No. R-1

\$

Initial

Maturity Date Dated Date Interest Rate CUSJP No.
,20 ,2018 % 167570

Registered Owner: CEDE & CO.

Maximum Principal Amount: DOLLARS

INITIAL MANDATORY TENDER DATE: , 20

The City of Chicago, a municipality and home rule unit of government duly organized and validly existing under the Constitution and the laws of the State of Illinois (the "Issuer"), for value received, hereby promises to pay (but only from the revenues and other assets and in the manner hereinafter described) to the Registered Owner specified above or registered assigns, the Principal Amount specified above on the Maturity Date specified above (subject to the rights of redemption and tender set forth herein), and to pay from those sources interest on the unpaid principal balance of said Principal Amount calculated at the Interest Rate on (a) 1 and 1 of each year beginning 1, 2018, (b) each Redemption Date, and (c) each Mandatory Tender Date (the "Interest Payment Dates") until the principal amount is paid or duly provided for. This Bond will bear interest from the most recent date to which interest has been paid or duly provided for or, if no interest has been paid or duly provided for, from its date, or, if no interest has been paid or provided for, from the date of initial delivery (the "Closing Date").

This Bond shall bear interest from the Dated Date to but not including the Initial Mandatory Tender Date at the Initial Interest Rate set forth above and thereafter this Bond shall bear interest at the Remarketing Rate (as defined in the Indenture) for each subsequent

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Remarketing Period (as defined in the Indenture). Interest on the Bonds shall be calculated on the basis of a 360-day year consisting of twelve 30-day months, for the actual number of days elapsed.

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

This Bond is one of a duly authorized series of bonds of the City designated as its Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018 (the "Bonds"), in the aggregate principal amount of \$ (the "Bonds"), pursuant to Article VII, Section 6 of the 1970 Constitution of the State of Illinois, and pursuant to the Ordinance adopted by the Issuer on September , 2018. The Bonds are issued under and are equally and ratably secured as to principal, premium, if any, and interest by a Bond Indenture dated as of 1, 2018, from the Issuer to the Bond Trustee (the "Bond Indenture"), to which Bond Indenture and all indentures supplemental thereto (copies of which are on file at the office of the Bond Trustee) reference is hereby made. By the acceptance of this Bond, the Holder hereof assents to all of the provisions of the Bond Indenture.

The Bonds, together with premium, if any, and interest thereon, do not constitute an indebtedness, liability, general or moral obligation or a pledge of the full faith or loan of credit of the Issuer, the State of Illinois, or any political subdivision of the State of Illinois within the meaning of any constitutional or statutory provisions. None of the Issuer, the State of Illinois or any political subdivision thereof shall be obligated to pay the principal of, premium, if any, or interest on the Bonds or other costs incident thereto except from the revenues and assets pledged with respect thereto. Neither the full faith and credit nor the taxing power of the United States of America, the Issuer, the State of Illinois or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest on the Bonds or other costs incident thereto. The Bonds are not a debt of the United States of America or any agency thereof, and are not guaranteed by the United States of America or any agency thereof.

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

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The Bonds are being issued by the Issuer for the purpose of financing a loan (the "Loan") to be made to Mark Twain NHPF, LLC, an Illinois limited liability company (the "Borrower"). The Loan will be used by the Borrower to pay a portion of the costs of acquiring, constructing and equipping the Project, as defined in the Indenture and as further described in the Loan Agreement dated as of even date with the Indenture (the "Loan

Agreement"), between the Issuer and the Borrower. The Bonds are special limited obligations of the Issuer<sup>^</sup> issued or to be issued under and are secured and entitled equally and ratably to the protection given by the Indenture, including payments under the Loan made to the Trustee by the Borrower.

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

a) Optional Redemption. The Bonds are subject to optional redemption in whole or in part by the Issuer at the written direction of the Borrower on any date on or after the later to occur of (a) the date that the Project is placed in service, as certified in writing by the Borrower to the Trustee, and (b) the Optional Redemption Date (as defined in the Indenture) at a redemption price equal to 100% of the principal amount of the Bonds plus accrued interest to the Redemption Date.

b) Reserved.

c) Mandatory Redemption. The Bonds shall be redeemed in whole at a redemption price of 100% of the principal amount of such Bonds, plus accrued interest to the Redemption Date, on any Mandatory Tender Date upon the occurrence of any of the following events: (i) the Borrower has previously elected not to cause the remarketing of the Bonds, (ii) the conditions to remarketing set forth in the Indenture have not been met by the dates and times set forth therein, or (iii) the proceeds of a remarketing on deposit in the Remarketing Proceeds Account at 11:00 a.m. Local Time on the Mandatory Tender Date are insufficient to pay the purchase price of the Outstanding Bonds on such Mandatory Tender Date. Bonds subject to redemption in accordance with this paragraph shall be redeemed from (i) amounts on deposit in the Collateral Fund, (ii) amounts on deposit in the Negative Arbitrage Account of the Bond Fund, (iii) amounts on deposit in the Project Fund, and (iv) any other Eligible Funds available or made available for such purpose at the direction of the Borrower.

d) Mandatory Tender. The Bonds are subject to mandatory tender in whole on each Mandatory Tender Date. Holders will not have the right to elect to retain their Bonds. Upon presentation and surrender of the Bonds by the Holder on the date fixed for tender, the Holder shall be paid the principal amount of the Bonds to be tendered, plus accrued interest on such Bonds to the tender date.

Reference is made to the Indenture for a more complete description of the Project, the provisions, among others, with respect to the nature and extent of the security for the Bonds, the rights, duties and obligations of the Issuer, the Trustee and the Holders of the Bonds, and the terms and conditions upon which the Bonds are issued and secured. Each Holder assents, by its acceptance hereof, to all of the provisions of the Indenture.

The Borrower is required by the Loan Agreement to cause the Lender (as defined in the Indenture) to make on its behalf Collateral Payments (as defined in the Indenture) to the Trustee

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in the amounts and at the times necessary to pay the principal of and interest (the "Bond Service Charges") on the Bonds. In the Indenture, the Issuer has assigned to the Trustee, to provide for the payment of the Bond Service Charges on the Bonds, the Issuer's right, title and interest in and to the Loan Agreement, except for Reserved Rights as defined in the Indenture. To secure its compliance with certain covenants in the Loan Agreement, the Borrower has executed and delivered a Regulatory and Land Use Restriction Agreement, dated as of \_\_\_\_\_, 2018 (the

"Land Use Restriction Agreement") among the Issuer, the Borrower and the Trustee.

Copies of the Indenture, the Loan Agreement and the Land Use Restriction Agreement are on file in the designated corporate trust office of the Trustee.

The Bond Service Charges on the Bonds are payable solely from the Revenues, as defined and as provided in the Indenture (being, generally, the amounts payable under the Loan Agreement and any unexpended proceeds of the Bonds), and are an obligation of the Issuer only to the extent of the Revenues. The Bonds are not secured by an obligation or pledge of any money raised by taxation and do not represent or constitute a debt or pledge of the faith and credit of the Issuer.

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

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

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

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

Neither the Issuer nor the Borrower shall be liable for an acceleration of the Bonds or payment of additional interest thereon in the event that interest on the Bonds is declared or becomes includable in gross income for federal income tax purposes.

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

This Bond is transferable by the Holder hereof in person or by his attorney duly authorized in writing at the principal corporate trust office of the Bond Trustee, but only in the manner and subject to the limitations provided in the Bond Indenture upon payment of any tax, fee or other governmental charge required to be paid with respect to such transfer, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or bonds of the same maturity and interest rate and of authorized denomination or denominations for the same aggregate principal amount will be issued to the transferee in exchange therefor.

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

Subject to the limitations of the Bond Indenture and upon payment of any tax, fee or other governmental charge required to be paid with respect to such exchange, Bonds may be exchanged for a like aggregate principal amount of Bonds of the same maturity and interest rate.

The principal hereof may be declared or may become due on the conditions and in the manner and at the time set forth in the Bond Indenture upon the occurrence of an event of default as provided in the Bond Indenture.

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No recourse shall be had for the payment of the principal of, premium, if any, or interest on this Bond, or for any claim based hereon, or otherwise in respect hereof, or based on or in respect of the Bond Indenture or any indenture supplemental thereto, against any trustee, officer or employee, as such, past, present or future, of the Issuer or any successor, whether by virtue of any constitution, statute or rule of law, or by the enforcement of any assessment or penalty or otherwise, all such liability being, by the acceptance hereof and as part of the consideration for the issue hereof, expressly waived and released. The following abbreviations, when used in the inscription on the face of this Bond, shall be construed as though they were written out in full according to



applicable laws or regulations:

UNIF GIFT MEM ACT-- Custodian

(Cust) (Minor) Under Uniform Gift to  
Minors  
Act  
(State)

TEN COM - as tenants in common TEN ENT - as  
tenants by the entireties JT TEN - as joint tenants with  
right of  
Survivorship and not as  
Tenants in common

Additional abbreviations may also be used though not in the above list.

It is hereby certified, recited and declared that all facts, conditions and things required to exist, happen and be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law and that the issuance of this Bond, together with all other obligations of the Issuer, does not exceed or violate any constitutional or statutory limitation.

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IN WITNESS WHEREOF, the Issuer has caused this Bond to be executed in its name by the manual or facsimile signature of an authorized officer and its corporate seal to be hereunto impressed or imprinted hereon and attested to by the manual or facsimile signature of an authorized officer of the Issuer, all as of the Dated Date identified above.

CITY OF CHICAGO, ILLINOIS

By: Mayor

Attest:

By: City Clerk

**FORM OF CERTIFICATE OF AUTHENTICATION**

This Bond is one of the Bonds described in the Bond Indenture referred to in this Bond.

As Bond Trustee

By: \_\_\_\_\_  
Authorized Signature

Date of Authentication:

Date from which interest is payable:

Unless this certificate is presented by an authorized representative of The Depository Trust Company, a New York corporation ("DTC"), to the issuer or its agent for registration or transfer, exchange or payment, and any certificate issued is registered in the name of Cede & Co. or in such other name as is required by an authorized representative of DTC (and any payment is made to Cede & Co. or to such other entity as if required by an authorized representative of DTC), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL inasmuch as the registered owner hereof, Cede & Co., has an interest herein.

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### FORM OF ASSIGNMENT

FOR VALUE RECEIVED, the undersigned hereby sells, assigns, and transfers unto

(Please Print or Type Name and Address of Assignee)

Social Security or Taxpayer Identification Number:

The within Bond and all rights thereunder, and hereby irrevocably constitutes and appoints

Attorney to transfer the said Bond on the books of the within-named Issuer maintained by the Trustee for the registration thereof, with full power of substitution in the premises.

Notice: The signature to this assignment Must correspond with the name as it appears On the face of the within note in every Particular, without alteration or enlargement or any change whatever. The signature Must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

Signature guaranteed by:

[Bank, Trust Company or Finn]

Authorized Signature

(Signature(s) must be guaranteed by a broker or other financial institution which is a participant in the Securities Transfer Agent's Medallion Program (STAMP, SEMP, MSP)).

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## **EXHIBIT B**

### **LEGAL DESCRIPTION OF PROJECT SITE**

LOT 1 AND THE NORTH 25 FEET OF LOT 2, ALSO THE WEST 50 FEET OF SAID LOT 2 (EXCEPT THEREFROM THE NORTH 25 FEET AND THE SOUTH 3.5 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 22 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST ½ OF THE SOUTHEAST ¼ OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 101-111 West Division Street, Chicago, Illinois 60610-1909 PIN: 17-04-405

-006-0000

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**Ordinance Exhibit C Form of Loan Agreement**

See Attached





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EXHIBIT A: Form of Promissory Note EXHIBIT B:  
Form of Requisition

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EXHIBIT C: *Compj*et/on CeJt].ff{

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## LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") dated as of \_\_\_\_\_, 2018, by and among CITY OF CHICAGO, a municipality and home rule unit of government duly organized and validly existing under the Constitution and the laws of the State of Illinois (the "Issuer"), MARK TWAIN NHPF, LLC, an Illinois Investor Membership (the "Borrower") and \_\_\_\_\_, an Illinois state banking corporation having its principal corporate trust office in Chicago, Illinois, as trustee (the "Trustee" or "Bond Trustee") under that certain Bond Indenture dated as of \_\_\_\_\_, 2018, from the Issuer to the Bond Trustee securing the Bonds described below (the "Bond Indenture").

### WITNESSETH:

WHEREAS, as a home rule unit of local government and pursuant to the Constitution of the State of Illinois, the Issuer is authorized to issue its revenue Bonds and bonds in order to aid in providing an adequate supply of residential housing for low- and moderate-income persons or families within the City of Chicago, which constitutes a valid public purpose for the issuance of revenue Bonds and bonds by the Issuer; and

WHEREAS, the Issuer has determined to issue, sell and deliver its Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018 (the "Bonds") pursuant to the Bond Indenture, from the Issuer to the Bond Trustee, and to lend the proceeds thereof to the Borrower for the purpose of financing a low-income housing development project consisting of the acquisition, rehabilitation and equipping of an approximately 148-unit multifamily housing rental apartment complex to be known as Mark Twain Apartments located at 111 W. Division Street, Chicago, Illinois (the "Project"); and

WHEREAS, the Issuer and the Borrower have entered into this Loan Agreement providing for the loan of the proceeds of the Bonds to the Borrower for the purposes described in the preceding paragraph; and

WHEREAS, this Loan Agreement provides for the issuance by the Borrower of the Promissory Note (as hereinafter defined); and

WHEREAS, the Issuer will pledge and assign the Promissory Note and this Loan Agreement to the Bond Trustee for the benefit of the Holders under the Assignment (contained in the Bond Indenture);

NOW, THEREFORE, in consideration of the premises and the mutual covenants and agreements contained herein, and for other good and valuable consideration (the receipt, sufficiency and adequacy of which are hereby acknowledged), the parties hereto agree as follows, provided that in the performance of the agreements of the Issuer herein contained, any obligation it may thereby incur for the payment of money

shall not constitute an indebtedness or give rise to a pecuniary liability of the Issuer, the State of Illinois or any political subdivision thereof, or a charge against the Issuer's general credit or the taxing powers of the State of Illinois or any political subdivision thereof, but shall be payable solely and only from the Revenues (as defined in the Bond Indenture):

## ARTICLE I. DEFINITIONS

Section 1.01 Definitions. Terms used in this Loan Agreement and defined in the Bond Indenture shall have the meanings given to such terms in the Bond Indenture.

Section 1.02 Interpretation. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number, and vice versa, unless the context shall otherwise indicate. References to Articles, Sections and other subdivisions of this Loan Agreement are to the Articles, Sections and other subdivisions of this Loan Agreement as originally executed. The headings of this Loan Agreement are for convenience and shall not define or limit the provisions hereof.

## ARTICLE II. REPRESENTATIONS AND WARRANTIES

Section 2.01 Representations and Warranties of Issuer. The Issuer represents and warrants that:

a) The Issuer is a municipal corporation and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State of Illinois. Under the Constitution and laws of the State of Illinois, the Issuer has the power to enter into the transaction contemplated by this Loan Agreement, the Bond Indenture, the Bonds, the Tax Regulatory Agreement, the Land Use Restriction Agreement and the Assignment (collectively, the "Issuer Documents"), and to carry out its obligations hereunder and thereunder, including the full right, power and authority to pledge and assign this Loan Agreement and the Promissory Note to the Bond Trustee as provided herein. By proper action of the City Council of the Issuer, the Issuer has been duly authorized to execute and deliver the Issuer Documents.

b) The Issuer is issuing the Bonds for the purpose of financing a portion of the Project Costs.

c) The Bonds are to be issued under home rule powers of the Issuer under the Constitution of the State of Illinois and secured by the Bond Indenture, pursuant to which the right, title and interest of the Issuer in, to and with respect to this Loan Agreement, the Promissory Note and all documents to be executed by the Borrower in connection with the Bonds (other than with respect to the Issuer Reserved Rights) will be assigned and pledged to the Bond Trustee as security for payment of the principal of and interest on the Bonds as provided in the Bond Indenture.

d) The Issuer hereby finds and determines that the Project is in the best interests of the Issuer, and that all requirements of the Constitution and laws of the State of Illinois have been complied with.

e) To the knowledge of the undersigned representatives of the Issuer, neither the execution and delivery of the Bonds, this Loan Agreement, the Land Use Restriction Agreement or the Bond Indenture, the consummation of the transactions contemplated hereby

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and thereby, nor the fulfillment of or compliance with the terms, conditions or provisions of the Bonds, this Loan Agreement, the Land Use Restriction Agreement or the Bond Indenture conflict with or result in a material breach of any of the terms, conditions or provisions of any agreement, instrument, judgment, order, or decree to which the Issuer is now a party or by which it is bound, or constitute a material default under any of the foregoing.

f) The Project is located entirely within the corporate boundaries of the City of Chicago, Illinois.

g) To the knowledge of the undersigned representatives of the Issuer, there is no action, suit, proceeding or investigation pending or threatened against the Issuer which seeks to restrain or enjoin the issuance or delivery of the Bonds, or the execution and delivery of the this Loan Agreement or any other Issuer Documents, or which in any way contests or affects any authority for the issuance or delivery of the Bonds, or the execution and delivery of this Loan Agreement or any other Issuer Documents, or the validity of the Bonds, this Loan Agreement, or in any way contests the corporate existence or powers of the Issuer, or in any way affects the exclusion from gross income for federal income tax purposes of interest on the Bonds.

