



# Office of the City Clerk

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

## Legislation Details (With Text)

**File #:** SO2021-4755

**Type:** Ordinance **Status:** Passed

**File created:** 10/14/2021 **In control:** City Council

**Final action:** 2/23/2022

**Title:** Redevelopment and related agreements authorizing multi-family housing financial assistance and lending to Chicago Lighthouse Residences 4 LLC, Brinshore Development LLC, The Chicago Lighthouse Residences 4 Manager LLC, The Chicago Lighthouse Special Investor Member for construction of new affordable residential units at 1134 S Wood St

**Sponsors:** Lightfoot, Lori E.

**Indexes:** Redevelopment

**Attachments:** 1. SO2021-4755.pdf, 2. O2021-4755.pdf

Date	Ver.	Action By	Action	Result
2/23/2022	1	City Council	Passed as Substitute	Pass
2/17/2022	1	Committee on Finance	Recommended to Pass	
2/17/2022	1	Committee on Finance	Substituted in Committee	
10/14/2021	1	City Council	Referred	

### SUBSTITUTE ORDINANCE

WHEREAS, by virtue of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois (the "Constitution"), 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, The Chicago Lighthouse Residences 4, LLC, an Illinois limited liability company (the "Borrower"), and Brinshore Development, L.L.C., an Illinois limited liability company ("Brinshore"), have proposed a certain affordable housing development project consisting of the acquisition of real property located at 1134 South Wood Street in the City (the "Property") and the construction thereon and equipping of a portion of the affordable housing development comprised of 45 residential units that include 6 studio units, 27 one-bedroom units and 12 two-bedroom units, together with common areas and approximately 34 parking spaces (the "4% Project"); and

WHEREAS, the 4% Project will constitute a separate and distinct condominium unit within a larger mixed-use building; and

WHEREAS, the members of the Borrower are The Chicago Lighthouse Residences 4 Manager, LLC, an Illinois limited liability company (the "Managing Member"), with a 0.0075% interest, The Chicago Lighthouse Residences 4 Special Investor Member, LLC, an Illinois limited liability company (the "Lighthouse Special Investor Member") the sole member of which is The Chicago Lighthouse for People Who Are Blind or Visually Impaired, an Illinois not-for-profit corporation ("Chicago Lighthouse"), with a 0.0025% interest and an investor member to be formed by National Equity

Fund, Inc., an Illinois not-for-profit corporation or such other party selected by Brinshore and acceptable to the City and anticipated to acquire a 99.99% interest in the Borrower upon the closing of this matter (the "Investor Member"); and

WHEREAS, the sole member of the Managing Member is Brinshore with a 100% interest; and

WHEREAS, the members of Brinshore are (i) RJS Real Estate Services, Inc , an Illinois corporation, with a 50% interest of which Richard J. Sciortino is the sole shareholder, and (ii) Brint Development, Inc., an Illinois corporation, with a 50% interest of which David B. Brint is the sole shareholder; and

WHEREAS, by this ordinance (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 and certain other funding, as provided herein, to the Borrower, to enable it to pay or reimburse a portion of the costs of the 4% Project, and to pay a portion of the costs of issuance and other costs incurred in connection therewith, and

WHEREAS, by this Ordinance, the City Council has determined that it is necessary and in the best interests of the City to enter into a Funding Loan Agreement (the "Funding Loan Agreement") with CIBC Bank, USA, an Illinois state chartered bank ("CIBC"), pursuant to which the City will borrow an aggregate principal amount not to exceed Fifteen Million Eight Hundred Sixty Two Thousand Dollars (\$15,862,000) (the "Funding Loan") for the purposes set forth above and, in evidence of its limited, special obligation to repay that borrowing, issue a tax-exempt revenue note, which is expected to be designated as Multi-Family Housing Revenue Note (Chicago Lighthouse Residences 4 Project), Series 2022 (the "Note"), under the terms and conditions of this Ordinance and the Funding Loan Agreement, and the City will thereafter loan the proceeds of the Funding Loan to the Borrower (the "Borrower Loan") pursuant to a borrower loan agreement (the "Borrower Loan Agreement") between the City and the Borrower, as evidenced by a certain Borrower promissory note (the "Borrower Note"), in order to finance a portion of the cost of the Project in return for loan payments sufficient to pay, when due, the principal of, prepayment premium, if any, and interest on the Note; and

WHEREAS, the principal of, prepayment premium, if any, and interest payable on the Note will be secured by, among other things, (i) a mortgage on the Property (the "Note Mortgage") granting the holder of the Note a mortgage on the Property that is senior in position, (ii) certain capital contributions to be made to the Borrower by its Investor Member in connection with the 4% federal low income housing tax credits which the 4% Project is expected to receive, and (iii) pledges and/or assignments of certain funds, personal property, and contractual rights of the Borrower and its affiliates (including certain Multi-Family Program Funds, as defined below); and

WHEREAS, in order to provide permanent financing for the 4% Project, it is anticipated that upon conversion of the 4% Project from its construction phase to its permanent phase CIBC will assign the Note to JP Morgan Chase Bank, N.A. ("Chase"), a national banking association, and assign all of its right, title and interest in the security for the Note to Chase; and in connection therewith there will be executed and delivered (i) an amended and restated Borrower Note reflecting the terms of the permanent financing which will be automatically reflected in the terms of the Note by virtue of the language of the Note, (ii) an amended and restated Note Mortgage and (iii) other related documents; and

WHEREAS, the Funding Loan and the Note 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 party to the Funding Loan Agreement or holder of any Note shall have the 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 Note or obligations under the Funding Loan Agreement; and

WHEREAS, in connection with the execution and delivery of the Funding Loan Agreement and the issuance of the Note, the City Council has determined by this Ordinance that it is necessary and in the best interests of the City to

enter into (i) the Funding Loan Agreement, providing for the security for and terms and conditions of the Funding Loan and the Note to be issued thereunder, (n) the Borrower Loan Agreement, providing for the loan of the proceeds of the Funding Loan to the Borrower and the use of such proceeds, and the Borrower Note to be issued thereunder (in) a Tax Regulatory Agreement and/or tax certificate (collectively, the 'Tax Agreements') between the City and the Borrower and (iv) a Land Use

Restriction Agreement between the City and the Borrower (the "Land Use Restriction Agreement"); and

WHEREAS, the City has certain funds available from a variety of funding sources ('Multi-Family Program Funds') to make loans and grants for the development of multi-family residential housing to increase the number of families served with decent, safe, sanitary and affordable housing and to expand the long-term supply of affordable housing, and such Multi-Family Program Funds are administered by the Department of Housing ("DOH") of the City; and

WHEREAS, the Borrower now desires to obtain financing from various sources, all such additional financing as shown in Exhibit A attached hereto and made a part hereof (the "Additional Financing"); and

WHEREAS, the City has preliminarily reviewed and approved the making of a loan to the Borrower in an amount not to exceed \$7,900,000 to be funded from its Multi-Family Program Funds (the "City Loan") pursuant to the terms and conditions set forth in this Ordinance and Exhibit A; now, therefore,

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

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 Funding Loan Agreement.

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 City Comptroller or, if so designated and determined by the City Comptroller, the Chief Financial Officer (as defined herein) (the City Comptroller or, if so designated and determined by the City Comptroller, the Chief Financial Officer, being referred to herein as the "Authorized Officer") to establish the terms of the Funding Loan Agreement and related Note, the Borrower Loan Agreement and the related Borrower Note on such terms as and to the extent such Authorized Officer determines that such terms are desirable and in the best financial interest of the City. Any such designation and determination by the Authorized Officer shall be signed in writing by such Authorized 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 an Authorized Officer and filed with the City Clerk. As used herein, the term "Chief Financial Officer" shall mean the Chief Financial Officer of the City appointed by the Mayor or, if there is no such officer then holding such office, the City Comptroller.

Each Authorized Officer is hereby authorized to act as an authorized City representative (each an "Authorized City Representative") of the City for the purposes provided in the Funding Loan Agreement.

Section 3. Authorization of the Funding Loan Agreement, the Note, the Borrower Loan Agreement and Related Agreements Upon the approval and availability of the Additional Financing, the execution and delivery of the Funding Loan Agreement and the

issuance of the Note in an aggregate principal amount of not to exceed \$15,862,000 are hereby authorized. The aggregate principal amount of the Note to be issued shall be as set forth in the Funding Loan Notification referred to in Section 6 below.