THE ISSUER MAKES NO REPRESENTATION, EITHER EXPRESS OR IMPLIED, AS TO THE CREDITWORTHINESS OR THE ABILITY OF THE BORROWER TO MAKE THE PAYMENTS DUE UNDER THIS LOAN AGREEMENT OR THE PROMISSORY NOTE AND DOES NOT REPRESENT OR WARRANT AS TO ANY OF THE STATEMENTS, MATERIALS (FINANCIAL OR OTHERWISE), REPRESENTATIONS OR CERTIFICATIONS FURNISHED OR TO BE MADE AND FURNISHED BY THE BORROWER IN CONNECTION WITH THE ISSUANCE, SALE, EXECUTION AND DELIVERY OF THE BONDS, OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY OF SUCH STATEMENTS.

Section 2.02 Representations and Warranties of Borrower. The Borrower represents and warrants that:

a) The Borrower is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of Illinois. The Managing Member is a limited liability company is a not-for-profit corporation, both duly organized and validly existing and in good standing under the laws of the State of Illinois.

b) The Borrower (i) is authorized to do business in the State of Illinois and every other jurisdiction in which the nature of its business or its properties makes such qualification necessary; (ii) has full power and authority to own its properties and to conduct its business as now being conducted, and to enter into, and to perform and observe in all material respects the covenants and agreements in its part contained in, this Loan Agreement, the Promissory Note, the Tax Regulatory Agreement, the Land Use Restriction Agreement and the Continuing Disclosure Agreement (collectively, the "Borrower Documents"); and (iii) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

c) The Managing Member (i) is authorized to do business in the State of Illinois and every other jurisdiction in which the nature of its business or its properties makes

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such qualification necessary; (ii) has full power and authority to own its properties and to conduct its business as now being conducted and to enter into, and to perform and observe in all material respects the covenants and agreements in its part contained in the Borrower Documents; and (iii) is in compliance with all laws, regulations, ordinances and orders of public authorities applicable to it.

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

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

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

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

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

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

(j) The Borrower is not in default under or in violation of, and the execution, delivery and compliance by the Borrower with the terms and conditions of the Borrower

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

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

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

(m) Neither the Borrower nor any related Person thereto shall acquire any Bonds in any amount.

(n) The Borrower acknowledges, represents and warrants that it understands the nature and structure of the transactions relating to the financing of the Project; that it is familiar with the provisions of all of the documents and instruments relating to such financing to which it or the Issuer is a party or of which it is a beneficiary; that it understands the risks inherent in such transactions, including, without limitation, the risk of loss of the Project; and that it has not relied on the Issuer or its counsel for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Agreement and the Indenture or otherwise relied on the Issuer or its counsel in any manner.

(o) The Project is, as of the Closing Date, in compliance with all applicable requirements of the Land Use Restriction Agreement, including all applicable requirements of the Code. The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Land Use Restriction Agreement, including all applicable requirements of the Code. All future leases will comply with all applicable laws and the Land Use Restriction Agreement. The Project currently meets the requirements of this Agreement, the Land Use Restriction Agreement, and the Code with respect to multifamily rental housing.

(p) The proceeds of the Bonds shall be used or deemed used exclusively to pay costs that (i) are (A) capital expenditures (as defined in Section 1.150-1 (a) of the Code's regulations) and (B) not made for the acquisition of existing property, to the extent prohibited in Section 147(d) of the Code; (ii) are made exclusively with respect to a "qualified residential rental project" within the meaning of Section 142(d) of the Code and that for the greatest number of buildings the proceeds of the Bonds shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Bonds for the purpose of complying with Section 42(h)(4)(B) of the Code, and the Borrower

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further covenants that it will not exercise any option to redeem the Bonds under the Indenture except upon the express written consent of the Investor Limited Member; provided, however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its members and neither the Trustee nor the Issuer shall have any obligation to enforce this covenant nor shall they incur any liability to any Person, including without limitation, the Borrower, the members of the Borrower, any other affiliate of the Borrower or the holders of the Bonds for any failure to meet the intent expressed in the foregoing representation, covenant and warranty; and provided further, failure to comply with this representation, covenant and warranty shall not constitute a default or "Event of Default" under this Agreement or the Indenture; and (iii) are costs related to the issuance of the Bonds.

(q) All building, zoning, safety, health, fire, water district, sewerage and environmental protection agency permits and other licenses and permits that are required by any governmental body for the acquisition, rehabilitation, equipping, use, occupancy and operation of the Project have been obtained and are in full force and effect (except for those which are not yet required to have been obtained in connection with the acquisition, rehabilitation and equipping of the Project, and which will be obtained at or prior to the time required by law in connection with the acquisition, rehabilitation and equipping of the Project).

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

Section 2.03 [[Borrower's Representations Regarding Bonds and Project. With respect to the use of proceeds of the Bonds, and the operation of the Project, the Borrower represents as follows:

a) The estimated cost of rehabilitating the Project, inclusive of financing costs, is in excess of \$32,000,000.

b) (i) At least 95% of the net proceeds of the Bonds will be used to finance Qualified Project Costs which constitute a "qualified residential rental project" within the meaning of Section 142(d) of the Code and such costs either (1) will have been paid with respect to work performed or materials purchased after July 26, 2015 (which date is sixty days prior to the adoption of the Inducement Ordinance) or (2) will constitute "Preliminary Expenditures" not in excess of twenty (20%) percent of the sale proceeds of the Bonds as defined in Section 3.13.6 of the Tax Regulatory Agreement executed by the City, the Borrower and the Bond Trustee in connection with the Bonds.

c) The average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the Project determined in accordance with Section 147(b) of the Code.

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d) Neither the Borrower nor any "related person" (within the meaning of the Code) will acquire, pursuant to any arrangement, formal or informal, any of the Bonds in an amount related to the principal amount of the Bonds.

e) Less than 25% of the net proceeds of the Bonds will be used for the acquisition of the land on which the Project is located.

f) None of the proceeds of the Bonds will be used to provide any airplane, skybox or other private luxury box, health club facility, any facility primarily used for gambling, or any store the principal business of which is the sale of alcoholic beverages for consumption off premises, and none of the proceeds of the Bonds will be used for the acquisition of land to be used for farming or industrial park purposes.

g) Until payment in full of all of the Bonds, unless the Bond Trustee shall otherwise consent in writing, it will not incur, create, assume or suffer to exist any mortgage, pledge, security interest, lien, charge or other encumbrance of any nature on the Project or the Trust Estate (as defined in the Bond Indenture) other than (i) any liens, taxes or other governmental charges which are not yet due and payable, (ii) any pledge relating to syndication of ownership interests in the Project, (iii) any lien, including, but without limiting the generality of the foregoing, mechanics' liens, or other liens resulting from a good-faith dispute on the part of the Borrower, which dispute the Borrower agrees to resolve diligently, (iv) the Borrower Documents, (v) other liens or encumbrances contemplated by the approving ordinance adopted by the Issuer in connection with the issuance of the Bonds, and (vi) such other pledges as may be approved in writing by the Bond Trustee.

h) The Bond Indenture has been submitted to the Borrower for its examination, and the Borrower acknowledges, by execution of this Loan Agreement, that it has reviewed and approved the Bond Indenture.

(i) Borrower has not taken, or permitted to be taken on its behalf, and agrees that it will not take, or permit to be taken on its behalf, any action which would adversely affect the exclusion from gross income for federal income tax purposes of the interest paid on the Bonds, and that it will make and take, or require to be made and taken, such acts and filings as may from time to time, be required under the Code to maintain the exclusion from gross income for federal income tax purposes of the interest on the Bonds, including maintaining continuous compliance with the requirements of Section 142 of the Code.

(j) If the Borrower becomes aware of any situation, event or condition which would result in the interest of the Bonds becoming includable in gross income for federal income tax purposes, the Borrower shall promptly give written notice thereof to the Issuer and the Bond Trustee. ]]



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## ARTICLE III. PLAN OF FINANCING

### **Section 3.01 Issuance of Bonds; Application of Proceeds.**

To provide funds to finance the Loan for purposes of assisting the Borrower in paying Project Costs, the Issuer shall simultaneously with the execution and delivery hereof proceed with the issuance and delivery of the Bonds upon receipt by the Trustee of the items listed in Section 2.13 of the Indenture. The Issuer agrees to deposit the proceeds of sale of the Bonds in accordance with the Indenture.

The Bonds will be issued pursuant to the Indenture in the aggregate principal amount, will bear interest, will mature and will be subject to redemption, mandatory tender and remarketing as set forth therein. The Borrower hereby approves the terms and conditions of the Indenture and the Bonds, and the terms and conditions under which the Bonds will be issued, sold and delivered and will comply with those provisions of the Indenture that contemplate action by the Borrower, all as if the Borrower were a party to the Indenture.

Pending disbursement pursuant to Section 3.06 hereof, the proceeds of the Bonds deposited in the Project Fund, together with any investment earnings thereon, shall constitute a part of the Revenues assigned by the Issuer to the Trustee as security for the payment of Bond Service Charges as provided in the Indenture.

Section 3.02 The Loan. The Issuer agrees, upon the terms and conditions herein, to make the Loan to the Borrower with the proceeds received by the Issuer from the sale of the Bonds by causing such proceeds to be deposited with the Trustee for disposition as provided in the Indenture. The obligation of the Issuer to finance the Loan shall be deemed fully discharged upon the deposit of the proceeds of the Bonds with the Trustee. The Loan shall be evidenced by the Note payable to the Trustee.

### **Section 3.03 Mortgage Loan to Borrower; GNMA Certificates.**

[[To provide and secure funds for the repayment of the Loan, and to provide for the delivery of the Collateral Payments, the Borrower shall simultaneously with the execution and delivery hereof, proceed with obtaining the Mortgage Loan from the Lender and entering into the Disbursement Agreement. In particular, the Borrower will promptly take all necessary actions on its part to close the Mortgage Loan and satisfy all other terms and conditions of the FHA Commitment and the requirements of the Lender.

The Borrower represents that the Mortgage Loan is to be insured by FFIA pursuant to and in accordance with the provisions of Section 232 of the National Housing Act and applicable regulations thereunder, and that the Mortgage Loan will be in the maximum original principal amount of \$ . The Mortgage Loan will be secured on a non-recourse basis pursuant to the Mortgage Loan Documents.

In connection with the Mortgage Loan, the Borrower shall execute and deliver such documents as may be customarily utilized for insured mortgage loans under the provisions of Section 220 of the National Housing Act and applicable regulations thereunder, with such

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omissions, insertions and variations as may be permitted by such regulations and as may be consistent with the terms and provisions of this Agreement.]]

### **Section 3.04 Acquisition, Rehabilitation, Installation, Equipment and Improvement.**

The Borrower (a) has acquired, or is in the process of acquiring, the Project site and shall construct, improve and equip the Project with all reasonable dispatch and in accordance with the Plans and Specifications, (b) shall pay when due all fees, costs and expenses incurred in connection with that acquisition, rehabilitation, installation, equipment and improvement from funds made available therefor in accordance with this Agreement or otherwise, except to the extent being contested in good faith, and (c) shall ask for, demand, sue for, levy, recover and receive all those sums of money, debts and other demands whatsoever which may be due, owing and payable under the terms of any contract, order, receipt, writing and instruction in connection with the acquisition, rehabilitation, improvement and equipping of the Project, and shall enforce the provisions of any contract, agreement, obligation, bond or other performance security with respect thereto. It is understood that the Project is that of the Borrower and any contracts made by the Borrower with respect thereto, whether acquisition contracts, rehabilitation contracts or otherwise, or any work to be done by the Borrower on the Project are made or done by the Borrower in its own behalf and not as agent or contractor for the Issuer. The Borrower agrees that it will compensate all workers employed in the rehabilitation, improvement and equipping of the Project as required by law.

### **Section 3.05 Plans and Specifications.**

The Plans and Specifications will be delivered to the Trustee upon request; provided that the Trustee shall have no duty to review such Plans and Specifications. The Borrower may revise the Plans and Specifications from time to time, provided that no revision shall be made which would change the purpose of the Project to other than purposes permitted by the Act and the Land Use Restriction Agreement.

### **Section 3.06 Disbursements from the Project Fund.**

[[Subject to the provisions below and so long as no Event of Default hereunder has occurred and is continuing for which the principal amount of the Bonds has been declared to be immediately due and payable pursuant to Section 8.02 hereof and Section 6.03 of the Indenture, and no Determination of Taxability, has occurred, disbursements from the Project Fund shall be made only to pay Costs of the Project.

Any disbursements from the Project Fund for the payment of Costs of the Project shall be made by the Trustee only upon the receipt by the Trustee of: (a) a requisition in the form attached hereto as Exhibit B, signed by an Authorized Borrower Representative; and (b) Collateral Payments, from the Lendere in an amount at least equal to the amount of any such requisition for deposit in the Collateral Fund as provided in Section 4.02 hereof and in accordance with Section 4.06 of the Indenture. The Borrower hereby acknowledges and agrees that it shall submit requisitions to the Trustee no more frequently than once each calendar month. Each such requisition shall be consecutively numbered and, if such requisition requests amounts

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corresponding to an advance of Lender Funds, accompanied by a copy of the approval of FHA or the Lender for FHA Insurance of the payments or reimbursements requested, for the portion of such requisition requiring such approval. The Trustee shall not be responsible for verifying such approval has been obtained.

Any money in the Project Fund remaining after the Completion Date and payment, or provision for payment, in full of the Costs of the Project, at the direction of the Authorized Borrower Representative, promptly shall be paid into the Bond Fund for payment of Bond Service Charges provided the Borrower obtains an opinion of Bond Counsel that such deposit will not adversely affect the Federal Tax Status of the Bonds. Any amounts remaining after the payment of all Bond Service Charges, if any, shall be remitted to the Borrower. Provided however that if the Mortgage Loan shall have been assigned to FHA in connection with a mortgage insurance claim, then such funds shall not be remitted to the Borrower, but shall be remitted to the Lender.

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

### **Section 3.07 Duties and Obligations of the Borrower.**

Borrower accepts the duties and obligations under the Indenture.

### **Section 3.08 Borrower Required to Pay Costs in Event Project Fund Insufficient.**

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

### **Section 3.09 Completion Date.**

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

### **Section 3.10 Remarketing of Bonds.**

The Borrower is hereby granted the right to (a) give notice of a remarketing of the Bonds in the manner and to the extent set forth in Section 3.07 of the Indenture and (ii) designate the length of the Remarketing Period and the related Mandatory Tender Date in the manner and to the extent set forth in Sections 3.05 and 3.07 of the Indenture.

### **Section 3.11 Investment of Fund Money.**

At the written request of the Authorized Borrower Representative, any money held as part of the Bond Fund, the Project Fund, the Collateral Fund and the Rebate Fund shall be invested or reinvested by the Trustee in Eligible Investments as provided in the Indenture. The Issuer (to the extent within its control) and the Borrower each hereby covenants that it will restrict that investment and reinvestment and the use of the proceeds of the Bonds, and moneys on deposit in or credited to the Collateral Fund and the Negative Arbitrage Account of the Bond Fund, in such manner and to such extent, if any, as may be necessary, after taking into account reasonable expectations at the time of delivery of and payment for the Bonds or subsequent intentional acts, so that the Bonds will not constitute arbitrage bonds under Section 148 of the Code. No provision of this Agreement shall be construed to impose upon the Trustee any obligation or responsibility for compliance with arbitrage regulations.

The Borrower shall provide the Issuer with, and the Issuer may base its certifications as authorized by the Tax Agreement on, a certificate of an Authorized Borrower Representative for inclusion in the transcript of proceedings for the Bonds, setting forth the reasonable expectations of the Borrower on the date of delivery of and payment for the Bonds regarding the amount and use of the proceeds of the Bonds and the facts, estimates and circumstances on which those expectations are based.

### **Section 3.12 Rebate Calculations and Payments.**

[[The Borrower shall appoint a Rebate Analyst, the expense of which shall be borne by the Borrower.

The Issuer has covenanted in the Indenture to take any and all actions necessary to assure compliance with Section 148(f) of the Code, relating to the rebate of excess investment earnings, if any, to the federal government, to the extent that such section is applicable to the Bonds. In furtherance of this covenant, the Borrower, on behalf of the Issuer, hereby covenants (i) within sixty (60) days of the payment in full of the Bonds, to calculate, or cause to be calculated, and provide to the Trustee and the Issuer such calculations, with such directions as are necessary to fully comply with the arbitrage and rebate requirements set forth in the Indenture and comply fully with Section 148 of the Code, including the timely payment of any Rebatable Arbitrage owed; and (ii) to deposit into the Rebate Fund to pay to the federal government any "Rebatable Arbitrage," to the extent required by Section 148(f) of the Code. The Borrower further agrees to comply with the provisions and requirements of Section 4.09 of the Indenture relating to the obligation to pay to the Trustee, for deposit into the Rebate Fund established under the Indenture, the "Rebatable Arbitrage" as required thereunder and under Section 148 of the Code.

If the amount then on deposit in the Rebate Fund created under the Indenture is less than the Rebatable Arbitrage (taking into account the amount or amounts, if any, previously paid to the United States), the

Borrower shall, within 30 days after the date of the aforesaid calculation, deposit or cause to be deposited to the credit of the Rebate Fund an amount sufficient to cause the Rebate Fund to contain an amount equal to the Rebatable Arbitrage. The obligation of the Borrower to make or cause to be made such payments shall remain in effect and be binding upon the Borrower, notwithstanding the release and discharge of the Indenture or the termination of this Agreement, for so long as may be required to maintain the Federal Tax Status of the Bonds in accordance with applicable law. The Borrower shall obtain such records of the computations made pursuant to this Section as are required under Section 148(f) of the Code and shall retain such records for at least six (6) years after the maturity or retirement of the Bonds.

The Borrower further covenants that, during the term of the Bonds, in the event the Borrower sells or otherwise disposes of the Project, it will require that the transferee execute a covenant similar to that in this Section in the sale or other documents concerning the disposition and will require such transferee to include such a covenant in future transfer documents. The special covenants of the Borrower in this Section shall survive the defeasance or payment in full of the Bonds, notwithstanding any other provision of this Agreement, until the requirement for payment of any Rebatable Arbitrage has been fully satisfied.

The obligations of the Borrower under this Section shall survive the termination of this Agreement and the payment and performance of all of the other obligations of the Borrower hereunder and under the other Borrower Documents for so long as may be required to maintain the Federal Tax Status of the Bonds in accordance with applicable law, or until the Borrower has transferred the Project to an unrelated entity with the prior written consent of the Issuer, which transferee assumes the obligations of the Borrower pursuant to this Section.]]

**ARTICLE IV.  
LOAN PAYMENTS; COLLATERAL PAYMENTS AND ADDITIONAL PAYMENTS**

Section 4.01 Loan Repayment; Delivery of Note. In consideration of and in repayment of the Loan, the Borrower shall deliver or cause to be delivered to the Trustee on or before each Bond Payment Date, a Loan Payment in an amount equal to the amount necessary to pay Bond Service Charges due on such Bond Payment Date. All such Loan Payments shall be paid to the Trustee in accordance with the terms of the Note for the account of the Issuer and shall be held and disbursed in accordance with the provisions of the Indenture and this Agreement.

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

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

The Note shall secure equally and ratably all Outstanding Bonds, except that, so long as no Event of Default has occurred and is continuing hereunder, payments by the Borrower on the Note shall be used by the Trustee to make a like payment of Bond Service Charges and shall constitute Loan Payments.

Upon payment in full, in accordance with the Indenture, of the Bond Service Charges on any or all Bonds, whether at maturity or otherwise, or upon provision for the payment thereof having been made in accordance with the provisions of the Indenture, (a) the Note shall be deemed fully paid, the obligations of the Borrower thereunder shall be terminated, and the Note shall be surrendered by the Trustee to the Borrower, and shall be canceled by the Borrower, or (b) an appropriate notation shall be endorsed thereon evidencing the date and amount of the principal payment (or prepayment) equal to the Bonds so paid, or with respect to which provision for payment has been made, and that Note shall be surrendered by the Trustee to the Borrower for cancellation if all Bonds shall have been paid (or provision made therefor) and canceled as aforesaid. Unless the Borrower is entitled to a credit under express terms of this Agreement or the Note, all payments on the Note shall be in the full amount required thereunder.

#### **Section 4.02 Collateral Payments.**

In consideration of and as a condition to the disbursement of Bond proceeds in the Project Fund to pay Project Costs, and to secure the Borrower's obligation to make Loan Payments, the Borrower shall direct the Lender to deliver or cause to be delivered to the Trustee, or shall otherwise cause to be delivered to the Trustee, Collateral Payments equal to the amount of the proposed disbursement. The Trustee shall not deposit such funds into the Collateral Fund unless it is prepared to disburse, on the same business day if such Collateral Payments are received prior to 10 AM, and otherwise within one Business Day, an equal amount of funds from the Project Fund. All such Collateral Payments shall be paid to the Trustee for the account of the Issuer and shall be held in the Collateral Fund and disbursed in accordance with the provisions of the Indenture. Upon deposit of such Collateral Payments into the Collateral Fund, the Trustee shall be unconditionally and irrevocably obligated to disburse an equal amount from the Project Fund to the party depositing the related Collateral Payments.

The Borrower hereby covenants and agrees to repay the Loan on or before any date that any payment of interest or principal is required to be made in respect of the Bonds pursuant to the Bond Indenture, until the principal of and interest on the Bonds shall have been fully paid or provision for the payment thereof shall have been made in accordance with the Bond Indenture, in immediately available funds, a sum which, together with any other moneys available for such payment in any account of the Bond Payment Fund, will enable the Bond Trustee to pay the amount payable on such date as principal of (whether at maturity or acceleration or otherwise) and interest on the Bonds as provided in the Bond Indenture. Payments by the Bond Trustee of principal and interest on the Bonds from amounts, in the Bond Payment Fund and funds deposited in the Collateral Fund under the Indenture shall be credited against the Borrower's obligation to pay principal and interest on the Loan. The Borrower also covenants and agrees to pay any additional interest, taxes or penalties that may be due as a result of a Determination of Taxability.

It is understood and agreed that all payments of principal and interest payable by the Borrower under subsection (a) of this Section 4.02 are assigned by the Issuer to the Bond Trustee for the benefit of the Holders of the Bonds (excluding amounts on deposit in the Rebate Fund). The Borrower consents to such assignment.

(a) In the event the Borrower should fail to make any of the payments required in this Section

4.02, the item or installment so in default shall continue as an obligation of the Borrower until the amount in default shall have been fully paid, and the Borrower agrees to pay the same with interest thereon, to the extent permitted by law, from the date when such payment was due, at the rate of interest borne by the Bonds.

**Section 4.03 Bond Fund and Collateral Fund.**

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

**Section 4.04 Additional Payments.**

The Borrower shall pay as Additional Payments hereunder the following:

a) Whether out of the proceeds of the Mortgage Loan or other funds, all Costs of Issuance of the Bonds, the costs of obtaining the FHA Insurance and all expenses incurred in closing the Mortgage Loan.

b) All Extension Payments and other sums required under Section 3.07 of the Indenture in order to revise or extend the Mandatory Tender Date or remarket the Bonds, and the Borrower further agrees to execute any and all certificates required by the Issuer, the Trustee or the Remarketing Agent in order to effectuate such revision, extension or remarketing.

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

d) To the Issuer (i) the Ordinary Issuer Fees to the extent that the funds available under the Indenture for the payment thereof are not sufficient and available therefor and (ii) the Extraordinary Issuer's Fees and Expenses.

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

f) To the extent not paid by the Trustee from the Expense Fund, all of the fees and expenses of the Rebate Analyst (including, but not limited to, the Rebate Analyst Fee) and any other necessary consultant employed by the Borrower, the Trustee or the Issuer in connection with any of the requirements imposed by Section 4.09 of the Indenture and the Tax Agreement to the extent funds available under the Indenture are not sufficient and applied therefor. The Borrower shall provide or cause to be provided all information and money (including money necessary to make deposits to the Rebate Fund required by the Indenture and the Tax Agreement

and the fees and expenses of the Rebate Analyst to the extent available money in the Bond Fund under the Indenture are inadequate to pay such amounts) to the Trustee and the Rebate Analyst to enable the Trustee and the Rebate Analyst to comply with the Indenture and the Tax Agreement.

g) To the Dissemination Agent, the Dissemination Agent Fee, to the extent funds available in the

Expense Fund under the Indenture are not sufficient and applied therefor, as well as any other costs and expenses in order to provide for compliance with the terms of the Continuing Disclosure Agreement.

- h) To the Remarketing Agent, the Remarketing Agent Fee and any Remarketing Expenses.

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

To provide for certain of the anticipated Additional Payments, the Borrower agrees to cause to be deposited a portion of the Initial Borrower Deposit into the Expense Fund and the Costs of Issuance Fund as required under the Indenture, and authorizes the Trustee to pay, from money on deposit in the Costs of Issuance Fund and the Expense Fund, the amounts provided to be paid from the Costs of Issuance Fund or the Expense Fund in accordance with Sections 4.05 and 4.08, respectively, of the Indenture. All such amounts shall be paid directly to the parties entitled thereto for their own account as and when such amounts become due and payable.

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

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

Section 4.05 Obligations of the Borrower Unconditional. The obligations of the Borrower to make the payments required under this Loan Agreement, and to perform and observe the other agreements on its part contained herein shall be absolute and unconditional,

irrespective of any defense or any right of notice, setoff, recoupment or counterclaim it might otherwise have against the Issuer, the Bond Trustee or any other person. Subject to termination as provided herein, the Borrower (a) will not suspend or discontinue, or permit the suspension or discontinuance of, any payments provided for under this Loan Agreement, (b) will perform and observe all of its other agreements contained in this Loan Agreement and (c) will not terminate this Loan Agreement for any cause including, without limiting the generality of the foregoing, any acts or circumstances that may constitute failure of consideration, eviction or constructive eviction, destruction of or damage to the Project, commercial frustration of purpose, or change



in the tax or other laws or administrative rulings of or administrative actions by the United States of America or the State or any political subdivision of either, any failure of the Issuer to perform and observe any agreement, whether express or implied, or any duty, liability, or obligation arising out of or connected with this Loan Agreement, whether express or implied, or any failure of the Bond Trustee to perform and observe any agreement, whether express or implied, or any duty, liability or obligation arising out of or connected with the Bond Indenture, whether express or implied.

Section 4.06 Limited Obligation of Issuer. The obligations of the Issuer under this Loan Agreement are special, limited obligations of the Issuer, payable solely out of the Revenues. The obligations of the Issuer hereunder shall not be deemed to constitute an indebtedness or an obligation of the Issuer, the State of Illinois or any political subdivision thereof within the meaning of any constitutional limitation or statutory provision, or a charge against the credit or general taxing powers, if any, of any of them.

Section 4.07 Assignment of Issuer's Rights. As security for the payment of the Bonds, the Issuer will, pursuant to the Bond Indenture and the Assignment, assign and pledge to the Bond Trustee all of the Issuer's right, title and interest in and to this Loan Agreement and the Promissory Note, except that it will retain the Issuer Reserved Rights, but such retention by the Issuer will not limit in any way the exercise by the Bond Trustee of its rights hereunder, under the Assignment or under the Bond Indenture, the Promissory Note and the Bonds. Notwithstanding anything herein to the contrary, the Issuer hereby directs the Borrower to make all payments under this Loan Agreement (except with respect to the Issuer Reserved Rights) and the Promissory Note directly to the Bond Trustee. The Borrower hereby acknowledges and consents to such pledge and assignment, and agrees to make payments directly to the Bond Trustee (except with respect to the Issuer Reserved Rights), without defense or set-off, recoupment or counterclaim by reason of any dispute between the Borrower on the one hand, and the Bond Trustee or the Issuer on the other hand, or otherwise. After any such assignment and pledge referenced in this Loan Agreement, the Bond Indenture, the Bonds or the Promissory Note, all rights, interest and benefits accruing to the Issuer under this Loan Agreement or the Promissory Note, except for the Issuer Reserved Rights, shall be assigned to and become the rights and benefits of the Trustee. Any obligations of the Issuer as provided in the Bond Indenture, this Loan Agreement, the Bonds or the Promissory Note shall remain the obligations of the Issuer to the extent provided herein and therein after such assignment. The Issuer agrees that the Bond Trustee, in its name or in the name of the Issuer, may enforce all rights of the Issuer (other than the Issuer Reserved Rights) and all obligations of the Borrower under and pursuant to the assigned documents as aforesaid, and the Issuer will not enforce such rights and obligations itself except at the written direction of the Bond Trustee, in each case whether or not the Issuer is in Default hereunder.

## ARTICLE V. SPECIAL COVENANTS

Section 5.01 Access to the Project. The Borrower agrees that the Issuer, the Bond Trustee and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right to inspect the Project and the acquisition, rehabilitation and equipping thereof at all reasonable times. The Borrower acknowledges that the Issuer shall monitor the acquisition, rehabilitation and equipping of the Project. The Issuer, the Bond Trustee and their duly authorized agents shall also be permitted, at all reasonable times, to examine the books, accounts, contracts, documents, and other papers of the Borrower with respect to the Project which shall all be maintained by the Borrower in reasonable condition and for audit.

Section 5.02 Further Assurances and Corrective Instruments. The Issuer and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the expressed intention of this Loan Agreement.

Section 5.03 Issuer and Borrower Representatives. Whenever under the provisions of this Loan Agreement the approval of the Issuer or the Borrower is required or the Issuer or the Borrower is required to take some action at the request of the other, such approval or such request shall be given in writing both for the Issuer by an Authorized Issuer Representative and for the Borrower by an Authorized Borrower Representative. The Bond Trustee shall be authorized to act on any such approval or request pursuant to the Bond Indenture.

Section 5.04 Financing Statements. The Borrower shall, or shall cause to be executed and filed any and all financing statements, or any amendments thereof or continuation statements thereto, to perfect the security interests granted in the Bond Indenture, in the manner prescribed in the Bond Indenture. The Borrower shall pay all costs of filing such instruments and any fees and expenses (including reasonable attorney's fees) associated therewith.

Section 5.05 Insurance. The Borrower shall obtain and keep in force such insurance coverage as may be required by the Issuer in its reasonable discretion from time to time. All insurance policies and renewals thereof relating to the Project shall be in a form acceptable to the Issuer in its reasonable discretion and shall designate the Issuer and the Bond Trustee as additional insured for liability insurance on the Project. The Issuer shall be furnished with full copies of all policies within fifteen (15) calendar days of receipt thereof and shall have the right to receive duplicate copies of policies and renewals, and the Borrower shall promptly furnish the Issuer with copies of all renewal notices and all receipts for paid premiums within fifteen (15) calendar days of receipt thereof. The Borrower shall notify the Issuer at least 30 calendar days in advance of an endorsement or of any change in the terms of coverage adverse to the Issuer. In the event of loss, the Borrower shall give prompt notice to the insurance carrier and the Issuer.

With respect to any casualty insurance, it shall (a) be in an amount equal to the greater of the actual cash value or the replacement cost of the insurable then existing improvements and equipment in the Project and (b) be provided by an insurance company with a claims paying ability rating of not less than "B+V" by A.M. Best.

Section 5.06 Restriction on Plans and Specifications. [[The Borrower will not cause, permit or suffer to exist, any material deviations from the Plans and Specifications and will not approve or consent to any construction change directive without the prior approval of the Issuer, which approval shall not be unreasonably withheld, conditioned or delayed.]]