The Funding Loan Agreement and the Note shall contain a provision that they are executed and delivered under authority of this Ordinance. The maximum term of the Funding Loan shall not exceed twenty-three (23) years from the date of execution and delivery of the Note. The Note shall bear interest at a rate or rates equal to the rate of interest on the Borrower Loan as provided in the Borrower Loan Agreement (which shall not exceed the lesser of 10% or the maximum rate of interest allowable under state law except in the case of an event of default in which case the rate of interest shall not exceed the maximum rate of interest allowable under state law) and shall be as determined by the Authorized Officer and shall be payable on the payment dates as set forth in the Funding Loan Agreement. The Note shall be dated, shall be subject to prepayment, shall be payable in such places and in such manner and shall have such other details and provisions as prescribed by the Funding Loan Agreement and the form(s) of the Note therein. The provisions for execution, signatures, payment and prepayment, with respect to the Funding Loan Agreement and the Note shall be as set forth in the Funding Loan Agreement and the form of the Note therein.

Each of (i) the Mayor of the City (the "Mayor"), the (ii) Chief Financial Officer of the City or (iii) any other officer designated in writing by the Mayor is hereby authorized to execute by their manual or, in the case of the Note, manual or facsimile signature, and to deliver on behalf of the City, and the City Clerk and the Deputy City Clerk are hereby authorized to attest by their manual or, in the case of the Note, manual or facsimile signature, the Funding Loan Agreement and the Note, each 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 officer's approval and the City Council's approval of any changes or revisions from the form of the Funding Loan Agreement and Note therein attached to this Ordinance and reflecting the terms as determined in the Funding Loan Notification.

An Authorized Officer is hereby authorized to execute and deliver on behalf of the City, and the City Clerk and the Deputy City Clerk are each hereby authorized to attest, the Borrower Loan Agreement 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 Borrower Loan Agreement and the Borrower Note therein attached to this Ordinance and reflecting the terms as determined in the Funding Loan Notification.

It is anticipated that upon the completion of construction, to provide for permanent financing for the 4% Project, CIBC will assign the Note to Chase and assign its right, title and interest in certain security for the Note to Chase. Upon such assignment (the "Note Assignment") all references to the Funding Lender will refer to Chase. The Borrower Note will be amended and restated to reflect the terms of the permanent financing which will be automatically reflected in the terms of the Note by virtue of the language of the Note. The terms of the Note will remain within the parameters set forth in Section 3 of this Ordinance. The execution and filing of the Supplemental Funding Loan Notification (as defined below) shall constitute conclusive evidence of the Authorized Officer's approval and the City Council's approval of any changes or revisions from the form of the Funding Loan Agreement, Note and

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Borrower Loan Agreement attached to this Ordinance and reflecting the terms as determined in the Supplemental Funding Loan Notification.

An Authorized Officer is hereby authorized to execute and deliver the Land Use Restriction Agreement on behalf of the City, 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 and reflecting the terms as determined

in the Funding Loan Notification.

An Authorized Officer is hereby authorized to execute and deliver and the City Clerk and the Deputy City Clerk are each hereby authorized to attest the Tax Agreements on behalf of the City, in substantially the forms of such documents used in previous tax-exempt multi-family housing financings (with appropriate revisions to reflect the terms and provisions of the Funding Loan Agreement and the Note and the 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 Note: The execution of the Tax Agreements by the Authorized Officer shall be deemed conclusive evidence of the approval of the City Council to the terms provided in the Tax Agreements.

An Authorized Officer is hereby authorized to execute and deliver on behalf of the City such security or collateral documents securing payment of the Note as the Authorized Officer regards as appropriate, in substantially the form of the security documents used in previous issuances of tax-exempt bonds pursuant to programs similar to that pursuant to which the Note is being executed and delivered, with appropriate revisions to reflect the terms and provisions of the Note and with such other revisions as the Authorized Officer executing the same shall determine are appropriate and consistent with the other provisions of this Ordinance. The execution of security or collateral documents by the Authorized Officer shall be deemed conclusive evidence of the approval of the City Council to the terms provided in such documents.

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 Funding Loan Agreement and the Note. The obligations of the City under the Funding Loan Agreement and the Note shall be limited obligations of the City, payable solely from and/or secured by a pledge of certain revenues and property as described in the Funding Loan Agreement.

In order to secure the payment of the principal of, prepayment premium, if any, and interest on the Note, such rights, proceeds and investment income are hereby pledged to the extent and for the purposes as provided in the Funding Loan Agreement and are hereby appropriated for the purposes set forth in the Funding Loan Agreement

The obligations of the Borrower under the Note will be secured by the Note Mortgage creating a senior lien on and security interest in the 4% Project pursuant to a Mortgage, Security Agreement. Assignment of Rents and Fixture Filing made by the Borrower in favor of the City as assigned by the City to CIBC to secure the performance by the City of its obligations under

the Funding Loan Agreement. The Note Mortgage will be assigned by CIBC to Chase upon the Note Assignment, and be amended and restated by the Borrower for the benefit of Chase

Section 5. Delivery of the Funding Loan Agreement Sale and Delivery of Note

Subject to the terms and conditions of the Funding Loan Agreement and such additional terms as are set forth in the Funding Loan Notification with the approval of an Authorized Officer, the Note shall be assigned and delivered to CIBC, as the initial funding lender, or such other funding lender as approved by an Authorized Officer (the "Funding Lender," which term shall mean Chase as the successor funding lender upon the Note Assignment), and each Funding Lender shall hold the Funding Loan Agreement and the Note, subject to the terms and conditions of the required transferee representations (the "Required Transferee Representations") which shall be delivered to the City by the Funding Lender. Any subsequent Funding Lender approved by an Authorized Officer, to the extent required under the Funding Loan Agreement, may succeed the initial Funding Lender as the registered holder of all or a portion of the Funding Loan, but only if such subsequent Funding Lender executes and delivers to the City the Required Transferee Representations, substantially in the form of the Required Transferee Representations set forth in the Funding Loan Agreement. The aggregate costs of origination of the Funding Loan paid from the proceeds of the Funding Loan to the Funding Lender shall not exceed one and one-half percent (1.5%) of the aggregate principal amount of the Note.

Section 6. Funding Loan Notification. Subsequent to the execution and delivery of the Funding Loan Agreement and the sale of the Note, the Authorized Officer shall file in the Office of the City Clerk a Funding Loan Notification (the "Funding Loan Notification") for such Funding Loan Agreement and the Note directed to the City Council setting forth (i) the aggregate original principal amount of, maturity schedule, redemption provisions for and other terms of the Note sold, (ii) the extent of any tender rights to be granted to the holders of the Note, (iii) the identity of the Funding Lender, if different from CIBC or Chase, (iv) the interest rates on the Note and/or a description of the method of determining the interest rates applicable to the Note from time to time, (v) the origination fee or other compensation paid to the Funding Lender in connection with the origination of the Funding Loan and issuance of the Note, and (vi) any other matter authorized by this Ordinance to be determined by an Authorized Officer at the time of the sale of any Note. There shall be attached to such notification the final form of the Funding Loan Agreement, a specimen of the Note and the Borrower Loan Agreement.

Subsequent to the Note Assignment, the Authorized Officer shall file in the office of the City Clerk a Supplemental Funding Loan Notification (the "Supplemental Funding Loan Notification") directed to the City Council setting forth the information required to be included in the Funding Loan Notification containing information related to the new noteholder. If any of the Funding Loan Agreement, the Note or the Borrower Loan Agreement have been amended in connection with the Note Assignment, there shall be attached to such notification the amended form of the Funding Loan Agreement, a specimen of the amended Note and the amended form of the Borrower Loan Agreement.

Section 7. Limited Obligations. The Note, when issued and outstanding, will be a limited obligation of the City, payable by its terms as provided in the Funding Loan Agreement. The Note and the interest thereon shall never constitute a debt or general obligation or a pledge of the faith, the credit or the taxing power of the City within the meaning of any Constitutional or statutory provision of the State of Illinois. The Note shall be payable solely from the funds pledged therefor pursuant to the terms of the Funding Loan Agreement herein described.