**Section 5.07 Requisitions.**

a) At such time as the Borrower shall desire to obtain an advance from the Project Fund, the Borrower shall complete, execute and deliver to the Bond Trustee a Requisition. Each Requisition shall be signed on behalf of the Borrower, shall be in the form set forth on Exhibit B to the Bond Indenture, and shall

state with respect to each disbursement to be made: (i) the number of the Requisition, (ii) the amount to be disbursed and the sources of such disbursement, (iii) that each obligation described therein is a Project Cost, has been properly incurred and has not been the basis for any previous disbursement and (iv) that the expenditure of such disbursement when added to all previous disbursements will result in not less than 95% of all disbursements from proceeds of the Bonds having been used to pay or reimburse the Borrower for Qualified Project Costs. The Borrower shall submit the Requisition to the Bond Trustee for payment. Approved Requisitions may be submitted to the Bond Trustee by facsimile and shall not include accompanying supporting materials.

b) The amounts deposited into the Project Fund may be disbursed by the Bond Trustee only in accordance with Section 5.02 of the Bond Indenture, including delivery of a written Requisition of the Borrower satisfying the requirements of this Section 5.07 and Section 5.02 of the Bond Indenture.

Section 5.08 Borrower Receipt of Insurance or Condemnation Proceeds. In the event the Borrower receives any proceeds of insurance or any condemnation awards with respect to the Project from a party other than the Bond Trustee, the Borrower shall promptly upon receipt remit all such insurance proceeds or condemnation awards to the Lender.

Section 5.09 Financial Information. The Borrower agrees that it will have the books and records of the Borrower audited annually by an independent certified public accountant as soon as practicable after the close of each fiscal year of the Borrower, and will furnish within 120 days after the end of each fiscal year to the Issuer and the Bond Trustee a copy of the audit report certified by such certified public accountant and prepared in accordance with generally accepted accounting principles, which report shall include calculations of the availability of funds for distributions and disclose the amount of member distributions for the preceding year. The Borrower and the Issuer acknowledge that the Bond Trustee shall have no obligations under this Section 5.09 other than to receive such statements and, if requested, to furnish such statements to Holders.

### **Section 5.10 Environmental Requirements; Indemnity.**

(a) As between the Issuer and the Borrower, the Issuer and the Borrower agree and understand that the terms and provisions of an environmental indemnification agreement between the parties, if any, shall govern all indemnifications from the Borrower to the Issuer with respect to environmental matters affecting the Project. The terms and provisions of

such environmental indemnification agreement are incorporated herein by this reference, mutatis mutandis, as if fully set forth herein with respect to such relationship. As such, the balance of the provisions of this Section govern only the relationship between the Borrower and the Issuer with respect to indemnifications from the Borrower to the Issuer with regard to environmental matters affecting the Project.

b) For purposes of this Section 5.10, the term "Hazardous Substance" means and includes any substance, material or waste, including asbestos, petroleum and petroleum products (including crude oil), that is or becomes designated, classified or regulated as "toxic," "hazardous" or a "pollutant," or that is or becomes similarly designated, classified or regulated, under any federal, state or local law, regulation or ordinance, but does not include any such substance that is a customary and ordinary household, cleaning or office product used on the Premises (as defined below) by Borrower or any tenant or agent of Borrower, or

customary construction materials used during the course of rehabilitation of the Project by the Borrower and its general contractor, provided such use is in accordance with applicable hazardous materials laws.

c) Before signing this Loan Agreement, the Borrower researched and inquired into the previous uses and owners of the premises on which the Project is located (the "Premises") and obtained a Phase I environmental site assessment and other reports with respect to the environmental conditions of the Premises, a copy of which has been delivered to the Issuer. Based on that due diligence, the Borrower represents and warrants to the Issuer that, except as the Borrower has disclosed to the Issuer in writing and as described in the Phase I environmental site assessment, to the best of the Borrower's knowledge, (i) no Hazardous Substance has been disposed of, or released to or from, or otherwise now exists in, on, under or around, the Premises, and (ii) no aboveground or underground storage tanks are now or have ever been located on or under the Premises.

d) The Borrower has complied, and will comply and cause all tenants and any other persons who may come upon the Premises to comply in all material respects with all federal, state and local laws, regulations and ordinances governing or applicable to Hazardous Substances, including those requiring disclosures to prospective and actual buyers or tenants of all or any portion of the Premises. The Borrower will not install or allow to be installed any aboveground or underground storage tanks<sup>N</sup> on the Premises. The Borrower must comply with the recommendations of any qualified environmental engineer or other expert engaged by the Borrower with respect to the Premises. The Borrower must promptly notify the Issuer in writing (i) if it knows, suspects or believes there may be any Hazardous Substance in or around any part of the Premises, any improvements constructed on the Premises, or the soil, groundwater or soil vapor on or under the Premises, or that the Borrower or the Premises may be subject to any threatened or pending investigation by any governmental agency under any law, regulation or ordinance pertaining to any Hazardous Substance, and (ii) of any claim made or threatened by any person, other than a governmental agency, against the Borrower arising out of or resulting from any Hazardous Substance being present or released in, on or around any part of the Premises, any Improvements constructed on the Premises or the soil, groundwater or soil vapor on or under the Premises (any of the matters described in clauses (i) and (ii) above a "Hazardous Substances Claim").

e) The Issuer, and its respective officers, employees, directors, agents, assignees, and any purchasers of the Premises at any foreclosure sale (each individually, an "Indemnified Party," and all collectively, the "Indemnified Parties"), have the right at any reasonable time and upon notice to the Borrower to enter and visit the Premises for the purposes of observing the Premises, taking and removing soil or groundwater samples and conducting tests on any part of the Premises. The Indemnified Parties have no duty, however, to visit or observe the Premises or to conduct tests, and no site visit, observation or testing by any Indemnified Party imposes any liability on any Indemnified Party. In no event will any site visit, observation or testing by any Indemnified Party be a representation that Hazardous Substances are or are not present in, on or under the Premises, or that there has been or will be compliance with any law, regulation or ordinance pertaining to Hazardous Substances or any other applicable governmental law. Neither the Borrower nor any other party is entitled to rely on any site visit, observation or testing by any Indemnified Party. The Borrower waives to the fullest extent permitted by law any such duty of care on the part of the Indemnified Parties or any other party to protect the Borrower or inform the Borrower or any other party of any Hazardous Substances or any other adverse condition affecting the Premises. Any Indemnified Party will give the Borrower reasonable notice before entering the Premises. The Indemnified Party will make reasonable efforts to avoid interfering with the Borrower's and its tenants' use of the Premises in exercising any rights provided in this Section. The

Borrower must pay all costs and expenses incurred by an Indemnified Party in connection with any inspection or testing conducted in accordance with this subsection. The results of all investigations conducted and/or reports prepared by or for any Indemnified Party must at all times remain the property of the Indemnified Party, and under no circumstances will any Indemnified Party have any obligation whatsoever to disclose or otherwise make available to the Borrower or any other party the results or any other information obtained by any of them in connection with the investigations and reports. Notwithstanding the foregoing, the Indemnified Parties hereby reserve the right, and the Borrower hereby expressly authorizes any Indemnified Party, to make available to any party (including any governmental agency or authority and any prospective bidder at any foreclosure sale of the Premises) any and all reports, whether prepared by any Indemnified Party or prepared by the Borrower and provided to any Indemnified Party (collectively, "Environmental Reports") that any Indemnified Party may have with respect to the Premises. The Borrower consents to the Indemnified Parties' notifying any party (either as part of a notice of sale or otherwise) of the availability of any or all of the Environmental Reports and the information contained therein. The Borrower acknowledges that the Indemnified Parties cannot control or otherwise assure the truthfulness or accuracy of the Environmental Reports and that the release of the Environmental Reports, or any information contained therein, to prospective bidders at any foreclosure sale of the Premises may have a material and adverse effect upon the amount that a party may bid at such sale. The Borrower agrees that the Indemnified Parties have no liability whatsoever as a result of delivering any or all of the Environmental Reports or any information contained therein to any third party, and the Borrower hereby releases and forever discharges the Indemnified Parties from any and all claims, damages, or causes of action, arising out of, connected with or incidental to the Environmental Reports or the delivery thereof, unless resulting from the gross negligence or willful misconduct of the Indemnified Parties

f) The Borrower must promptly undertake any and all remedial work ("Remedial Work") in response to Hazardous Substances Claims to the extent required by governmental agency or agencies involved or as recommended by prudent business practices, if

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such standard requires a higher degree of remediation, and in all events to minimize any impairment to the Issuer's security under the Borrower Documents. All Remedial Work must be conducted (i) in a diligent and timely fashion by licensed contractors acting under the supervision of a consulting environmental engineer, (ii) pursuant to a detailed written plan for the Remedial Work approved by all applicable public or private agencies or persons with a legal or contractual right to such approval, (iii) with insurance coverage pertaining to liabilities" arising out of the Remedial Work as is then customarily maintained with respect to such activities, and (iv) only following receipt of any required permits, licenses or approvals. The selection of the Remedial Work contractors and consulting environmental engineer, the contracts entered into with such parties, any disclosures to or agreements with any public or private agencies or parties relating to Remedial Work and the written plan for the Remedial Work (and any changes thereto) at the Issuer's option, is subject to the Issuer's prior written approval, which may not be unreasonably withheld or delayed.

g) The obligations and rights of the parties under this Section 5.10 continue in full force and effect until the first to occur of full, final and indefeasible repayment of the Liabilities or the transfer of title to all or any part of the Premises at a foreclosure sale or by deed in lieu of such foreclosure (any such foregoing transfer being referred to as a "Foreclosure Transfer"). The parties' obligations and rights under this Section 5.10 continue in full force and effect after the full and final payment of the Liabilities or a Foreclosure Transfer, as the case may be, but (i) in the case of a full and final payment of the Liabilities, the Borrower's obligations under this Section 5.10 are thereafter limited to the indemnification obligations of subsections (i) and (j) below as to Indemnified Costs (as defined below) arising out of or as a result of events prior to the full and final

payment of the Liabilities, and (ii) in the case of a Foreclosure Transfer, the obligations do not include the obligation to reimburse any Indemnified Party for diminution in value of the Premises resulting from the presence of Hazardous Substances on the Premises before the date of the Foreclosure Transfer if, and to the extent that, the Indemnified Party recovers on a deficiency judgment including compensation for such diminution in value; provided, however, that nothing in this sentence impairs or limits an Indemnified Party's right to obtain a judgment in accordance with applicable law for any deficiency in recovery of all obligations, subject to the provisions of Section 9.03 hereof. As used in this Section 5.10, the term "Indemnified Costs" means all actual or threatened liabilities, claims, actions, causes of action, judgments, orders, damages (including foreseeable and unforeseeable consequential damages), costs, expenses, fines, penalties and losses incurred in connection with Hazardous Substances on the Property (including sums paid in settlement of claims and all consultant, expert and reasonable legal fees and expenses of the Issuer's counsel), including those incurred in connection with any investigation of site conditions or any clean-up, remedial, removal or restoration work (whether of the Premises or any other property), or any resulting damages, harm or injuries to the person or property of any third parties or to any natural resources.

h) The Borrower shall indemnify, defend and hold the Indemnified Parties harmless for, from and against any and all Indemnified Costs directly or indirectly arising out of or resulting from any Hazardous Substance being present or released in, on or around any part of the Premises, or in the soil, groundwater or soil vapor on or under the Premises, including: (i) any claim for such Indemnified Costs asserted against any Indemnified Party by any federal, state or local governmental agency, including the United States Environmental Protection Agency and the Illinois Environmental Protection Agency, and including any claim that any

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Indemnified Party is liable for any such Indemnified Costs as an "owner" or "operator" of the Premises under any law relating to Hazardous Substances; (ii) any claim for such Indemnified Costs asserted against any Indemnified Party by any person other than a governmental agency, including (1) any person who may purchase or lease all or any portion of the Premises from the Borrower, from any Indemnified Party or from any other purchaser or lessee, (2) any person who may at any time have any interest in all or any portion of the Premises, (3) any person who may at any time be responsible for any clean-up costs or other Indemnified Costs relating to the Premises, and (4) any person claiming to have been injured in any way as a result of exposure to any Hazardous Substance; (iii) any Indemnified Costs incurred by any Indemnified Party in the exercise by the Indemnified Party of its rights and remedies under this Section 5.10; and (iv) any Indemnified Costs incurred by any Indemnified Party as a result of currently existing conditions in, on or around the Premises, whether known or unknown by the Borrower or the Indemnified Parties at the time this Loan Agreement is executed, or attributable to the acts or omissions of the Borrower, any of the Borrower's tenants, or any other person in, on or around the Premises with the consent or under the direction of the Borrower.

(i) Upon demand by any Indemnified Party, the Borrower must defend any investigation, action or proceeding involving any Indemnified Costs that is brought or commenced against any Indemnified Party, whether alone or together with the Borrower or any other person, all at the Borrower's own cost and by counsel reasonably approved by the Indemnified Party. In the alternative, any Indemnified Party may elect to conduct its own defense at the Borrower's expense.

(j) In addition to any other rights or remedies the Issuer may have under this Loan Agreement, at law or in equity, upon the occurrence of an Event of Default under this Loan Agreement, the Issuer may do or

cause to be done whatever is necessary to cause the Premises to comply with any and all laws, regulations and ordinances governing or applicable to Hazardous Substances, and any other applicable law, rule, regulation, order or agreement, and the cost thereof will become immediately due and payable upon demand by the Issuer, and if not paid when due will accrue interest at the default rate set forth in the Bonds, until paid. The Borrower hereby acknowledges and agrees that any amounts realized by the Issuer by reason of the following may be applied to pay the Liabilities prior to being applied to pay the Borrower's obligations to reimburse the Issuer for costs and expenses, including those incurred by the Issuer in enforcing its rights and remedies under the provisions of this Section 5.10: (i) any payments made pursuant to the Bonds or any of the Borrower Documents (other than payments made to the Issuer for reimbursement of costs and expenses or for enforcement of its rights and remedies, under the provisions of this Section 5.10); (ii) any foreclosure of documents evidencing or securing the Liabilities (including any amounts realized by reason of any credit bid in connection with any such foreclosure); (iii) any conveyance in lieu of foreclosure; (iv) any other realization upon any security for the Liabilities; (v) any recoveries against the Borrower personally (except for recoveries against the Borrower for reimbursement of costs and expenses or enforcement of the Issuer's rights and remedies under this Section 5.10); and (vi) any recoveries against any person or entity other than the Borrower (including any guarantor) to the maximum extent permitted by applicable law.

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**ARTICLE VI. RESTRICTION ON  
TRANSFER**

**Section 6.01 Borrower to Maintain its Existence; Sale of Project.**

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

b) No sale, assignment or transfer of the Project, except as may be otherwise required by FHA or the Lender, shall be made unless (a) FHA, and if necessary, the Lender, and the Issuer consent to such assignment or transfer, (b) the transferee or assignee, as the case may be, assumes all the duties of the Borrower under the Borrower Documents, provided that such assumption may contain an exculpation of the assignee from personal liability with respect to any obligation hereunder arising prior to such sale, assignment or transfer, and (c) no Event of Default as certified in writing to the Trustee by the Borrower shall have occurred and be continuing under the Indenture or this Agreement. The Trustee shall consent to any such assignment or transfer if (i) the aforesaid conditions have been satisfied, (ii) the Trustee receives an Opinion of Bond Counsel to the effect that such transfer or assignment would not adversely affect the Federal Tax Status of the Bonds, and (iii) the Trustee receives written confirmation from the Rating Agency that such transfer or assignment will not result in a withdrawal or reduction in any rating on the Outstanding Bonds by the Rating Agency (if the Bonds are then rated by the Rating Agency). Upon the assumption of the duties of the Borrower by a purchaser,

assignee or transferee as provided herein, the outgoing Borrower shall be released from all executory obligations so assumed; provided, however, the Borrower shall not be released from its obligation (x) to pay or reimburse the fees and expenses of the Issuer and the Trustee incurred prior to such sale, assignment or transfer and (y) to indemnify the Trustee and the Issuer with respect to any obligation, event or action incurred or arising prior to such sale, assignment or transfer. Nothing contained in this Section shall be construed to supersede any provisions regarding assignment and transfer of the Project contained in the Mortgage Loan Documents.

c) Notwithstanding anything to the contrary contained herein or in any other Borrower Document, and subject to the consent of FHA and the Lender as required by the Controlling HUD and GNMA Requirements or the Mortgage Loan Documents, the following shall be permitted and shall not require the prior written approval of the Issuer, the Lender or the Trustee: (a) the transfer by the Investor Member of its respective interests in the Borrower in accordance with the terms of the Borrower's Organizational Documents, (b) the removal of the Managing Member of the Borrower in accordance with the Organizational Documents and the replacement thereof with the Investor Member or any of its respective affiliates, (c) the transfer of ownership interests in the Investor Member, (d) upon the expiration of the tax credit compliance period, the transfer of the interests of the Investor Member in the Borrower to the Borrower's Managing Member or any of its respective affiliates, and (e) any amendment to the Organizational Documents to memorialize the transfers or removal described above. The parties

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agree that this section shall control to the extent of any conflict in any Borrower Documents. In the event the Borrower intends to sell, lease (except to the tenants who will occupy units in the Project), sublease or otherwise materially encumber the whole of or any part of the Project or sell, assign or otherwise, except as otherwise provided herein, transfer any interest in the Borrower (a "transfer"), it shall (i) apply to the Issuer for consent to transfer, and (ii) comply with the provisions of the Tax Regulatory Agreement restricting any such transfer.]]