6

Section 8. Use of Proceeds. The proceeds from the Funding Loan (as evidenced by the sale of the Note) shall be deposited as provided in the Funding Loan Agreement and used for the 4% Project.

Section 9. Volume Cap. The proceeds from the Funding Loan (as evidenced by the sale of the Note) are obligations that are taken into account under Section 146 of the Code in the allocation of the City's volume cap.

Section 10. Declaration of Official Intent. A portion of the cost of the acquisition and construction of the 4% Project which the City intends to finance with the proceeds of the Funding Loan has been or is expected to be paid from available monies of the Borrower prior to the date of execution and delivery of the Funding Loan. It is the intention of the City that the Borrower will utilize a portion of the proceeds of the Note to reimburse such expenditures which have been or will be made for those costs, to the extent allowed by the Code and related regulations. It is necessary and in the best interests of the City to declare its official intent under Section 1.150-2 of the Treasury Regulations promulgated under the Code so to utilize the proceeds of the Funding Loan. The City declared such official intent in its Ordinance passed on December 16, 2020 and published in the Journal of the Proceedings of the City Council (the "Journal") of such date at pages 24774 to 24776.

Section 11. Proxies. Each Authorized Officer may designate another to act as their respective proxy and to affix their respective signatures to the Note, whether in temporary or definitive form, and to any other instrument, certificate or document required to be signed by the Mayor or an Authorized Officer pursuant to this ordinance or the Funding Loan Agreement. 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 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 12. Additional Authorization. Each Authorized Officer, the City Treasurer and the Commissioner of DOH or a designee thereof (the "Authorized DOH Officer"), upon the approval and availability of the Additional Financing, is 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, including, without limitation, any documents necessary to evidence the receipt or assignment of any collateral for the Funding Loan Agreement and the Note, the Borrower Loan Agreement or the Borrower Note from the Borrower, and perform such other acts as may be necessary or desirable in connection with the City Agreements (as defined in Section 18 hereof) including, but not limited to, the exercise following the delivery date of the City Agreements of any power or authority delegated to such official under this Ordinance with respect to the City Agreements upon original execution and delivery, but subject to any limitations on or restrictions of such power or authority as herein set forth Notwithstanding anything contained herein (including but not limited to Section 3 hereof and this Section 12), if any portion of the Additional Financing is not approved and available at such time as the Authorized Officer and the Authorized DOH Officer otherwise deem it in the

7

best interest of the City to execute the City Agreements, then the Authorized Officer and the Authorized DOH Officer may so execute the City Agreements (with such changes thereto as the Authorized Officer and the Authorized DOH Officer deem necessary and advisable) and any necessary ancillary documents and may impose such conditions upon the approval and availability of such Additional Financing as they deem necessary and advisable.

Section 13. City Loan Authorization. Upon the approval and availability of the Additional Financing, the Authorized DOH 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 City Loan. The Authorized DOH Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the City Loan that do not substantially modify the terms described in Exhibit A hereto. Upon the execution and receipt of proper documentation, the Authorized DOH Officer is hereby authorized to disburse the proceeds of the City Loan to the Borrower.

Section 14. Public Hearing. The City Council hereby directs that the Note shall not be issued unless and until the requirements of Section 147(f)(1) of the Code, including particularly the approval requirement following any required public hearing, have been fully satisfied, and that no contract, agreement or commitment to issue the Note shall be executed or undertaken prior to satisfaction of the requirements of said Section 147(f) unless the performance of said contract, agreement or commitment is expressly conditioned upon the prior satisfaction of such requirements. To the extent that the requirements of Section 147(f)(1) of the Code, including the public hearing, have occurred prior to the effective date of this Ordinance, this Ordinance constitutes approval for purposes of Section 147(f) of the Code. All such actions taken prior to the enactment of this Ordinance are hereby ratified and confirmed.

Section 15. Authorization of Fees and Expenses. The following fees and expenses are hereby authorized in connection with the Funding Loan Agreement and the Note: (i) a Bond Issuer Fee in an amount equal to 1/8 of 1.0%, (i.e. 0.125%) of the original principal amount of the Governmental Lender Note payable on the Closing Date and 1.5% of the principal amount of the Governmental Lender Note upon the Note Assignment payable upon the occurrence of the Note Assignment, (ii) a Bond Legal Reserve Fee in the amount of 0.10 percent of the par amount of the Note (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), (iii) a Bond Administrative Fee in an amount equal to 0.15 percent of the outstanding principal of the Note, accruing monthly but payable to the City on a semi-annual basis, (iv) a Low Income Housing Tax Credit Reservation Fee equal to 5.0% of the first full year's tax credit allocation payable upon acceptance of the credit reservation letter or tax-exempt bond agreement issued by DOH, and (v) a Monitoring Fee in the amount of \$25 per unit, paid annually, submitted with the annual owner's certification. The timing of the payment of such fees shall be as set forth in the Tax Agreements.

Section 16. Severability. 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 17. Inconsistent Provisions All ordinances, resolutions, motions or orders in conflict with this Ordinance are hereby repealed to the extent of such conflict

Section 18. No Recourse No recourse shall be had for the payment of the principal of, prepayment premium, if any, or interest on the Note or for any claim based thereon or upon any obligation, covenant or agreement contained in this Ordinance, the Funding Loan

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Section 18. No Recourse. No recourse shall be had for the payment of the principal of, prepayment premium, if any, or interest on the Note or for any claim based thereon or upon any obligation, covenant or agreement contained in this Ordinance, the Funding Loan Agreement, the Note, the Borrower Loan Agreement, the Land Use Restriction Agreement, or the Tax Agreements (collectively, the "City Agreements") against any past, present or future officer, member or employee of the City, or any officer, employee, director or trustee of any successor, as such, either directly or through the City, or any such successor, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such member, officer, employee, director or trustee as such is hereby expressly waived and released as a condition of and consideration for the execution of the City Agreements and the issuance of the Note.

Section 19. No Impairment. To the extent that any ordinance, resolution, rule, order or provision of the Municipal Code of Chicago (the "Municipal Code"), or part thereof, is in conflict with the provisions of this Ordinance, the provisions of this Ordinance shall be controlling. No provision of the Municipal Code or violation of any provision of the Municipal Code shall be deemed to render voidable at the option of the City any document, instrument or agreement authorized hereunder or to impair the validity of this Ordinance or the instruments authorized by this Ordinance or to impair the rights of the holders of the Funding Loan and the Note to receive payment of the principal of, prepayment premium, if any, or interest on the Note or to impair the security for the Funding Loan Agreement and the Note; provided further 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. Sections 2-44-080, 2-44-085, 2-44-090, 2-44-100 and 2-44-105 of the Municipal Code shall not apply to the 4% Project or the Property.

Section 20. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage and approval.

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



Ordinance Exhibit A Loan and Additional Financing  
Terms

**BORROWER:** The Chicago Lighthouse Residences 4, LLC, an Illinois limited liability company ("Borrower") and its managing member, The Chicago Lighthouse Residences 4 Manager, LLC, an Illinois limited liability company (the "Managing Member"), of which the managing member is Brinshore Development, L.L.C. an Illinois limited liability company ("Brinshore") an additional special member formed by The Chicago Lighthouse for People Who are Blind or Visually Impaired, an Illinois not-for-profit corporation ("Chicago Lighthouse").

**PROJECT:** Acquisition of land and construction of an affordable housing development located at 1134 South Wood Street, Chicago, Illinois (the "Property") to contain approximately 45 residential housing units shall be for affordable housing and related site infrastructure costs. The building will contain community space and approximately 34 parking spaces.

The Property on which the 4% Project will be constructed will be donated by the Chicago Lighthouse to Housing Opportunity Development Corporation, an Illinois not-for-profit corporation ("HODC") and HODC will transfer the Property to an affiliate of the Borrower, or such other entity deemed acceptable to the Authorized DOH Officer.

1. The Note, as described in this Ordinance.

**2. The City Loan**

Source: Multi-Family Program Funds. Amount: Not

to exceed \$7,900,000.

Term: Not to exceed 40 years plus construction period, or another term acceptable to the Authorized Officer.

Interest. 0% per annum, or another rate acceptable to the Authorized Officer.