**ARTICLE VII.  
INDEMNIFICATION**

Section 7.01 Indemnification of Issuer and Bond Trustee, (a) Except as otherwise provided below and subject to Sections 8.07 and 9.04 hereof, the Issuer and the Bond Trustee, and each of their officers, agents, independent contractors, employees, successors and assigns, and, in the case of the Issuer, its elected and appointed officials, past, present or future (hereinafter the "Indemnified Persons"), shall not be liable to the Borrower for any reason. The Borrower shall defend, indemnify and hold the Indemnified Persons harmless from any loss, claim, damage, tax, penalty or expense (including, but not limited to, reasonable counsel fees, costs, expenses and disbursements), or liability (other than with respect to payment of the principal of or interest on the Promissory Note) of any nature due to any and all suits, actions, legal or administrative proceedings, or claims arising or resulting from, or in any way connected with: (i) the financing, installation, operation, use or maintenance of the Project; (ii) any act, failure to act, or misrepresentation by the Borrower or any member of the Borrower, or any Person acting on behalf of, or at the direction of, the Borrower or any member of the Borrower, in connection with the issuance, sale or delivery of the Bonds; (iii) any false or misleading representation made by the Borrower in the Borrower Documents; (iv) the breach by the Borrower of any covenant contained in the Borrower Documents, or the failure of the Borrower to fulfill any such covenant which are not cured within all applicable notice and cure periods; (v) enforcing any obligation or



liability of the Borrower under this Loan Agreement, the Promissory Note, or the other Borrower Documents, or any related agreement; (vi) taking any action requested by the Borrower; (vii) taking any action reasonably required by the Borrower Documents; or (viii) taking any action considered necessary by the Issuer or the Bond Trustee, and which is authorized by the Borrower Documents. If any suit, action or proceeding is brought against any Indemnified Person, the interests of the Indemnified Person in that suit, action or proceeding shall be defended by counsel to the Indemnified Person or the Borrower, as the Indemnified Person shall determine. If such defense is by counsel to the Indemnified Person, the Borrower shall indemnify and hold harmless the Indemnified Person for the cost of that defense, including counsel fees, disbursements, costs and expenses. If the Indemnified Persons affected by such suit determine that the Borrower shall defend the Indemnified Persons, the Borrower shall immediately assume the defense at its own cost. Neither the Indemnified Persons nor the Borrower shall be liable for any settlement of any proceeding made without each of their consent. In no event shall the Borrower be liable to an Indemnified Person for its own willful misconduct or gross negligence.

(b) Any provision of this Loan Agreement or any other instrument or document executed and delivered in connection therewith to the contrary notwithstanding, the Issuer retains the right to enforce: (i) any applicable federal or state law or regulation or resolution of the Issuer related to the Project, and (ii) any rights accorded the Issuer by federal or

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state law or regulation or resolution of the Issuer, and nothing in this Loan Agreement shall be construed as an express or implied waiver thereof.

c) If the Indemnified Persons are requested by the Borrower to take any action under this Loan Agreement or any other instrument executed in connection herewith for the benefit of the Borrower, they will do so if and only if: (i) the Indemnified Persons are a necessary party to any such action; (ii) the Indemnified Persons have received specific written direction from the Borrower, as required hereunder or under any other instrument executed in connection herewith, as to the action to be taken by the Indemnified Persons; and (iii) a written agreement of indemnification and payment of costs, liabilities and expenses satisfactory to the Indemnified Persons has been executed by the Borrower prior to the taking of any such action by the Indemnified Persons.

d) The obligations of the Borrower under this Section 7.01 shall survive any assignment or termination of this Loan Agreement and, as to the Bond Trustee, any resignation or removal of the Bond Trustee.

e) Indemnification of the Issuer by the Borrower with respect to environmental matters shall be governed exclusively by the terms and provisions of any environmental indemnification agreement.

## ARTICLE VIII. DEFAULTS AND REMEDIES

Section 8.01 Defaults Defined. The following shall be "Defaults" under this Loan Agreement and the term "Default" shall mean, whenever it is used in this Loan Agreement, any one or more of the following events:

a) The Borrower shall fail to pay any Loan Payment on or prior to the date on which that Loan Payment is due and payable to the extent amounts on deposit in the Bond Fund, including amounts

transferred from the Collateral Fund and the Project Fund are insufficient to pay the Bond Service Charges due on the next Bond Payment Date;

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

c) The Borrower shall: (i) admit in writing its inability to pay its debts generally as they become due; (ii) have an order for relief entered in any case commenced by or against it under the federal bankruptcy laws, as now or hereafter in effect, which is not dismissed within 90 days; (iii) commence a proceeding under any other federal or state bankruptcy, insolvency, reorganization or similar law, or have such a proceeding commenced against it and

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either have an order of insolvency or reorganization entered against it or have the proceeding remain undismissed and unstayed for ninety days; (iv) make an assignment for the benefit of creditors; or (v) have a receiver or trustee appointed for it or for the whole or any substantial part of its property which appointment is not vacated within a period of 90 days;

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

e) There shall occur an "Event of Default" as defined in the Indenture; and

f) There shall occur an "Event of Default" as defined in the Land Use Restriction Agreement by the Borrower under the Land Use Restriction Agreement that is continuing after any applicable notice and cure period.

Notwithstanding the foregoing, if, by reason of Force Majeure, the Borrower is unable to perform or observe any agreement, term or condition hereof which would give rise to an Event of Default under subsection (b) hereof, the Borrower shall not be deemed in default during the continuance of such inability. However, the Borrower shall promptly give written notice to the Trustee and the Issuer of the existence of an event of Force Majeure and shall use commercially reasonable efforts to remove the effects thereof; provided that the settlement of strikes or other industrial disturbances shall be entirely within its discretion.

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

(i) acts of God; strikes, lockouts or other industrial disturbances; acts of terrorism or of public enemies; orders or restraints of any kind of the government of the United States of America or of the State or any of their departments, agencies, or officials, or any civil or military

authority; insurrections; civil disturbances; riots; landslides; earthquakes; fires; hurricanes; tornados; storms; droughts; floods; arrests; restraint of government and people; explosions; breakage, malfunction or accident to facilities, machinery, transmission pipes or canals; partial or entire failure of utilities; shortages of labor, materials, supplies or transportation; or

(i) any cause, circumstance or event not reasonably within the control of the Borrower. The Borrower agrees, however, to use its best efforts to remedy with all reasonable dispatch the cause or causes preventing the Borrower from carrying out its agreement.

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

Section 8.02 Remedies on Default. Whenever any Default referred to in Section 8.01 hereof shall have happened and be continuing beyond the expiration of any applicable cure

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period, the Bond Trustee, or the Issuer (in the event the Bond Trustee fails to act), may take one or any combination of the following remedial steps:

a) If the Bond Trustee has declared the Bonds immediately due and payable pursuant to Section 9.01 of the Indenture, by written notice to the Borrower, declare an amount equal to all amounts then due and payable on the Bonds, whether by acceleration of maturity (as provided in the Bond Indenture) or otherwise, to be immediately due and payable, whereupon the same shall become immediately due and payable; and

b) Take whatever action at law or in equity may appear necessary or desirable to collect the amounts then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Loan Agreement, the Promissory Note, the Tax Regulatory Agreement or any other Borrower Document in the event of default thereunder.

Notwithstanding the foregoing, neither the Issuer nor the Trustee shall be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until satisfactory indemnity has been furnished to the Issuer or the Trustee at no cost or expense to the Issuer or the Trustee. Any amounts collected as Loan Payments or applicable to Loan Payments and any other amounts which would be applicable to payment of Bond Service Charges collected pursuant to action taken under this Section shall be paid into the Bond Fund and applied in accordance with the provisions of the Indenture or, if the Outstanding Bonds have been paid and discharged in accordance with the provisions of the Indenture, shall be paid as provided in Section 4.14 of the Indenture for transfers of remaining amounts in the Bond Fund.

The provisions of this Section are subject to the further limitation that the rescission by the Trustee of its declaration that all of the Bonds are immediately due and payable also shall constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of that declaration and of the Event of Default with respect to which that declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

Section 8.03 No Remedy Exclusive. Subject to Section 9.01 of the Bond Indenture, no remedy herein conferred upon or reserved to the Issuer or the Bond Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Loan Agreement or now or hereafter existing at law or in equity. No delay or omission to exercise any right or power accruing upon any Default shall impair any such right or power nor shall it be construed to be a waiver thereof, but any such right or power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Issuer or the Bond Trustee to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be required in this Article. Such rights and remedies as are given the Issuer hereunder shall also extend to the Bond Trustee, and the Bond Trustee and the Holders, subject to the provisions of the Bond Indenture, including, but not limited to the Reserved Rights of the Issuer, shall be entitled to the benefit of all covenants and agreements herein contained.

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Section 8.04 Agreement to Pay Attorneys' Fees and Expenses. In the event the Borrower should Default under any of the provisions of this Loan Agreement or under the Promissory Note and the Issuer and/or Bond Trustee should employ attorneys or incur other expenses for the collection of payments required hereunder or under the Promissory Note, or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein or in the Promissory Note, the Borrower agrees that it will on demand therefor pay to the Issuer and the Bond Trustee, as the case may be, the reasonable fees and expenses of such attorneys and such other expenses so incurred by the Issuer and/or the Bond Trustee. This Section 8.04 will continue in full force and effect notwithstanding the full payment of the obligations under the Loan Agreement or the termination of this Loan Agreement for any reason.

Section 8.05 No Additional Waiver Implied by One Waiver. In the event any agreement contained in this Loan Agreement should be breached by either party and thereafter waived by the other party, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

Section 8.06 Right to Cure. Notwithstanding anything to the contrary herein or Otherwise in the Borrower Documents, if the Borrower shall, for whatever reason, at any time fail to pay any amount or perform any act which it is obligated to pay or perform under any of the Borrower Documents and, as a result, a default or event of default occurs or may occur thereunder, the Investor Member shall have the right to perform such act or pay such amount on behalf of the Borrower and thereby cure or prevent such default or event of default, provided such default or event of default is cured within any applicable cure period or grace period provided to the Borrower herein or otherwise in the Borrower Documents.

Section 8.07 Default by Issuer; Limited Liability. Notwithstanding any provision or obligation to the contrary herein set forth, no provision of this Loan Agreement shall be construed so as to give rise to a pecuniary liability of the Issuer or a charge upon the general credit of the Issuer. The liability of the Issuer hereunder shall be limited to its interest in this Loan Agreement, the Promissory Note, and any other Borrower Documents, and the lien of any judgment shall be restricted thereto. In the performance of the agreements of the Issuer herein contained, any obligation it may incur for the payment of money shall not be a debt of the Issuer, and the Issuer shall not be liable on any obligation so incurred. The Issuer does not assume general liability for the repayment of the Bonds or for the costs, fees, penalties, taxes, interest, commissions, charges,

insurance or any other payments recited herein, and the Issuer shall be obligated to pay the same only out of Revenues. The Issuer shall not be required to do any act whatsoever, or exercise any diligence whatsoever, to mitigate the damages to the Owner if an Event of Default shall occur hereunder.

**ARTICLE IX.  
MISCELLANEOUS**

Section 9.01 Term of Agreement. This Loan Agreement shall remain in full force and effect from the date hereof until such time as all of the Bonds and all amounts payable hereunder and under the Bond Indenture shall have been fully paid or provision made for such payments,

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whichever is later, provided, that the provisions of Sections 5.10, 7.01 and Article VIII hereof shall survive termination of this Loan Agreement.

**Section 9.02 Notices; Publication of Notice.**

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

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

Section 9.03 Nonrecourse Liability of Borrower. Except as provided herein, the monetary obligations of the Borrower contained in this Agreement (except for fees, payments and indemnification under Sections 3.12, 4.04, 7.01 and 8.04 hereof) shall be limited obligations payable solely from the income and assets of the Project and neither the Borrower nor any partner, manager, member, director, official or officer of the Borrower shall have any personal liability for the satisfaction of any obligation of the Borrower or claim against the Borrower, arising out of this Agreement. Notwithstanding anything contained in this Agreement to the contrary, neither the Issuer nor the Trustee may assert any claim arising hereunder against the Borrower's interest in the Project, any reserve or deposit made with the Lender or with any other entity that is required by

HUD in connection with the Mortgage Loan, or in the rents or other income of the Project for the payment of any charge or obligation due hereunder except to the extent available from then currently available "Surplus Cash" as that term is defined in the HUD Regulatory Agreement approved for distribution by HUD.

The limit on the Borrower's liability set forth in this Section shall not, however, be construed, and is not intended to in any way, to constitute a release, in whole or in part, of the indebtedness evidenced by this Loan Agreement or a release, in whole or in part, or an impairment of the security interest, or in case of any default or enforcing any other right of the Issuer under this Loan Agreement or to alter, limit or affect the liability of any person or party

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who may now or hereafter or prior hereto guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Borrower under this Loan Agreement.

The provisions of this Section shall survive the termination of this Loan Agreement.

Section 9.04 No Pecuniary Liability of Issuer. No agreements or provisions contained in this Loan Agreement or any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project or any property of the Borrower financed, directly or indirectly, out of proceeds of the Bonds or the issuance, sale and delivery of the Bonds will give rise to any pecuniary liability of the Issuer (including tax and rebate liability) or its past, present or future officers, directors, employees, commissioners, agents or members of its governing body and their successors and assigns or constitute a charge against the Issuer's general credit, or obligate the Issuer financially in any way, except with respect to the Trust Estate. No failure of the Issuer to comply with any terms, covenants or agreements in this Loan Agreement or in any document executed by the Issuer in connection with the Bonds will subject the Issuer or its past, present or future officers, directors, employees, commissioners, agents and members of its governing body and their successors and assigns to any pecuniary charge or liability except to the extent that the same can be paid or recovered from the Trust Estate. Without limiting the requirement to perform its duties or exercise its rights and powers under this Loan Agreement upon receipt of appropriate indemnity or payment, none of the provisions of this Loan Agreement or the Indenture will require the Issuer to expend or risk its own funds or otherwise to incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers under this Loan Agreement. Nothing in this Loan Agreement will preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement in this Loan Agreement or in the Bond Indenture; provided that no costs, expenses or other monetary relief will be recoverable from the Issuer except as may be payable from the funds available under this Loan Agreement or made available under the Indenture by the Borrower and pledged to the payment of the Bonds.

No covenant, agreement or obligation contained herein or in any other financing instrument executed in connection with the Project or the making of the Loan shall be deemed to be a covenant, agreement or obligation of any past, present or future director, officer, employee, commissioner, or agent of the Issuer in his or her individual capacity so long as he or she does not act in bad faith, and no such director, officer, employee, commissioner or agent of the Issuer in his or her individual capacity shall be subject to any liability under any agreement to which the Issuer is a party or with respect to any other action taken by him or her so long as he or she does not act in bad faith.

Section 9.05 Binding Effect. This Loan Agreement shall inure to the benefit of and shall be binding upon the Issuer, the Borrower, the Trustee, the Holders and their respective successors and assigns.

Section 9.06 Severability. In the event any provision of this Loan Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

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Section 9.07 Amounts Remaining in Funds. Subject to the provisions of Section 4.07 of the Bond Indenture, any amounts in the Bond Fund remaining unclaimed by the Holders of Bonds for two years after the due date thereof (whether at stated maturity or otherwise), shall be deemed to belong to and shall be paid, at the written request of the Borrower, to the Borrower by the Trustee as overpayment of Loan Payments. With respect to that principal of and interest on the Bonds to be paid from money paid to the Borrower pursuant to the preceding sentence, the Holders of the Bonds entitled to such money shall look solely to the Borrower for the payment of such money. Further, any amounts remaining in the Bond Fund, the Project Fund and Collateral Fund after all of the Outstanding Bonds shall be deemed to have been paid and discharged under the provisions of the Indenture and all other amounts required to be paid under this Agreement, the Note and the Indenture have been paid, shall, subject to Section 4.08 of the Indenture, be paid to the Borrower to the extent that such money are in excess of the amounts necessary to effect the payment and discharge of the Outstanding Bonds. Provided, however, that in the event of a default under the FHA Loan, and assignment of the FHA Loan to FHA, of which the Trustee has received written notification, such excess funds shall be paid to the Lender.

Section 9.08 Amendments, Changes and Modifications. Subsequent to the issuance of the Bonds and prior to their payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Bond Indenture), and except as otherwise herein expressly provided, this Loan Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Bond Trustee, in accordance with the provisions of the Bond Indenture.

Section 9.09 Execution in Counterparts. This Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 9.10 Applicable Law; Jury Trial. This Loan Agreement and the Promissory Note, and the rights and obligations of the parties hereunder and thereunder, shall be construed in accordance with, and shall be governed by, the laws of the State of Illinois, without regard to its conflict of laws principles.

**THE BORROWER HEREBY IRREVOCABLY WAIVES ANY RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING (I) TO ENFORCE OR DEFEND ANY RIGHTS UNDER OR IN CONNECTION WITH THIS LOAN AGREEMENT OR THE PROMISSORY NOTE, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED, OR WHICH MAY IN THE FUTURE BE DELIVERED; IN CONNECTION HERewith OR THEREWITH, OR (II) ARISING FROM ANY DISPUTE OR CONTROVERSY IN CONNECTION WITH OR RELATED TO THIS LOAN AGREEMENT OR THE PROMISSORY NOTE, OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT, AND AGREES THAT ANY SUCH ACTION OR**

**COUNTERCLAIM SHALL BE TRIED BEFORE A COURT AND NOT BEFORE A JURY.**

**THE BORROWER IRREVOCABLY AGREES THAT, SUBJECT TO THE ISSUER'S SOLE AND ABSOLUTE ELECTION, ANY ACTION OR PROCEEDING IN ANY WAY, MANNER OR RESPECT ARISING OUT OF THIS LOAN AGREEMENT,**

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**THE PROMISSORY NOTE AND THE OTHER BORROWER DOCUMENTS, OR ANY AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT DELIVERED OR WHICH MAY IN THE FUTURE BE DELIVERED IN CONNECTION HERewith OR THEREWITH, OR ARISING FROM ANY DISPUTE OR CONTROVERSY ARISING IN CONNECTION WITH OR RELATED TO THIS LOAN AGREEMENT, THE PROMISSORY NOTE AND THE OTHER BORROWER DOCUMENTS, OR ANY SUCH AMENDMENT, INSTRUMENT, DOCUMENT OR AGREEMENT, SHALL BE LITIGATED ONLY IN THE COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS, AND THE BORROWER HEREBY CONSENTS AND SUBMITS TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURT LOCATED WITHIN SUCH CITY AND STATE. THE BORROWER HEREBY WAIVES ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT IN ACCORDANCE WITH THIS SECTION.**

Section 9.11 Captions. The captions and headings in this 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 Loan Agreement.

**Section 9.12 Mortgage Loan Documents and Regulations Control.**

a) In the event of any conflict and to the extent that there is any inconsistency or ambiguity between the provisions of this Agreement and the provisions of the Controlling HUD and GNMA Requirements or the Mortgage Loan Documents, the Controlling HUD and GNMA Requirements and Mortgage Loan Documents will be deemed to be controlling, and any such ambiguity or inconsistency will be resolved in favor of, and pursuant to the terms of the Controlling HUD and GNMA Requirements and Mortgage Loan Documents, as applicable. Notwithstanding any provision of this Agreement to the contrary, the parties hereto acknowledge and agree that all of their respective rights and powers to any assets or properties of the Borrower are subordinate and subject to the liens created by the Mortgage, together with any and all amounts from time to time secured thereby, and interest thereon, and to all of the terms and provisions of the Mortgage, and any and all other documents executed by the Borrower as required by HUD or GNMA in connection therewith.

b) Enforcement of the covenants in this Agreement will not result in, and neither the Issuer nor the Trustee has or shall be entitled to assert, any claim against the Project, the Mortgage Loan proceeds (other than the amounts deposited with the Trustee as provided in the Indenture), any reserves or deposits required by HUD in connection with the Mortgage Loan transaction, or the rents or deposits or other income of the Project other than available "Surplus Cash" as defined in the HUD Regulatory Agreement.

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

d) The Bonds are not a debt of the United States of America, HUD, FFIA, GNMA or any



other agency or instrumentality of the federal government, and are not guaranteed by the full faith and credit of the United States or any agency or instrumentality thereof.

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(e) Except as otherwise provided herein, there is no pledge hereunder of the gross revenues or any of the assets of the Project.

f) Nothing contained herein shall inhibit or impair the right of FHA to require or agree to any amendment, change or modification of any Mortgage Loan Documents.

g) Proceeds from any condemnation award or from the payment of a claim under any hazard insurance policy relating to the Project will not be payable to the Trustee, but will be payable in accordance with the Mortgage Loan Documents.

h) Notwithstanding anything to the contrary in the event of an assignment or conveyance of the Mortgage Loan Documents to the Federal Housing Commissioner, subsequent to the issuance of the Bonds, all money remaining in all Special Funds and any other funds remaining under the Indenture after payment or provision for payment of debt service on the Bonds and the fees and expenses of the Issuer, Trustee and other such parties unrelated to the Borrower (other than amount in the Rebate Fund and any funds originally deposited by the Borrower or related parties on or before the date of issuance of the Bonds) shall be returned to the Lender.

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IN WITNESS WHEREOF, the Issuer and the Borrower have caused this Loan Agreement to be executed in their respective official names and their respective official seals to be hereunto affixed and attested by their duly authorized officers, all as of the date first above written.

CITY OF CHICAGO, as Issuer

By:  
Chief Financial Officer

[SIGNATURE PAGE TO LOAN AGREEMENT - SIGNATURES CONTINUED ON NEXT PAGE]

**34**

**MARK TWAIN NHPF, LLC,**  
an Illinois limited liability company

By: MARK TWAIN NHPF MANAGER, LLC, an Illinois limited liability  
company, its Managing Member

By: THE NHP FOUNDATION,  
corporation,  
its Managing Member  
a District of Columbia not-for-profit

By: [NAME] [TITLE]

[SIGNATURE PAGE TO LOAN AGREEMENT CONTINUED]

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as Bond Trustee

By: \_ Name: Title:

[SIGNATURE PAGE TO LOAN AGREEMENT CONTINUED]

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**Exhibit A Form of Promissory Note [See attached]**

**38**

Ordinance Exhibit D Form of Land Use Restriction Agreement

See Attached

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This Instrument was Prepared by and When Recorded Send to:  
Steven Washington  
Ice Miller LLP  
200 West Madison Street  
Chicago, Illinois 60606

**LAND USE RESTRICTION AGREEMENT between CITY OF CHICAGO**

And

**MARK TWAIN NHPF, LLC**

an Illinois limited liability company

Dated as of 1, 2018

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REQUIRED PROVISIONS

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### LAND USE RESTRICTION AGREEMENT

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement"), entered into as of 1, 2018, between the CITY OF CHICAGO, a municipal corporation and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State of Illinois (the "Issuer"), and MARK TWAIN NHPF, LLC, an Illinois limited liability company (the "Owner"),



**WITNESSETH:**

WHEREAS, the Issuer has issued, sold and delivered its \$ Multi-Family Housing Revenue Bonds (Mark Twain Apartments Project), Series 2018 (the "Bonds"); and

WHEREAS, the Bonds are issued pursuant to the Bond Indenture of even date herewith (the "Bond Indenture"), between the Issuer and Huntington National Bank, a national banking association having its principal corporate trust office in [Chicago, Illinois], as bond trustee (the "Bond Trustee"); and

WHEREAS, the proceeds derived from the issuance and sale of the Bonds are being lent by the Issuer to the Owner pursuant to the Loan Agreement of even date herewith (the "Loan Agreement"), between the Issuer and the Owner for the purpose of financing a portion of the costs of the acquisition, rehabilitation and equipping of an approximately 148-unit (the "Units") multifamily housing rental apartment complex located at 111 W. Division Street, Chicago, Illinois (as further described in Exhibit A hereto, the "Site") to be known as Mark Twain Apartments (collectively, the Site and the Units are referred to herein as the "Project"); and

WHEREAS, in order to assure the Issuer and the Holders that interest on the Bonds will be excluded from gross income for federal income tax purposes under the Internal Revenue Code of 1986, as amended (the "Code"), and to further the public purposes of the Issuer, certain restrictions on the use and occupancy of the Project under the Code must be established;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other good and valuable consideration, the receipt, sufficiency and adequacy of which are hereby acknowledged, the Owner and the Issuer agree as follows:

**Section 1. Term of Restrictions**

**(a) Occupancy Restrictions.** The term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the first day on which at least 10% of the Units are first occupied following completion of the renovation of such Units and shall end on the latest of (i) the date which is 15 years after the date on which at least 50% of the Units in the Project are first occupied; (ii) the first date on which no tax-exempt note or bond (including any refunding note or bond) issued with respect to the Project is outstanding; or (iii) the date on which any housing assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates (which period is hereinafter referred with respect to the Project as the "Qualified Project Period").

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b) Rental Restrictions. The Rental Restrictions with respect to the Project set forth in Section 4 hereof shall remain in effect during the Qualified Project Period.

c) Involuntary Loss or Substantial Destruction. The Occupancy Restrictions set forth in Section 3 hereof, and the Rental Restrictions set forth in Section 4 hereof, shall cease to apply to the Project in the event of involuntary noncompliance caused by fire, seizure, requisition, foreclosure, transfer of title by deed in lieu of foreclosure, change in federal law or an action of a federal agency (with respect to the Project) after the date of delivery of the Bonds, which prevents the Issuer from enforcing the Occupancy Restrictions and the Rental

Restrictions (with respect to the Project), or condemnation or similar event (with respect to the Project), but only if, within a reasonable time, (i) all of the Bonds are promptly retired, or amounts received as a consequence of such event are used to provide a new project which meets all of the requirements of this Agreement, which new project is subject to new restrictions substantially equivalent to those contained in this Agreement, and which is substituted in place of the Project by amendment of this Agreement; and (ii) an opinion from nationally recognized bond counsel (selected by the Issuer) is received to the effect that noncompliance with the Occupancy Restrictions and the Rental Restrictions applicable to the Project as a result of such involuntary loss or substantial destruction resulting from an unforeseen event with respect to the Project will not adversely affect the exclusion of the interest on the Bonds from the gross income of the owner thereof for purposes of federal income taxation; provided, however, that the preceding provisions of this paragraph shall cease to apply in the case of such involuntary noncompliance caused by foreclosure, transfer of title by deed in lieu of foreclosure or similar event if at any time during the Qualified Project Period with respect to the Project subsequent to such event the Owner or any Affiliated Party (as hereinafter defined) obtains an ownership interest in the Project for federal income tax purposes. "Affiliated Party" means a person whose relationship to another person is such that (i) the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code; or (ii) such persons are members of the same controlled group of corporations (as defined in Section 1563(a) of the Code, except that "more than 50%" shall be substituted for "at least 80%" each place it appears therein).

d) Termination. This Agreement shall terminate with respect to the Project upon the earliest of (i) termination of the Occupancy Restrictions and the Rental Restrictions with respect to the Project, as provided in paragraphs (a) and (b) of this Section 1; or (ii) delivery to the Issuer and the Owner of an opinion of nationally recognized bond counsel (selected by the Issuer) to the effect that continued compliance of the Project with the Rental Restrictions and the Occupancy Restrictions applicable to the Project is not required in order for interest on the Bonds to remain excludable from gross income for federal income tax purposes.

e) Certification. Upon termination of this Agreement, the Owner and the Issuer shall execute and cause to be recorded (at the Owner's expense), in all offices in which this Agreement was recorded, a certificate of termination, specifying which of the restrictions contained herein has terminated.

f) [Hud-Required Language. The parties hereby incorporate into this Agreement the provisions set forth in Appendix I attached hereto to the same extent and effect as if the provisions set forth in Appendix I were fully set forth and made a part hereof]

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Section 2. Project Restrictions. The Owner represents, warrants and covenants that:

a) The Owner has reviewed the provisions of the Code and the Treasury Regulations thereunder (the "Regulations") applicable to this Agreement (including, without limitation, Section 142(d) of the Code and Section 1.103-8(b) of the Regulations) with its counsel and understands said provisions.

b) The Project is being acquired, renovated and equipped for the purpose of providing a "qualified residential rental project" (as such phrase is used in Section 142(d) of the Code) and will, during the term of the Rental Restrictions and Occupancy Restrictions hereunder applicable to the Project, continue to constitute a "qualified residential rental project" under Section 142(d) of the Code and any Regulations heretofore or

hereafter promulgated thereunder and applicable thereto.

c) Substantially all (not less than 95%) of the Project will consist of a "building or structure" (as defined in Section 1.103-8(b)(8)(iv) of the Regulations), or several proximate buildings or structures, of similar construction, each containing one or more similarly constructed residential units (as defined in Section 1.103-8(b)(8)(i) of the Regulations) located on a single tract of land or contiguous tracts of land (as defined in Section 1.103-8(b)(4)(ii)-(B) of the Regulations), which will be owned, for federal tax purposes, at all times by the same person, and financed pursuant to a common plan (within the meaning of Section 1.103-8(b)(4)(ii) of the Regulations), together with functionally related and subordinate facilities (within the meaning of Section 1.103-8(b)(4)(iii) of the Regulations). If any such building or structure contains fewer than five (5) units, no unit in such building or structure shall be Owner-occupied.

d) None of the Units in the Project will at any time be used on a transient basis, nor will the Project itself be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court for use on a transient basis; nor shall any portion of the Project be operated as an assisted living facility which provides continual or frequent nursing, medical or psychiatric services; provided, however that nothing herein shall be understood to prohibit single-room-occupancy units occupied under month-to-month leases.

e) All of the Units in the Project will be leased or rented, or available for lease or rental, on a continuous basis to members of the general public (other than (i) Units for resident managers or maintenance personnel, (ii) Units for Qualifying Tenants as provided for in Section 3 hereof, and (iii) Units which may be rented under the Section 8 assistance program, which units (subject to the Section 8 assistance program) shall be leased to eligible tenants in accordance with Section requirements), subject, however, to the requirements of Section 3(a) hereof. Each Qualifying Tenant (as hereinafter defined) occupying a Unit in the Project shall be required to execute a written lease with a stated term of not less than 30 days nor more than one year.

f) Any functionally related and subordinate facilities {e.g., parking areas, swimming pools, tennis courts, etc.) which are included as part of the Project will be of a character and size commensurate with the character and size of the Project, and will be made available to all tenants in the Project on an equal basis; fees will only be charged with respect to the use thereof if the

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charging of fees is customary for the use of such facilities at similar residential rental properties in the surrounding area (i.e., within a one-mile radius), or, if none, then within comparable urban settings in the City of Chicago, and then only in amounts commensurate with the fees being charged at similar residential rental properties within such area. In any event, any fees charged will not be discriminatory or exclusionary as to the Qualifying Tenants (as defined in Section 3 hereof). No functionally related and subordinate facilities will be made available to persons other than tenants or their guests.

g) Each residential unit in the Project will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for a single person or family.

h) No portion of the Project will be used to provide any health club facility (except as provided in (f) above); any facility primarily used for gambling, or any store, the principal business of which is the sale of alcoholic beverages for consumption off premises, in violation of Section 147(e) of the Code.