Security. Non-Recourse Mortgage junior to the lien of the Note Mortgage (the "City Mortgage")

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

Amount Approximately \$11,130,987, or such amount as may be acceptable to the Authorized DOH Officer all or a portion of which may be paid in on a delayed basis, and all or a portion of which may be used to repay the Note upon the completion of construction of the 4% Project or upon

compliance with such other benchmarks as shall be set forth in the operating agreement of the Borrower

Source: To be derived from the syndication of the LIHTCs generated by the Property.

4. Illinois Affordable Housing Tax Credit ("IAHTC") Proceeds

Source. Chicago Lighthouse, from proceeds derived from transfer of IAHTCs allocated by the City in the approximate amount of \$2,500,000.

Amount: Approximately \$2,162,500, or such other amount as may be acceptable to the Authorized DOH Officer.

Term: Not to exceed 40 years plus construction period, or another term acceptable to the Authorized DOH Officer

Interest: 0% per annum or such other interest rate acceptable to the Authorized DOH Officer.

Security: A mortgage lien on the Property junior to the lien of the City Mortgage.

5. The Lighthouse Loan

Source: Chicago Lighthouse, or a wholly owned subsidiary thereof.

Amount: Approximately \$2,970,638, or such other amount as may be acceptable to the Authorized DOH Officer.

Term: Not to exceed 40 years plus construction period, or another term acceptable to the Authorized DOH Officer.

Interest: 2.5% per annum, or another rate acceptable to the Authorized DOH Officer.

Security: A mortgage lien on the Property junior to the lien of the City Mortgage.

A-2

Ordinance Exhibit B

See Attached

FUNDING LOAN AGREEMENT Between

CIBC BANK USA, as Funding Lender

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CITY OF CHICAGO, as Governmental Lender

Dated as of

TABLE OF CONTENTS

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RECITALS

ARTICLE I

Section 1 Section 1 Section I Section I Section 1

ARTICLE II

DEFINITIONS: PRINCIPLES OF CONSTRUCTION.

Definitions	2
Effect of Headings and Table of Contents	12
Date of Funding Loan Agreement	12
Designation of Time for Performance	12
Interpretation	12
TERMS; GOVERNMENTAL LENDER NOTE	12
Section 2.1. Section 2.2. Section 2.3. Section 2.4. crms.	

Form of Governmental Lender Note	14	
Execution and Delivery of Governmental Lender Note	14	
Required Transferee Representations; Participations; Sale and Assignment	14	
ARTICLE III PREPAYMENT		15
Section 3.1.		
Prepayment of a Governmental Lender Note from Prepayment under the		
Section 3.2.		
ARTICLE IV		
Section 4.1. Section 4.2.		
ARTICLE V		
Section 5.1.		
Section 5.2.		
Related Borrower Note	15	
Notice of Prepayment	15	
SECURITY	16	
Security for the Funding Loan	16	
Delivery of Security	17	
LIMITED LIABILITY	17	
Source of Payment of Governmental Lender Note and Other Obligations;		
Disclaimer of General Liability	17	
Exempt from Individual Liability	18	
ARTICLE VI CLOSING CONDITIONS; APPLICATION OF FUNDS		18
Section 6.1. Conditions Precedent to Closing		18
ARTICLE VII FUNDS AND ACCOUNTS		19
Section 7.1. Authorization to Create Funds and Accounts		19
Section 7.2. Investment of Funds		19
ARTICLE VIII REPRESENTATIONS AND COVENANTS		
Section 8.1. General Representations		19
Section 8.2. Further Assurances	.....	20
Section 8.3. Payment of Funding Loan Obligations		20
Section 8.4. Funding Loan Agreement Performance		20
Section 8.5. Servicer		20
Section 8.6. Tax Covenants		21
Section 8.7. Performance by the Borrower		21
Section 8.8. Repayment of Funding Loan		21
Section 8.9. Borrower Loan Agreement Performance		22
Section 8.10. Maintenance of Records: Inspection of Records		22

• i -

( 1'1'1-x.111

Section 8.11. Section 8.12.

Representations and Warranties of the funding Lender

Funding Lender Limitations

Error! Bookmark not defined

ARTICLE IX . DEFAULT: REMEDIES.

Section 9.1 Section 9.2 Section 9.3 Section 9.4 Section 9.5 Section 9.6 Section 9.7 Section 9.8 Section 9.9 Section 9.10 Section  
9.11 Section 9.12 Section 9.13 Section 9.14 Section 9.15

ARTICLE X

Events of Default  
Acceleration of Maturity; Rescission and Annulment  
Additional Remedies; Funding Lender Enforcement..  
Application of Money Collected  
Remedies Vested in Funding Lender  
Restoration of Positions  
Rights and Remedies Cumulative  
Delay or Omission Not Waiver  
Waiver of Past Defaults  
Remedies Under Borrower Loan Agreement or Borrower Note.  
Waiver of Appraisal and Other Laws  
Suits to Protect the Security  
Remedies Subject to Applicable Law  
Assumption of Obligations  
Remedies upon Unremedied Material Funding Lender Event...

AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT

AND OTHER DOCUMENTS

Section 10.1. Amendment of Funding Loan Agreement  
Section 10.2. Amendments Requiring Funding Lender Consent.  
Section 10.3. Consents and Opinions

ARTICLE XI MISCELLANEOUS

Section 11.1. Section 11.2. Section 11.3. Section 11.4. Section 11.5. Section 11.6. Section 11.7. Section 11.8. Section 11.9. Section 11.10. Section 11.11.

Notices

Term of Funding Loan Agreement.

Successors and Assigns

Legal Holidays

Governing Law

Severability

Execution in Several Counterparts

Nonrecourse Obligation of the Borrower.

Reserved

*Electronic Transactions*

Reference Date

Exhibit A - Form of Governmental Lender Note

Exhibit B - Form of Required Transferee Representations

- ii -

## FUNDING LOAN AGREEMENT

This Funding Loan Agreement, dated as of 1. 2022 (this "Funding Loan Agreement"), is entered into by CIBC BANK USA, an Illinois state chartered bank (together with any successor hereunder, the "Funding Lender") and CITY OF CHICAGO, a municipality and home rule unit of local government duly organized and validly existing under the constitution and laws of the State of Illinois (together with its successors and assigns, the "Governmental Lender").

## RECITALS

WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of Article VII, Section 6(a) of the 1970 Constitution of the State of Illinois, is a home rule unit of local government and as such may provide a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices or rentals they can afford; and

WHEREAS, the Governmental Lender is authorized: (a) to make loans to any person to provide financing for rental residential developments located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low and moderate income, as determined by the Governmental Lender; (b) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish any required reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal of, prepayment premium, if any, on and interest on such indebtedness of the Governmental Lender; and

WHEREAS, Chicago Lighthouse Residences 4, LLC, an Illinois limited liability company (the "Borrower"), has requested the Governmental Lender to enter into this Funding Loan Agreement under which the Funding Lender (i) will advance funds (the "Funding Loan") to or for the account of the Governmental Lender on a draw-down basis, and (ii) apply the proceeds of the Funding Loan to make a loan (the "Borrower Loan") to the Borrower to finance the acquisition, lease, construction, development, and equipping of a certain mixed-use development project consisting of the acquisition of real property located at 1134 South Wood Street in the City (the "Property") and the construction thereon and equipping of a portion of a mixed-use building comprised of 45 residential units that include 6 studio units, 27 one-bedroom units and 12 two-bedroom units, which will be affordable units, together with common areas and approximately 34 parking spaces (the "4% Project"), which will constitute a separate and distinct condominium unit within a larger mixed-use building; and

WHEREAS, simultaneously with the delivery of this Funding Loan Agreement, the Governmental Lender and the Borrower will enter into a Borrower Loan Agreement of even date herewith (as it may be supplemented or amended, the "Borrower Loan Agreement"), whereby the Borrower agrees to make loan payments to the Governmental Lender in an amount which, when added to other funds available under this Funding Loan Agreement, will be sufficient to enable the Governmental Lender to repay the Funding Loan and to pay all costs and expenses related thereto when due. and

WHEREAS, to evidence its payment obligations under the Borrower Loan Agreement, the Borrower will execute and deliver to the Governmental Lender its Borrower Note, as defined in the Borrower Loan Agreement (the "Borrower Note") and the obligations of the Borrower under the Borrower Note will be secured by a lien on and its undivided interest in the 4% Project pursuant to the Security Instrument

(Continued on Page 11)

(as hereinafter defined), made by the Borrower in favor of the Governmental Lender, as assigned to the Funding Lender to secure the performance by the Governmental Lender of its obligations under the Funding Loan; and

WHEREAS, the Governmental Lender has executed and delivered to the Funding Lender its not to exceed \$15,862,000 City of Chicago Multi-Family Housing Revenue Note (Chicago Lighthouse Residences 4 Project), Series 2022 (the "Governmental Lender Note") dated as of the Closing Date (defined below) collectively evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Lender Note, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION

Section 1.1. Definitions. For all purposes of this Funding Loan Agreement, except as otherwise expressly provided or unless the context otherwise clearly requires:

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Borrower Loan Agreement.