Section 3. Occupancy Restrictions. The Owner represents, warrants and covenants with respect to the Project that:

a) Pursuant to the election of the Issuer in accordance with the provisions of Section 142(d)(1)(A) of the Code, at all times during the Qualified Project Period with respect to the Project at least 40% of the completed Units in the Project shall be continuously occupied (or treated as occupied as provided herein) or held available for occupancy by Qualifying Tenants as herein defined. For purposes of this Agreement, "Qualifying Tenants" means individuals or families whose aggregate adjusted incomes do not exceed 60% of the applicable median gross income (adjusted for family size) for the area in which the Project is located, as such income and area median gross income are determined by the Secretary of the United States Treasury in a manner consistent with determinations of income and area median gross income under Section 8 of the United States Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such determination).

b) Prior to the commencement of occupancy of any unit to be occupied by a Qualifying Tenant, the prospective tenant's eligibility shall be established by execution and delivery by such prospective tenant of an Income Computation and Certification in the form attached hereto as Exhibit B (the "Income Certification") evidencing that the aggregate adjusted income of such prospective tenant does not exceed the applicable income limit. In addition, such prospective tenant shall be required to provide whatever other information, documents or certifications are reasonably deemed necessary by the Owner or the Issuer to substantiate the Income Certification.

c) Not less frequently than annually, the Owner shall determine whether the current aggregate adjusted income of each tenant occupying any unit being treated by the Owner as occupied by a Qualifying Tenant exceeds the applicable income limit. For such purpose the Owner shall require each such tenant to execute and deliver the Income Certification; provided, however, that for any calendar year during which no unit in the Project is occupied by a new resident who is not a qualifying tenant, no Income Computation and Certification for existing tenants shall be required.

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d) Any unit vacated by a Qualifying Tenant shall be treated as continuing to be occupied by such tenant until reoccupied, other than for a temporary period not to exceed 31 days, at which time the character of such unit as a unit occupied by a Qualifying Tenant shall be redetermined.

e) If an individual's or family's income exceeds the applicable income limit as of any date of determination, the income of such individual or family shall be treated as continuing not to exceed the applicable limit, provided that the income of an individual or family did not exceed the applicable income limit upon commencement of such tenant's occupancy or as of any prior income determination, and provided, further, that if any individual's or family's income as of the most recent income determination exceeds 140% of the applicable income limit, such individual or family shall cease to qualify as a Qualifying Tenant if, prior to the next income determination of such individual or family, any unit in the Project of comparable or smaller size to such individual's or family's unit is occupied by any tenant other than a Qualifying Tenant.

f) The lease to be utilized by the Owner in renting any Unit in the Project to a prospective Qualifying Tenant shall provide for termination of the lease and consent by such person to eviction following

30 days' written notice, subject to applicable provisions of Illinois law (including for such purpose all applicable home rule ordinances), for any material misrepresentation made by such person with respect to the Income Certification with the effect that such tenant is not a Qualified Tenant.

g) All Income Certifications will be maintained on file at the Project as long as the Note is outstanding and for five years thereafter with respect to each Qualifying Tenant who occupied a Unit in the Project during the period the restrictions hereunder are applicable, and the Owner will, promptly upon receipt, file a copy thereof with the Issuer.

h) On the first day of the Qualified Project Period with respect to the Project, on the fifteenth days of January, April, July and October of each year during the Qualified Project Period with respect to the Project, and within 30 days after the final day of each month in which there occurs any change in the occupancy of a Unit in the Project, the Owner will submit to the Issuer a "Certificate of Continuing Program Compliance," in the form attached hereto as Exhibit C executed by the Owner with respect to the Project.

(i) The Owner shall submit to the Secretary of the United States Treasury (at such time and in such manner as the Secretary shall prescribe) with respect to the Project an annual certification on Form 8703 as to whether the Project continues to meet the requirements of Section 142(d) of the Code. Failure to comply with such requirement may subject the Owner to the penalty provided in Section 6652(j) of the Code.

Section 4. Rental Restrictions. The Owner represents, warrants and covenants with respect to the Project that once available for occupancy, each Unit in the Project will be rented or available for rental on a continuous basis to members of the general public (other than (a) Units for resident managers or maintenance personnel, (b) Units for Qualifying Tenants as provided for in Section 3 hereof, and (c) Units which may be rented under the Section 8 assistance program, which Units (subject to the Section 8 assistance program) shall be leased to eligible tenants in accordance with Section 8 requirements). If a Housing Assistance Payments Contract is

subsequently entered into with respect to the Project under the Section 8 assistance program, in administering the restrictions hereunder with respect to the Project the Owner will comply with all Section 8 requirements.

Section 5. Transfer Restrictions. The Owner covenants and agrees that no conveyance, transfer, assignment or any other disposition of title to any portion of the Project (a "Transfer") shall be made prior to the termination of the Rental Restrictions and Occupancy Restrictions hereunder with respect to the Project, unless the transferee pursuant to the Transfer assumes in writing (the "Assumption Agreement"), in a form reasonably acceptable to the Issuer, all of the executory duties and obligations hereunder of the Owner with respect to such portion of the Project, including those contained in this Section 5, and agrees to cause any subsequent transferee to assume such duties and obligations in the event of a subsequent Transfer by the transferee prior to the termination of the Rental Restrictions and Occupancy Restrictions hereunder with respect to the Project. The Owner shall deliver the Assumption Agreement to the Issuer at least 30 days prior to a proposed Transfer. This Section 5 shall not apply to any involuntary transfer pursuant to Section 1(c) hereof.

This Section shall not be deemed to restrict the transfer of any partnership interest in the Owner or a transfer by foreclosure or deed in lieu of foreclosure.

### Section 6. Enforcement

a) The Owner shall permit all duly authorized representatives of the Issuer to inspect any books and records of the Owner regarding the Project and the incomes of Qualifying Tenants which pertain to compliance with the provisions of this Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

b) In addition to the information provided for in Section 3(i) hereof, the Owner shall submit any other information, documents or certifications reasonably requested by the Issuer, which the Issuer deems reasonably necessary to substantiate continuing compliance with the provisions of this Agreement and Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

c) The Issuer and the Owner each covenant that it will not take or permit to be taken any action within its control that it knows would adversely affect the exclusion of interest on the Bonds from the gross income of the owners thereof for purposes of federal income taxation pursuant to Section 103 of the Code. Moreover, each covenants to take any lawful action within its control (including amendment of this Agreement as may be necessary in the opinion of nationally recognized bond counsel selected by the Issuer) 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 from time to time pertaining to obligations issued under Section 142(d) of the Code and affecting the Project.

d) The Owner covenants and agrees to inform the Issuer by written notice of any violation of its obligations hereunder within five days of first discovering any such violation. If any such violation is not corrected to the satisfaction of the Issuer within the period of time specified by either the Issuer, which shall be (i) the lesser of (A) 60 days after the effective date of any notice to or from the Owner, or (B) 75 days from the date such violation would have been

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discovered by the Owner by the exercise of reasonable diligence, or (ii) such longer period as may be necessary to cure such violation, provided bond counsel (selected by the Issuer) of nationally recognized standing in matters pertaining to the exclusion of interest on municipal bonds from gross income for purposes of federal income taxation issues an opinion that such extension will not result in the loss of such exclusion of interest on the Bonds, without further notice, the Issuer shall declare a default under this Agreement effective on the date of such declaration of default, and the Issuer shall apply to any, court, state or federal, for specific performance of this Agreement or an injunction against any violation of this Agreement, or any other remedies at law or in equity or any such other actions as shall be necessary or desirable so as to correct noncompliance with this Agreement.

e) The Owner and the Issuer each acknowledges that the primary purposes for requiring compliance with the restrictions provided in this Agreement are to preserve the exclusion of interest on the Bonds from gross income for purposes of federal income taxation, and that the Issuer, on behalf of the owners of the Bonds, who are declared to be third-party beneficiaries of this Agreement, shall be entitled for any breach of the provisions hereof, to all remedies both at law and in equity in the event of any default hereunder.

f) In the enforcement of this Agreement, the Issuer may rely on any certificate delivered by or on behalf of the Owner or any tenant with respect to the Project.

g) Nothing in this Section shall preclude the Issuer from exercising any remedies it might otherwise have, by contract, statute or otherwise, upon the occurrence of any violation hereunder.

h) Notwithstanding anything to the contrary contained herein, the Issuer hereby agrees that any cure of any default made or tendered by one or more of the Owner's partners shall be deemed to be a cure by the Owner and shall be accepted or rejected on the same basis as if made or tendered by the Owner.

Section 7. Covenants to Run with the Land. The Owner hereby subjects the Project, the Property, the Site and the Units to the covenants, reservations and restrictions set forth in this Agreement. The Issuer and the Owner hereby declare their express intent that the covenants, reservations and restrictions set forth herein shall be deemed covenants, reservations and restrictions running with the land to the extent permitted by law, and shall pass to and be binding upon the Owner's successors in title to the Project, the Units, and the Site, throughout the term of this Agreement. Each and every contract, deed, mortgage, lease or other instrument hereafter executed covering or conveying the Project, the Units or the Site, or any portion thereof or interest therein (excluding any transferee of a partnership interest in the Owner), 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, mortgage, lease or other instrument.

Section 8. Recording. The Owner shall cause this Agreement and all amendments and supplements hereto to be recorded in the conveyance and real property records of Cook County, Illinois, and in such other places as the Issuer may reasonably request. The Owner shall pay all fees and charges incurred in connection with any such recording.

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Section 9. Agents of the Issuer. The Issuer shall have the right to appoint agents to carry out any of its duties and obligations hereunder, and shall, upon written request, certify in writing to the other party hereto any such agency appointment.

Section 10. No Conflict with Other Documents. The Owner warrants and covenants that it has not and will not execute any other agreement with provisions inconsistent or in conflict with the provisions hereof (except documents that are subordinate to the provisions hereof), and the Owner agrees that the requirements of this Agreement are paramount and controlling as to the rights and obligations herein set forth, which supersede any other requirements in conflict herewith.

Section 11. Interpretation. Any capitalized terms not defined in this Agreement shall have the same meaning as terms defined in the Bond Indenture and the Loan Agreement or Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder.

Section 12. Amendment. Subject to any restrictions set forth in either the Bond Indenture, this Agreement may be amended by the parties hereto to reflect changes in Section 142(d) of the Code, the regulations hereafter promulgated thereunder and revenue rulings promulgated thereunder, or in the

interpretation thereof.

Section 13. Severability. The invalidity of any clause, part or provision of this Agreement shall not affect the validity of the remaining portions thereof.

Section 14. Notices. Any notice, demand or other communication required or permitted hereunder shall be in writing and shall be deemed to have been given if and when personally delivered and receipted for, or, if sent by private courier service or sent by overnight mail service, shall be deemed to have been given if and when received (unless the addressee refuses to accept delivery, in which case it shall be deemed to have been given when first presented to the addressee for acceptance), or on the first day after being sent by telegram, or on the third day after being deposited in United States registered or certified mail, postage prepaid. Any such notice, demand or other communication shall be given as provided for in the applicable sections of the Loan Agreement.

Section 15. Governing Law. The laws of the State of Illinois shall govern the construction of this Agreement, without reference to its conflicts of laws principles.

Section 16. Limited Liability of Owner. Notwithstanding any other provision or obligation stated in or implied by this Agreement to the contrary, any and all undertakings and agreements of the Owner contained herein shall not (other than as expressly provided hereinafter in this paragraph) be deemed, interpreted or construed as the personal undertaking or agreement of, or as creating any personal liability upon, any past, present or future partner of the Owner, and no recourse (other than as expressly provided hereinafter in this paragraph) shall be had against the property of the Owner or any past, present or future partner of the Owner, personally or individually for the performance of any undertaking, agreement or obligation, or the payment of any money, under this Agreement or any document executed or delivered by or on behalf of the Owner pursuant hereto or in connection herewith, or for any claim based thereon. It is expressly understood and agreed that the Issuer and the registered owner of the Bonds, and its

respective successors and assigns, shall have the right to sue for specific performance of this Agreement and to otherwise seek equitable relief for the enforcement of the obligations and undertakings of the Owner hereunder, including, without limitation, obtaining an injunction against any violation of this Agreement or the appointment of a receiver to take over and operate all or any portion of the Project in accordance with the terms of this Agreement. This Section shall survive termination of this Agreement.



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IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be signed and sealed by their respective, duly authorized representatives, as of the day and year first above written.

**CITY OF CHICAGO**

Chief Financial Officer

(SEAL) ATTEST:

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MARK TWAIN NHPF, LLC,  
an Illinois limited liability company

By: Mark Twain NHPF Manager, LLC, an Illinois limited liability company, its managing member

By: The NHP Foundation,  
a District of Columbia nonprofit  
corporation,  
its managing member

By: .

Name: Mecky Adnani Title: Senior Vice President

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(STATE OF ILLINOIS)

) ss:

COUNTY OF COOK )

BEFORE ME, the undersigned authority, on this day personally appeared \_\_\_\_\_ and \_\_\_\_\_, the CHIEF FINANCIAL OFFICER and CITY CLERK, respectively, of the CITY OF CHICAGO, a municipal corporation and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State of Illinois (the "Issuer"), known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that each executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said Issuer.

GIVEN UNDER MY HAND and seal of office, this the \_\_\_\_\_ day of \_\_\_\_\_ 201\_.

[SEAL]



Notary Public

(SEAL)

My commission expires on:

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**EXHIBIT A**

**LEGAL DESCRIPTION OF THE SITE**

LOT 1 AND THE NORTH 25 FEET OF LOT 2, ALSO THE WEST 50 FEET OF SAID LOT 2 (EXCEPT THEREFROM THE NORTH 25 FEET AND THE SOUTH 3.5 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 22 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST 1/2 OF THE SOUTHEAST 1/4 OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Common Address: 101-111 West Division Street, Chicago, Illinois 60610-1909

PIN: 17-04-405-006-0000

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**EXHIBIT B**

**INCOME COMPUTATION AND CERTIFICATION\***

NOTE TO APARTMENT OWNER: This form is designed to assist you in computing Annual Income in accordance with the method set forth in the Department of Housing and Urban Development ("HUD") Regulations (24 CFR Part 5). You should make certain that this form is at all times up to date with HUD Regulations. All capitalized terms used herein shall have the meanings set forth in the Land Use Restriction Agreement, dated as of \_\_\_\_\_, 2018, among the City of Chicago and Mark Twain NHPF, LLC, an Illinois limited liability company (the "Owner").

Re: Mark Twain Apartments Chicago, IL

I/We, the undersigned, being first duly sworn, state that I/we have read and answered fully and truthfully each of the following questions for all persons who are to occupy the unit in the above apartment project for which application is made. Listed below are the names of all persons who intend to reside in the unit:

Name of Members of the Household	Relationship to Head of Household	Age	Social Security Number	Place of Employment
	HEAD			
	<u>SPOUSE</u>			

6. Total Anticipated Income. The total anticipated income, calculated in accordance with this paragraph 6, of all persons listed above for the 12-month period beginning the date that I/we plan to move into a unit (i.e., ) is \$ .Included in the total anticipated income listed above are:

- a) the full amount, before payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;
- b) the net income from operation of a business or profession or net income from real or personal property (without deducting expenditures for business expansion or amortization or capital indebtedness); an allowance for depreciation of capital assets used in a business or profession may be deducted, based on straight-line depreciation, as provided in Internal Revenue Service regulation;

\* The form of Income Computation and Certification shall be conformed to any amendments made to 24 CFR Part 5, or any regulatory provisions promulgated in substitution therefor.

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include any withdrawal of cash or assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons;

- c) interest and dividends (see 7(C) below);
- d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment;
- e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;
- f) the amount of any public welfare assistance payment; if the welfare assistance payment includes any

amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare assistance income to be included as income shall consist of:

- i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus
- ii) the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities (if the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph 6(f) shall be the amount resulting from one application of the percentage);
- g) periodic and determinable allowances, such as alimony and child support payments and regular contributions or gifts received from persons not residing in the dwelling; and
- h) all regular pay, special pay and allowances of a member of the Armed Forces.

Excluded from such anticipated total income are:

- a) income from employment of children (including foster children) under the age of 18 years;
- b) payment received for the care of foster children or foster adults;
- c) lump-sum additions to family assets, such as inheritances, insurance payments (including payments under health and accident insurance and worker's compensation), capital gains and settlement for personal or property losses;

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- d) amounts received by the family that are specifically for, or in reimbursement of, the cost of medical expenses for any family member;
- e) income of a live-in aide;
- f) the full amount of student financial assistance paid directly to the student or to the educational institution;
- g) special pay to a family member serving in the Armed Forces who is exposed to hostile fire;
- h) amounts received under training programs funded by the Department of Housing and Urban Development ("HUD");
- (i) amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);



(j) amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(k) a resident service stipend in a modest amount (not to exceed \$200 per month) received by a resident for performing a service for the Owner, on a part-time basis, that enhances the quality of life in the Project, including, but not limited to, fire patrol, hall monitoring, lawn maintenance and resident initiatives coordination (no resident may receive more than one stipend during the same period of time);

(l) compensation from state or local employment training programs in training of a family member as resident management staff, which compensation is received under employment training programs (including training programs not affiliated with a local government) with clearly defined goals and objectives, and which compensation is excluded only for the period during which the family member participates in the employment training program;

(m) reparations payment paid by a foreign government pursuant to claims filed under the laws of that government for persons who were persecuted during the Nazi era;

(n) earnings in excess of \$480 for each full-time student, 18 years or older, but excluding the head of household and spouse;

(o) adoption assistance payments in excess of \$480 per adopted child;

(p) deferred periodic payments of supplemental security income and social security benefits that are received in a lump sum payment;

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(q) amounts received by the family in the form of refunds or rebates under state or local law for property taxes paid on the dwelling unit;

(r) amounts paid by a state agency to a family with a developmentally disabled family member living at home to offset the cost of services and equipment needed to keep the developmentally disabled family member at home;

(s) temporary, nonrecurring or sporadic income (including gifts); and

(t) amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.