The terms "herein," "hereof" and "hereunder" and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. The terms "agree" and "agreements" contained herein are intended to include and mean "covenant" and "covenants."

All references made (i) in the neuter, masculine or feminine gender shall be deemed to have been made in all such genders, and (ii) in the singular or plural number shall be deemed to have been made, respectively, in the plural or singular number as well. Singular terms shall include the plural as well as the singular, and vice versa.

All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with the Approved Accounting Method. All references herein to "Approved Accounting Method" refer to such principles as they exist at the date of application thereof.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

References to the Governmental Lender Note as "tax-exempt" or to the "tax-exempt status" of the Governmental Lender Note are to the exclusion of interest payable on the Governmental Lender Note (other than any portion of the Governmental Lender Note held by a "substantial user" of the 4% Project or a "related person" (within the meaning of Section 117 of the Code) thereto) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

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The following terms have the meanings set forth below.

"Additional Borrower Payments" shall have the meaning given such term in the Borrower Loan Agreement.

"Affiliate" shall mean, as to any Person, any other Person that, directly or indirectly, is in Control of, is Controlled by or is under common Control with such Person.

"Approved Institutional Buyer" means (1) a "qualified institutional buyer" ("QIB") as defined in Rule 144A promulgated under the Securities Act of 1933, as in effect on the date hereof (the "Securities Act") that is a financial institution or commercial bank having capital and surplus of \$5,000,000,000 or more, (2) an affiliate of the Funding Lender, or (3) a trust or custodial arrangement established by the Funding Lender or one of its affiliates the beneficial interests in which will be owned only by QIBs."

"Assignment Event" shall mean the date, if the conditions of the Forward Loan Assignment Agreement are met, of the assignment by CIBC Bank USA, an Illinois state chartered bank, of its right, title and interest hereunder, to the Governmental Lender Note, the Security Agreement, certain of the Borrower Loan Documents, and the Security to Chase, after which event Chase shall be recognized for all purposes hereunder as the Funding Lender.

"Authorized Amount" shall mean an amount not to exceed \$[15,862,000], the maximum aggregate principal amount of the Funding Loan under this Funding Loan Agreement.

"Authorized City Representative" shall have the meaning as set forth for the term "Authorized Officer" in the Ordinance.

"Borrower" shall mean Chicago Lighthouse Residences 4, LLC, an Illinois limited liability company.

"Borrower Controlling Entity" shall mean, if the Borrower is a partnership, any general partner or managing partner of the Borrower, or if the Borrower is a limited liability company, the manager or managing member of the Borrower.

"Borrower Loan" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to the Borrower Loan Agreement in the aggregate principal amount of the Borrower Loan Amount, as evidenced by the Borrower Note.

"Borrower Loan Agreement" shall mean the Borrower Loan Agreement, of even date herewith, between the Governmental Lender and the Borrower, as supplemented, amended or replaced from time to time in accordance with its terms.

"Borrower Loan Agreement Default" shall mean any event of default set forth in Section 8.1 of the Borrower Loan Agreement. A Borrower Loan Agreement Default shall "exist" if a Borrower Loan Agreement Default shall have occurred and be continuing beyond any applicable notice and cure period.

"Borrower Loan Amount" shall mean an amount not to exceed \$[15,862,000].

"Borrower Loan Documents" shall have the meaning given such term in the Borrower Loan Agreement.

"Borrower Note" shall mean the "Borrower Note" as defined in the Borrower Loan Agreement.

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"Business Day" shall have the meaning set forth in the Loan Agreement.

"Chase" shall mean JPMorgan Chase Bank, N.A., a national banking association.

"Closing Date" shall mean . 2022. the date that initial Funding Loan proceeds are disbursed hereunder.



"Code" shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Construction Escrow Agreement" shall mean that certain Construction Escrow and Disbursement Agreement, dated 1, 2022, among the Title Company named therein, in its capacity as escrow agent, Governmental Lender, Funding Lender, certain subordinate lenders named therein, and Borrower, as such agreement may be amended, modified, supplemented and replaced from time to time.

"Construction Funding Agreement" shall mean that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

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

"Control" shall mean, with respect to any Person, either (i) ownership directly or through other entities of more than 50% of all beneficial equity interest in such Person, or (ii) the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, through the ownership of voting securities, by contract or otherwise.

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

"Equity investor" shall have the meaning given to that term in the Borrower Loan Agreement. "Event of Default" shall have the meaning ascribed thereto in Section 9.1 hereof. "Fitch" shall mean Fitch, Inc.

"Forward Loan Assignment Agreement" shall mean that certain Forward Loan Assignment Agreement dated as of the Closing Date by and between CIBC Bank USA and Chase.

"Funding Lender" shall mean (i) prior to the Assignment Event, CIBC Bank USA, an Illinois state-chartered bank, and any successor or assignee thereof, and (ii) after the Assignment Event, Chase and any successor or assignee thereof.

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Funding Loan Agreement shall mean this Funding Loan Agreement, by and between the Funding Lender and the Governmental Lender, as it may from time to time be supplemented, modified or amended by one or more indentures or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

"Funding Loan Documents" shall mean (i) this Funding Loan Agreement, (ii) the Borrower Loan Agreement, (iii) the Regulatory Agreement, (iv) the Tax Compliance Agreement, (v) the Borrower Loan Documents, (vi) all other documents evidencing, securing, governing or otherwise pertaining to the Funding Loan, and (vii) all amendments, modifications, renewals and substitutions of any of the foregoing.

"Government Obligations" shall mean noncallable, nonrepayable (i) direct, general obligations of the United States of America, or (ii) any obligations unconditionally guaranteed as to the full and timely payment of all amounts due thereunder by the full faith and credit of the United States of America (including obligations held in book entry form), but specifically excluding any

mutual funds or unit investment trusts invested in such obligations.

"Governmental Lender" shall mean the City of Chicago, a municipality and home rule unit of local government duly organized and validly existing under the constitution and laws of the State of Illinois, together with its successors and assigns.

"Governmental Lender Note" shall mean the Governmental Lender Note described in the recitals of this Funding Loan Agreement.

"Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note is not rated (and, consequently, there is no Rating Agency), then the term "Highest Rating Category" means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the highest rating given by that rating agency for that general category of security. By way of example, the Highest Rating Category for tax-exempt municipal debt established by S&P is "A 1+" for debt with a term of one year or less and "AAA" for a term greater than one year, with corresponding ratings by Moody's of "MIG 1" (for fixed rate) or "VMIG 1" (for variable rate) for three months or less and "Aaa" for greater than three months. If at any time (i) the Governmental Lender Note is not rated, (ii) both S&P and Moody's rate a Permitted Investment and (iii) one of those ratings is below the Highest Rating Category, then such Permitted Investment will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency. For example, a Permitted Investment rated "AAA" by S&P and "Aa3" by Moody's is rated in the Highest Rating Category. If, however, the lower rating is more than one full rating category below the Highest Rating Category of that rating agency, then the Permitted Investment will be deemed to be rated below the Highest Rating Category. For example, a Permitted Investment rated "AAA" by S&P and "A 1" by Moody's is not rated in the Highest Rating Category.

"Loan Agreement" shall mean (i) prior to the Assignment Event, the Construction Funding Agreement, and (ii) after the Assignment Event, the Term Loan Agreement.

"Material Funding Lender Event" shall mean the occurrence and continuation of one or more of the following:

(a) Prior to the advancement by the Funding Lender of the entire amount of the Funding Loan (i) a petition has been filed and is pending against the Funding Lender under any bankruptcy.

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reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, and has not been dismissed within 90 days after such filing; (ii) the funding Lender has filed a petition, which is pending, under any bankruptcy, reorganization, arrangement, insolvency, readjustment of debt, dissolution or liquidation law of any jurisdiction, whether now or hereafter in effect, or has consented in writing to the filing of any petition against it under such law; or (iii) an order, judgment or decree is entered by any court of competent jurisdiction on the application of a creditor appointing a receiver, liquidator or trustee appointed for it or for the whole or substantially all of its property and has not been dismissed within 90 days after filing. The occurrence of a Material Funding Lender Event under this subsection (a) and the exercise of remedies upon any such declaration shall be subject to any applicable limitations of federal bankruptcy law affecting or precluding such declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings; or

(b) Prior to the advancement by the Funding Lender of the entire amount of the Funding Loan (i) the Funding Loan Agreement or the Construction Funding Agreement is declared by a nonappealable order of a court of competent jurisdiction to be null and void; (ii) the Funding Lender has, in writing, rescinded, repudiated or terminated the Funding Loan Agreement or the Construction Funding Agreement; or (iii) the Funding Lender is dissolved or confiscated by action of government due to war or peace time emergency or the United States government declares a moratorium on the Funding Lender's activities.

"Maturity Date" shall mean [ ], 20 J with respect to the Governmental Lender Note; provided, however, that in the event that the Borrower Note shall mature by its terms on a date prior to such date, the Maturity Date of the Governmental Lender Note shall be deemed to be such maturity date of the Borrower Note.

"Maximum Rate" shall mean the lesser of (i) 10% per annum and (ii) the maximum interest rate that may be paid on the Funding Loan under State law.

"Moody's" shall mean Moody's Investors Service, Inc., or its successor.

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"Noteowner" or "owner of the Governmental Lender Note" mean the owner, or as applicable, collectively the owners, of the Governmental Lender Note as shown on the registration books maintained by the Funding Lender pursuant to Section 2.4(d).

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

"Ongoing Governmental Lender Fee" shall mean the annual fee of the Governmental Lender in the amount of \$ prior to the occurrence of the Assignment Event and \$ following the occurrence of the Assignment Event. The Ongoing Governmental Lender Fee is payable annually in advance by the Borrower to the Governmental Lender, commencing on the Closing Date and, thereafter, on or before each anniversary of the Closing Date, so long as any portion of the Funding Loan is outstanding.

"Opinion of Counsel" shall mean a written opinion from an attorney or firm of attorneys, acceptable to the Funding Lender and the Governmental Lender with experience in the matters to be covered in the opinion, provided that whenever an Opinion of Counsel is required to address the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation, such opinion shall be provided by fax Counsel

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"Ordinance"<sup>7</sup> shall mean the Ordinance adopted by the Governmental Lender on February \_\_, 2022 authorizing the Funding Loan and the execution and delivery of the Funding Loan Documents to which the Governmental Lender is a party.

"Permitted Investments" shall mean to the extent authorized by law for investment of Tarry moneys held under this Funding Loan Agreement:

- a) Government Obligations.
- b) Direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, any agency or instrumentality of the United States of America (other than the Federal Home Loan Mortgage Corporation) or direct obligations of the World Bank, which obligations are rated in the Highest Rating Category.
- c) Obligations, in each case rated in the Highest Rating Category, of (i) any state or territory of the United States of America, (ii) any agency, instrumentality, authority or political subdivision of a state or territory or (iii) any public benefit or municipal corporation the principal of and interest on which are guaranteed by such state or political subdivision.
- d) Any written repurchase agreement entered into with a Qualified Financial Institution whose unsecured short term obligations are rated in the Highest Rating Category.
- e) Commercial paper rated in the Highest Rating Category.
- f) Interest bearing negotiable certificates of deposit, interest bearing time deposits, interest bearing savings accounts and bankers' acceptances, issued by a Qualified Financial Institution if either (i) the Qualified Financial Institution's

unsecured short term obligations are rated in the Highest Rating Category or (ii) such deposits, accounts or acceptances are fully collateralized by investments described in clauses (a) or (b) of this definition or fully insured by the Federal Deposit Insurance Corporation.

g) An agreement held by the Funding Lender for the investment of moneys at a guaranteed rate with a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or the Second Highest Rating Category, or whose obligations are unconditionally guaranteed or insured by a Qualified Financial Institution whose unsecured long term obligations are rated in the Highest Rating Category or Second Highest Rating Category; provided that such agreement is in a form acceptable to the Funding Lender; and provided further that such agreement includes the following restrictions:

- (1) the invested funds will be available for withdrawal without penalty or premium, at any time that (A) the Funding Lender is required to pay moneys from the Fund(s) established under this Funding Loan Agreement to which the agreement is applicable, or (B) any Rating Agency indicates that it will lower or actually lowers, suspends or withdraws the rating on the Funding Loan on account of the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement.
- (2) the agreement, and if applicable the guarantee or insurance, is an unconditional and general obligation of the provider and, if applicable, the guarantor or insurer of the agreement, and ranks pari passu with all other unsecured unsubordinated obligations of the provider, and if applicable, the guarantor or insurer of the agreement:

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- (j) the Funding Lender receives an Opinion of Counsel, which may be subject to customary qualifications, that such agreement is legal, valid, binding and enforceable upon the provider in accordance with its terms and, if applicable, an Opinion of Counsel that any guaranty or insurance policy provided by a guarantor or insurer is legal, valid, binding and enforceable upon the guarantor or insurer in accordance with its terms; and
- (4) the agreement provides that if during its term the rating of the Qualified Financial Institution providing, guaranteeing or insuring, as applicable, the agreement, is withdrawn, suspended by any Rating Agency or falls below the Second Highest Rating Category, the provider must, within ten days, either: (A) collateralize the agreement (if the agreement is not already collateralized) with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Funding Lender or a third party custodian, such collateralization to be effected in a manner and in an amount reasonably satisfactory to the Funding Lender, or, if the agreement is already collateralized, increase the collateral with Permitted Investments described in paragraph (a) or (b) by depositing collateral with the Funding Lender or a third party custodian, in an amount reasonably satisfactory to the Funding Lender, (13) at the request of the Funding Lender, repay the principal of and accrued but unpaid interest on the investment, in either case with no penalty or premium unless required by law or (C) transfer the agreement, guarantee or insurance, as applicable, to a replacement provider, guarantor or insurer, as applicable, then meeting the requirements of a Qualified Financial Institution and whose unsecured long term obligations are then rated in the Highest Rating Category or the Second Highest Rating Category. The agreement may provide that the down graded provider may elect which of the remedies to the down grade (other than the remedy set out in (13)) to perform.

Notwithstanding anything else in this Paragraph (g) to the contrary and with respect only to any agreement described in this Paragraph (g) or any guarantee or insurance for any such agreement which is to be in effect for any period after the Conversion Date, any reference in this Paragraph to the "Second Highest Rating Category" will be deemed deleted so that the only acceptable rating category for such an agreement, guarantee or insurance will be the Highest Rating Category.

- (h) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those

of the Funding Lender or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated "AAAm-G" or "AAAm" by S&P or "Aaa" by Moody's so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If approved in writing by the Funding Lender, a money market mutual fund portfolio may also contain obligations and agreements to repurchase obligations described in paragraphs (b) or (c). If the Governmental Lender Note are rated by a Rating Agency, the money market mutual fund must be rated "AAAm-G" or "AAAm" by S&P. If S&P is a Rating Agency, or "Aaa" by Moody's, if Moody's is a Rating Agency. If at any time the Governmental Lender Note are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated "AAAm-G" or "AAAm" by S&P or Aaa by Moody's. If at any time (i) either of the Governmental Lender Note is not rated, (ii) both S&P and Moody's rate a money market mutual fund and (iii) one of those ratings is below the level required by this paragraph, then such money market mutual fund will, nevertheless, be deemed to be rated in the Highest Rating Category if the lower rating is no more than one rating category below the highest rating category of that rating agency.

li) Any other investment authorized by the laws of the State, if such investment is approved in writing by the Funding Lender.

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Permitted Investments shall not include any of the following:

( I) Except for any investment described in the next sentence, any investment with a final maturity or any agreement with a term greater than one year from the date of the investment. This exception (I) shall not apply to Permitted Investments listed in paragraphs (g) and (i).