## 7. Assets

(a) Do the persons whose income or contributions are included in Item 6 above:

- i) have savings, stocks, bonds, equity in real property or other form
- i) of capital investment (excluding the values of necessary items of personal
- i) property such as furniture and automobiles, equity in a housing
- i) cooperative unit or in a manufactured home in which such family resides,
- i) and interests in Indian trust land)? Yes No.
- ii) have they disposed of any assets (other than at a foreclosure or
- ii) bankruptcy sale) during the last two years at less than fair market value?
- ii) Yes No.
- b) If the answer to (i) or (ii) above is yes, does the combined total value of all
- b) such assets owned or disposed of by -all such persons total more than \$5,000?
- b) Yes No.
- c) If the answer to (b) above is yes, state:
  - i) the total value of all such assets: \$
  - ii) the amount of income expected to be derived from such assets in
  - ii) the 12-month period beginning on the date of initial occupancy of the unit
  - ii) that you propose to rent: \$ ; and
  - iii) the amount of such income, if any, that was included in Item 6
  - iii) above: \$ .

**8. Full-time Students**

- (a) Are all of the individuals who propose to reside in the unit full-time students? Yes No.

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A full-time student is an individual enrolled as a full-time student (carrying a subject load that is considered full-time for day students under the standards and practices of the educational institution attended) during each of five calendar months during the calendar year in which occupancy of the unit begins at an educational organization which

normally maintains a regular faculty , and curriculum and normally has a regularly enrolled body of students in attendance or an individual pursuing a full-time course of institutional or farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(b) If the answer to 8(a) is yes, are at least two of the proposed occupants of the unit a husband and wife entitled to file a joint federal income tax return?

Yes                      No.

9. Relationship to Project Owner. Neither I nor any other occupant of the unit I/we propose to rent is the Owner, has any family relationship to the Owner, or owns directly or indirectly any interest in the Owner. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member; ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. Reliance. This certificate is made with the knowledge that it will be relied upon by the Owner to determine maximum income for eligibility to occupy the unit and is relevant to the status under federal income tax law of the interest on obligations issued to provide financing for the apartment development for which application is being made. I/We consent to the disclosure of such information to the issuer of such obligations, the holders of such obligations, any fiduciary acting on their behalf and any authorized agent of the Treasury Department or the Internal Revenue Service. I/We declare that all information set forth herein is true, correct and complete and based upon information I/we deem reliable, and that the statement of total anticipated income contained in paragraph 6 is reasonable and based upon such investigation as the undersigned deemed necessary.

11. Further Assistance. I/We will assist the Owner in obtaining any information or documents required to verify the statements made herein, including, but not limited to, either an income verification from my/our present employer(s) or copies of federal tax returns for the immediately preceding two calendar years.

12. Misrepresentation. I/We acknowledge that I/we have been advised that the making of any misrepresentation or misstatement in this declaration will constitute a material breach of my/our agreement with the Owner to lease the unit, and may entitle the Owner to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

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I/We declare under penalty of perjury that the foregoing is true and correct. Executed this  
day of            in            , Illinois.

Applicant Applicant

Applicant Applicant

[Signature of all persons over the age of 18 years listed in 2 above required.]

SUBSCRIBED AND SWORN to before me this        day of

(NOTARY SEAL)

Notary Public in and for the State of

My Commission Expires:

FOR COMPLETION BY APARTMENT OWNER ONLY: 1.     Calculation

of eligible income:

- a.     Enter amount entered for entire household in 6 above: \$
- b.     (1)    if the amount entered in 7(c)(i) above is greater than \$5,000, enter the total amount entered in 7(c)(ii), subtract from that figure the amount entered in 7(c)(iii) and enter the remaining balance (\$        );
- (2)    multiply the amount entered in 7(c)(i) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(c)(ii) would be if invested in passbook savings (\$\_        ), subtract from that figure the amount entered in 7(c)(iii) and enter the remaining balance (\$        ); and
- (3)    enter at right the greater of the amount calculated under (1) or (2) above:
- 3)     \$        t
- c.     TOTAL ELIGIBLE INCOME (Line 1 .a plus line 1 .b(3)): \$

The amount entered in 1.c is:

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       Less than 80% of Median Gross Income for Area. (\*\* More than 80% of Median Gross Income for the Area.)

3. Number of apartment unit assigned:

Bedroom Size:

Rent:

4. The last tenants of this apartment unit for a period of 31 consecutive days [had/did not have] aggregate anticipated annual income, as certified in the above manner upon their initial occupancy of the apartment unit, of less than 80% of Median Gross Income for the Area.

5. Method used to verify applicant(s) income:

Employer income verification.

Copies of tax returns.

Other ( )

Owner or Manager

\*\* "Median Gross Income for the Area" means the median income for the area where the Project is located as determined by the Secretary of Housing and Urban Development under Section 8(0(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, median income determined under the method used by the Secretary prior to the termination. "Median Gross Income for the Area" shall be adjusted for family size.

\*\* See footnote 2.

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**INCOME VERIFICATION**

**(for employed persons)**

The undersigned employee has applied for a rental unit located in a project financed by the City of Chicago. Every income statement of a prospective tenant must be stringently verified. Please indicate below the employee's current annual income from wages, overtime, bonuses, commissions or any other form of compensation received on a regular basis.

Annual wages

Overtime

Bonuses

Commissions

Total current income

I hereby certify that the statements above are true and complete to the best of my knowledge.

Signature

Date Title

I hereby grant you permission to disclose my income to Mark Twain NHPF, LLC, an Illinois limited liability company, in order that it may determine my income eligibility for rental of an apartment located in one of its projects which has been financed by the City of Chicago.

Signature Date Please send to:

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**INCOME VERIFICATION**

**(for self-employed persons)**

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding two calendar years and certify that the information shown in such income tax returns is true and complete to the best of my knowledge.

Signature Date

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**EXHIBIT C**

**CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE**

The undersigned, on behalf of Mark Twain NHPF, LLC, an Illinois limited liability company (the "Owner"), hereby certifies as follows:

1. The undersigned has read and is thoroughly familiar with the provisions of the Land Use Restriction Agreement, dated as of \_\_\_\_\_, 2018 (the "Land Use Restriction Agreement"), between the City of Chicago and the Owner. All capitalized terms used herein shall have the meanings given in the Land Use Restriction Agreement.

2. Based on Certificates of Tenant Eligibility on file with the Owner, as of the date of this Certificate the following number of completed Units in the Project (i) are occupied by Qualifying Tenants (as such term is defined in the Land Use Restriction Agreement), or (ii) were previously occupied by Lower-Income Tenants and have been vacant and not reoccupied except for a temporary period of no more than 31 days:

Occupied by Qualifying Tenants****'	No. of Units
Previously occupied by Qualifying Tenants (vacant and not reoccupied except for a temporary period of no more than 31 days):	No of Units

3. The total number of completed Units in the Project is \_\_\_\_\_.

4. The total number in 2 is at least 40% of the total number in 3 above.



\*\*\*\* A unit all of the occupants of which are full-time students does not qualify as a unit occupied by Qualifying Tenants, unless one or more of the occupants was entitled to file a joint tax return.

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5. No Event of Default (as defined in the Land Use Restriction Agreement) has occurred and is subsisting under the Land Use Restriction Agreement, except as set forth in Schedule A attached hereto.

MARK TWAIN NHPF, LLC, an Illinois limited liability company

By: Mark Twain NHPF Manager, LLC, an Illinois limited liability company, its managing member

By: The NHP Foundation, a District of Columbia nonprofit corporation, its managing member

By:  
Name: Mecky Adnani Title: Senior Vice President

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**APPENDIX I**

**HUD RIDER TO RESTRICTIVE COVENANTS**

This RIDER TO RESTRICTIVE COVENANTS is made as of \_\_\_\_\_, 20\_\_, by  
("Borrower") and \_\_\_\_\_ ("Agency").

WHEREAS, Borrower has obtained financing from  
("Lender") for the benefit of the project known as \_\_\_\_\_ ("Project"), which loan is  
secured by a Multifamily \_\_\_\_\_, Assignment of Leases and Rents and Security  
Agreement ("Security Instrument") dated as of \_\_\_\_\_, and recorded in the Recorder's  
Office of \_\_\_\_\_ County, \_\_\_\_\_ ("Records") on \_\_\_\_\_ as Document  
Number \_\_\_\_\_, and is insured by the United States Department of Housing and  
Urban Development ("HUD");

WHEREAS, Borrower has received a tax-exempt bond financing from the Agency, which Agency is  
requiring certain restrictions be recorded against the Project; and

WHEREAS Borrower entered into that certain \_\_\_\_\_ ("Restrictive  
Covenants") with respect to the Project, as more particularly described in Exhibit A attached  
hereto, dated as of \_\_\_\_\_ and recorded in the Records;

WHEREAS, HUD requires as a condition of its insuring Lender's financing to the Project, that the lien  
and covenants of the Restrictive Covenants be subordinated to the lien, covenants, and enforcement of the  
Security Instrument; and

WHEREAS, the [Agency]? has agreed to subordinate the Restrictive Covenants to the lien of the  
Mortgage Loan in accordance with the terms of this Rider.

NOW, THEREFORE, in consideration of the foregoing and for other consideration the receipt and  
sufficiency of which are hereby acknowledged, the parties hereby agree as follows:

a) In the event of any conflict between any provision contained elsewhere in the Restrictive  
Covenants and any provision contained in this Rider, the provision contained in this Rider shall govern and be  
controlling in all respects as set forth more fully herein.

b) The following terms shall have the following definitions: "Code" means  
the Internal Revenue Code of 1986, as amended.

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

"HUD Regulatory Agreement" means the Regulatory Agreement between Borrower and HUD with respect to the Project, as the same may be supplemented, amended or modified from time to time.

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"Lender" means \_\_\_\_\_, its successors and assigns.

"Mortgage Loan" means the mortgage loan made by Lender to the Borrower pursuant to the Mortgage Loan Documents with respect to the Project.

"Mortgage Loan Documents" means the Security Instrument, the HUD Regulatory Agreement and all other documents required by HUD or Lender in connection with the Mortgage Loan.

"National Housing Act" means the National Housing Act of 1934, as amended.

"Program Obligations" has the meaning set forth in the Security Instrument.

"Residual Receipts" has the meaning specified in the HUD Regulatory Agreement.

"Security Instrument" means the mortgage or deed of trust from Borrower in favor of Lender, as the same may be supplemented, amended or modified.

"Surplus Cash" has the meaning specified in the HUD Regulatory Agreement.

c) Notwithstanding anything in the Restrictive Covenants to the contrary, the provisions hereof are expressly subordinate to (i) the Mortgage Loan Documents, including without limitation, the Security Instrument, and (ii) Program Obligations (the Mortgage Loan Documents and Program Obligations are collectively referred to herein as the "HUD Requirements"). Borrower covenants that it will not take or permit any action that would result in a violation of the Code, HUD Requirements or Restrictive Covenants. In the event of any conflict between the provisions of the Restrictive Covenants and the provisions of the HUD Requirements, HUD shall be and remains entitled to enforce the HUD Requirements. Notwithstanding the foregoing, nothing herein limits the Agency's ability to enforce the terms of the Restrictive Covenants, provided such terms do not conflict with statutory provisions of the National Housing Act or the regulations related thereto. The Borrower represents and warrants that to the best of Borrower's knowledge the Restrictive Covenants impose no terms or requirements that conflict with the National Housing Act and related regulations.

d) In the event of foreclosure (or deed in lieu of foreclosure), the Restrictive Covenants (including without limitation, any and all land use covenants and/or restrictions contained herein) shall automatically

terminate.

e) Borrower and the Agency [??] acknowledge that Borrower's failure to comply with the covenants provided in the Restrictive Covenants does not and shall not serve as a basis for default under the HUD Requirements, unless a default also arises under the HUD Requirements.

f) Except for the Agency's [??] reporting requirement, in enforcing the Restrictive Covenants the Agency will not file any claim against the Project, the Mortgage Loan proceeds, any reserve or deposit required by HUD in connection with the Security Instrument or HUD Regulatory Agreement, or the rents or other income from the property other than a claim against:

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Available surplus cash, if the Borrower is a for-profit entity;

- ii. Available distributions of surplus cash and residual receipts authorized for release by HUD, if the Borrower is a limited distribution entity; or
- iii. Available residual receipts authorized by HUD, if the Borrower is a non-profit entity, [or
- iv. [A HUD-approved collateral assignment of any HAP contract.]

g) For so long as the Mortgage Loan is outstanding, Borrower and Agency [??] shall not further amend the Restrictive Covenants, with the exception of clerical errors or administrative correction of non-substantive matters, without HUD's prior written consent.

h) Subject to the HUD Regulatory Agreement, the Agency may require the Borrower to indemnify and hold the Agency harmless from all loss, cost, damage and expense arising from any claim or proceeding instituted against Agency relating to the subordination and covenants set forth in the Restrictive Covenants, provided, however, that Borrower's obligation to indemnify and hold the Agency harmless shall be limited to available surplus cash and/or residual receipts of the Borrower.

(i) No action shall be taken in accordance with the rights granted herein to preserve the tax exemption of the interest on the notes or bonds, or prohibiting the owner from taking any action that might jeopardize the tax-exemption, except in strict accord with Program Obligations.

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CM25I289.3

BORROWER: By:

Name: Title:

STATE OF COUNTY OF

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this \_\_\_\_\_, \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of \_\_\_\_\_ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public

C-6

C\ 1251289.3

AGENCY:

By:

Name: Title:

STATE OF COUNTY OF

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that on this \_\_\_\_\_, personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that (s)he signed and delivered the said instrument as his/her free and voluntary act and the free and voluntary act of \_\_\_\_\_ for the purposes therein set forth.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal the day and year first above written.

[seal]

Notary Public

**C-1**

CV 251289.3

**Exhibit A - Legal Description**

LOT 1 AND THE NORTH 25 FEET OF LOT 2, ALSO THE WEST 50 FEET OF SAID LOT 2 (EXCEPT THEREFROM THE NORTH 25 FEET AND THE SOUTH 3.5 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 22 TN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

Permanent Real Estate Index Number: 17-04-405-006

Address:

101-111 West Division Street, Chicago, Illinois

C-8

CM251289.3

**Ordinance Exhibit E Legal Description of Property**

**[Subject to Survey and Title Insurance]**

**LOT 1 AND THE NORTH 25 FEET OF LOT 2, ALSO THE WEST 50 FEET OF SAID LOT 2 (EXCEPT THEREFROM THE NORTH 25 FEET AND THE SOUTH 3.5 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 22 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST V\* OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.**

**Common Address: 101-111 West Division Street, Chicago, Illinois 60610-1909**

**PIN: 17-04-405-006-0000**



**H-1**

CV 249-118.7

**Ordinance Exhibit E Legal Description of Property**

**[Subject to Survey and Title Insurance]**

**LOT 1 AND THE NORTH 25 FEET OF LOT 2, ALSO THE WEST 50 FEET OF SAID LOT 2 (EXCEPT THEREFROM THE NORTH 25 FEET AND THE SOUTH 3.5 FEET THEREOF) IN THE SUBDIVISION OF BLOCK 22 IN BUSHNELL'S ADDITION TO CHICAGO IN THE EAST  $\frac{1}{2}$  OF THE SOUTHEAST  $\frac{1}{4}$  OF SECTION 4, TOWNSHIP 39 NORTH, RANGE 14 EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.**

**Common Address: 101-111 West Division Street, Chicago, Illinois 60610-1909**

**PIN: 17-04-405-006-0000**

OI2194 18.8

**H-1**