2) Except for any obligation described in paragraph (a) or (b), any obligation with a purchase price greater or less than the par value of such obligation.

3) Any asset backed security, including mortgage-backed securities, real estate mortgage investment conduits, collateralized mortgage obligations, credit card receivable asset backed securities and auto loan asset backed securities.

4) Any interest only or principal only stripped security.

5) Any obligation bearing interest at an inverse floating rate.

6) Any investment which may be prepaid or called at a price less than its purchase price prior to stated maturity.

7) Any investment the interest rate on which is variable and is established other than by reference to a single index plus a fixed spread, if any, and which interest rate moves proportionately with that index.

8) Any investment described in paragraph (d) or (g) with, or guaranteed or insured by, a Qualified financial Institution described in clause (iv) of the definition of Qualified Financial Institution if such institution does not agree to submit to jurisdiction, venue and service of process in the United States of America in the agreement relating to the investment.

9) Any investment to which S&P has added an "r" or "t" highlighter.

"Person" shall mean any individual, corporation, limited liability company, partnership, joint venture, estate, trust, unincorporated association, any federal, state, county or municipal government or any bureau, department or agency thereof and any fiduciary acting in such capacity on behalf of any of the foregoing.

"Pledged Revenues" shall mean the amounts pledged under this Funding Loan Agreement to the payment of the principal of, prepayment premium, if any, and interest on the Funding Loan and the Governmental Lender Note, consisting of the following: (i) all income, revenues, proceeds and other amounts to which the Governmental Lender is entitled (other than amounts received by the

Governmental Lender with respect to the Unassigned Rights) derived from or in connection with the 4% Project and the Funding Loan Documents, including all Borrower Loan Payments due under the Borrower Loan Agreement and the Borrower Note, payments with respect to the Borrower Loan Payments and all amounts obtained through the exercise of the remedies provided in the Funding Loan Documents and all receipts credited under the provisions of this Funding Loan Agreement against said amounts payable, and (ii) moneys held in the funds and accounts established under this Funding Loan Agreement, together with investment earnings thereon.

"Potential Default" shall have the meaning ascribed to that term in the Borrower Loan Agreement.

"Prepayment Premium" shall mean (i) any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of the Borrower Note (including any

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Prepayment Premium as set forth in the Borrower Note) and (ii) any premium payable on the Governmental Lender Note pursuant to this Funding Loan Agreement.

"4% Project" shall have the meaning given to that term in the Borrower Loan Agreement.

"Qualified Financial Institution" shall mean any (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, savings and loan association, or insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by the Funding Lender the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) other entity which is acceptable to the Funding Lender. With respect to an entity which provides an agreement held by the Funding Lender for the investment of moneys at a guaranteed rate as set out in paragraph (g) of the definition of the term "Permitted Investments" or an entity which guarantees or insures, as applicable, the agreement, a "Qualified Financial Institution" may also be a corporation or limited liability company organized under the laws of any state of the United States of America.

"Rating Agency" shall mean any one and each of S&P, Moody's and Fitch then rating the Governmental Lender Note or any other nationally recognized statistical rating agency then rating the Governmental Lender Note, which has been approved by the Funding Lender.

"Regulations" shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

"Regulatory Agreement" shall mean that certain Land Use Restriction Agreement, dated as of the Closing Date, by and between the Governmental Lender and the Borrower, as hereafter amended or modified.

"Remaining Funding Loan Proceeds Account" has the meaning set forth in the Contingency Draw-Down Agreement.

"Remaining Funding Loan Proceeds Account Earnings Subaccount" has the meaning set forth in the Contingency Draw-Down Agreement.

"Required Transferee Representations" shall mean the representations in substantially the form attached to this Funding Loan Agreement as Exhibit B.

"Second Highest Rating Category" shall mean, with respect to a Permitted Investment, that the Permitted Investment is rated by each Rating Agency in the second highest rating category given by that Rating Agency for that general category of security. If at any time the Governmental Lender Note are not rated (and, consequently, there is no Rating Agency), then the term "Second Highest

Rating Category" means, with respect to a Permitted Investment, that the Permitted Investment is rated by S&P or Moody's in the second highest rating category given by that rating agency for that general category of security. By way of example, the Second Highest Rating Category for tax-exempt municipal debt established by S&P is "AA" for a term greater than one year, with corresponding ratings by Moody's of "Aa" if at any time (i)

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(the Governmental Lender Note are not rated, (ii) both S&P and Moody's rate a Permitted Investment and (iii) one of those ratings is below the Second Highest Rating Category, then such Permitted Investment will not be deemed to be rated in the Second Highest Rating Category. For example, an Investment rated "AA" by S&P and "A" by Moody's is not rated in the Second Highest Rating Category.

"Securities Act" shall mean the Securities Act of 1933, as amended.

"Security" shall mean the security for the performance by the Governmental Lender of its obligations under the Governmental Lender Note and this Funding Loan Agreement as more fully set forth in Article IV hereof.

"Security Instrument" shall mean (i) prior to the Assignment Event, the Construction Mortgage, Security Agreement, Assignment of Leases and Rents and Fixture Filing (as amended, restated and/or supplemented from time to time) of even date herewith, made by the Borrower in favor of the Governmental Lender, as assigned by the Governmental Lender to the Funding Lender and (ii) after the Assignment Event, the amended and restated mortgage to be executed by the Borrower in favor of Chase, in each case to secure the performance by the Governmental Lender of its obligations under the Funding Loan.

"Servicer" shall mean any Servicer appointed by the Funding Lender to perform certain servicing functions with respect to the Funding Loan and on the Borrower Loan pursuant to a separate servicing agreement to be entered into between the Funding Lender and the Servicer. Initially the Servicer shall be the Funding Lender pursuant to this Funding Loan Agreement.

"Servicing Agreement" shall mean any servicing agreement entered into between the Funding Lender and a Servicer with respect to the servicing of the Funding Loan and/or the Borrower Loan.

"S&P" shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LLC business division, and its successors.

"State" shall mean the State of Illinois.

"Tax Compliance Agreement" shall mean the Tax Compliance Agreement, dated the Closing Date, executed and delivered by the Governmental Lender and the Borrower.

"Tax Counsel" shall mean Hardwick Law Firm, LLC, or any other attorney or firm of attorneys designated by the Governmental Lender and approved by the Funding Lender having a national reputation for skill in connection with the authorization and issuance of municipal obligations under Sections 103 and 141 through I 50 (or any successor provisions) of the Code.

"Tax Counsel Approving Opinion" shall mean an opinion of Tax Counsel substantially to the effect that the Governmental Lender Note constitute a valid and binding obligation of the Governmental Lender and that, under existing statutes, regulations published rulings and judicial decisions, the interest on the Governmental Lender Note is excludable from gross income for federal income tax purposes (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

"Tax Counsel No Adverse Effect Opinion" shall mean an opinion of Tax Counsel to the effect that the taking of the action specified therein will not impair the exclusion of interest on the Governmental Lender Note from gross income for purposes of federal income taxation (subject to the inclusion of such customary exceptions as are acceptable to the recipient thereof).

"Term Loan Agreement" shall mean that certain [Insert in Loan Agreement] to be dated as of the Assignment 17.vent by and between the Borrower and Chase.

"UCC" shall mean the Uniform Commercial Code as in effect in the State.

"Unassigned Rights" shall mean the Governmental Lender's rights to reimbursement and payment of its fees, costs and expenses and the Rebate Amount under Section 2.5 of the Borrower Loan Agreement, its right to payment of the Governmental Lender's Closing fee, the Ongoing Governmental Lender Fee and any other fees payable to the Governmental Lender under Section 2.5 thereof, its rights to attorneys' fees under Section 5.14 thereof, its rights to indemnification under Section 5.15 thereof, its rights of access under Section 5.17 thereof, its rights to enforce the terms of the Regulatory Agreement, including Borrower's covenants to comply with applicable laws, its rights to give and receive notices, reports and other statements and to enforce notice and reporting requirements and restrictions on transfers of ownership of the 4% Project, and its rights to consent to certain matters, as provided in this Funding Loan Agreement and the Borrower Loan Agreement.

"Written Certificate," "Written Certification," "Written Consent," "Written Direction," "Written Notice," "Written Order," "Written Registration," "Written Request," and "Written Requisition" shall mean a written certificate, direction, notice, order or requisition signed by an Authorized Borrower Representative, an Authorized City Representative or an authorized representative of the Funding Lender and delivered to the Funding Lender, the Servicer or such other Person as required under the Funding Loan Documents.

"Yield" shall mean yield as defined in Section 148(h) of the Code and any regulations promulgated thereunder.

Section 1.2. Effect of Headings and Table of Contents. The Article and Section headings herein and in the Table of Contents are for convenience only and shall not affect the construction hereof.

Section 1.3. Date of Funding Loan Agreement. The date of this Funding Loan Agreement is intended as and for a date for the convenient identification of this Funding Loan Agreement and is not intended to indicate that this Funding Loan Agreement was executed and delivered on said date.

Section 1.4. Designation of Time for Performance. Except as otherwise expressly provided herein, any reference in this Funding Loan Agreement to the time of day shall mean the time of day in the city where the Funding Lender maintains its place of business for the performance of its obligations under this Funding Loan Agreement.

Section 1.5. Interpretation. The parties hereto acknowledge that each of them and their respective counsel have participated in the drafting and revision of this Funding Loan Agreement. Accordingly, the parties agree that any rule of construction that disfavors the drafting party shall not apply in the interpretation of this Funding Loan Agreement or any amendment or supplement or exhibit hereto.

## **ARTICLE 11 TERMS; GOVERNMENTAL LENDER NOTE**

Section 2.1. Terms.

(a) Principal Amount. The total aggregate principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount.



b) Draw-Down Funding. The Funding Loan is originated on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Funding Lender directly to the Borrower for the account of the Governmental Lender as and when needed to make each advance in accordance with the disbursement provisions of the Borrower Loan Agreement and the Construction Funding Agreement. Upon each advance of principal under the Borrower Loan Agreement and the Construction Funding Agreement, a like amount of the Funding Loan shall be deemed concurrently and simultaneously advanced under this Funding Loan Agreement, including the initial advance of \$[ 100,000]. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded

hereunder after [redacted], 202 [redacted]"; provided, however, that upon the delivery of a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender such date may be changed to a later date as specified in such Tax Counsel No Adverse Effect Opinion. The Governmental Lender has reviewed and approved the form of Contingency Draw-Down Agreement and consents to the terms thereof and agrees to take all actions reasonably required of the Governmental Lender in connection with the conversion of the Funding Loan to a fully drawn loan pursuant to the provisions of the Contingency Draw-Down Agreement in the event a Draw-Down Notice is filed by the Funding Lender or the Borrower.

c) Origination Date; Maturity. The Funding Loan shall be originated and the Governmental Lender Note shall be issued on the Closing Date and shall mature on the applicable Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

d) Principal. The outstanding principal amount of the Governmental Lender Note and of the Funding Loan as of any given date shall be the total amount advanced by the Funding Lender to or for the account of the Governmental Lender to fund corresponding advances with respect to the Borrower Note under the Borrower Loan Agreement and the Loan Agreement as proceeds of the Borrower Loan, less any payments of principal of the Governmental Lender Note previously received upon payment of corresponding principal amounts under the Borrower Note, including regularly scheduled principal payments and voluntary and mandatory prepayments. The principal amount of the Governmental Lender Note and interest thereon shall be payable on the basis specified in this paragraph (d) and in paragraphs (e) and (f) of this Section 2.1.

The Funding Lender shall keep a record of all principal advances and principal repayments made under the Governmental Lender Note and shall upon written request provide the Governmental Lender with a statement of the outstanding principal balance of the Governmental Lender Note and the Funding Loan.

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

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

L-1) Usury. The Governmental Lender intends to conform strictly to the usury laws applicable to this Funding Loan Agreement and the Governmental Lender Note and all agreements made in the Governmental Lender Note, this Funding Loan Agreement and the Funding Loan Documents are expressly limited so that in no event whatsoever shall the amount paid or agreed to be paid as interest or the amounts paid for the use of money advanced or to be advanced hereunder exceed the highest lawful rate prescribed under any

law which a court of competent jurisdiction may deem applicable hereto. If, from any circumstances whatsoever, the fulfillment of any provision of the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents shall involve the payment of interest in excess of the limit prescribed by any law which a court of competent jurisdiction may deem applicable hereto, then the obligation to pay interest hereunder shall be reduced to the maximum limit prescribed by law. If from any circumstances whatsoever, the Funding Lender shall ever receive anything of value deemed interest, the amount of which would exceed the highest

lawful rate, such amount as would be excessive interest shall be deemed to have been applied, as of the date of receipt by the Funding Lender, to the reduction of the principal remaining unpaid hereunder and not to the payment of interest, or if such excessive interest exceeds the unpaid principal balance, such excess shall be refunded to the Borrower. This paragraph shall control every other provision of the Governmental Lender Note, this Funding Loan Agreement and all other Funding Loan Documents.

In determining whether the amount of interest charged and paid might otherwise exceed the limit prescribed by law, the Governmental Lender intends and agrees that (i) interest shall be computed upon the assumption that payments under the Borrower Loan Agreement and other Funding Loan Documents will be paid according to the agreed terms, and (ii) any sums of money that are taken into account in the calculation of interest, even though paid at one time, shall be spread over the actual term of the Funding Loan.

Section 2.2. Form of Governmental Lender Note. As evidence of its obligation to repay the Funding Loan, simultaneously with the delivery of this Funding Loan Agreement to the Funding Lender, the Governmental Lender hereby agrees to execute and deliver the Governmental Lender Note. The Governmental Lender Note shall be substantially in the form set forth in Exhibit A attached hereto, with such appropriate insertions, omissions, substitutions and other variations as are required or permitted by this Funding Loan Agreement and the Ordinance.

Section 2.3. Execution and Delivery of Governmental Lender Note. The Governmental Lender Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of its Chief Financial Officer, and its corporate seal (or a facsimile thereof) shall be thereunto affixed, imprinted, engraved or otherwise reproduced, and attested by the manual or facsimile signature of its City Clerk or Deputy City Clerk. In case any officer of the Governmental Lender whose signature or facsimile signature shall appear on the Governmental Lender Note shall cease to be such officer before the Governmental Lender Note so signed and sealed shall have been actually delivered, the Governmental Lender Note may, nevertheless, be delivered as herein provided, and may be executed and delivered as if the persons who signed or sealed such Governmental Lender Note had not ceased to hold such offices or be so employed. The Governmental Lender Note may be signed and sealed on behalf of the Governmental Lender by such persons as: at the actual time of the execution of such Governmental Lender Note, shall be duly authorized or hold the proper office in or employment by the Governmental Lender, although at the date of the Governmental Lender Note such persons may not have been so authorized nor have held such office or employment.

Section 2.4. Required Transferee Representations; Participations; Sale and Assignment.

a) The Funding Lender shall deliver to the Governmental Lender the Required Transferee Representations in substantially the form attached hereto as Exhibit 13 on the Closing Date, and upon the Assignment Event, by Chase.

b) The Funding Lender shall have the right to sell (i.) the Governmental Lender Note and the Funding Loan. (A) such sale shall be only to 10 Approved Institutional Buyers that execute and deliver

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to the Funding Lender, with a copy to the Governmental Lender, the Required Transferee Representations and (B) if any amendment is to be made to this Funding Loan Agreement or any other Funding Loan Document (except for amendments to the Borrower Loan Documents) in conjunction with such transfer, a Tax Counsel No Adverse Effect Opinion. and (ii) participation interests, in whole or in part, in the Governmental Lender Note and the Funding Loan..

c) Notwithstanding paragraph (b) above, CIBC Bank USA may assign the Government Lender Note and its rights under this Agreement to Chase pursuant to the terms of the Forward Loan Assignment Agreement.

d) The Governmental Lender Note or any interest therein, shall be in fully registered form transferable to subsequent holders only on the registration books which shall be maintained by the Funding Lender for such purpose and which shall be open to inspection by the Governmental Lender. The Governmental Lender Note shall not be transferred through the services of the Depository Trust Company or any other third-party registrar.

e) No service charge shall be made for any sale or assignment of the Governmental Lender Note, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other charge that may be imposed in connection with any such sale or assignment and payment of any fees and expenses incurred by the Governmental Lender in connection therewith. Such sums shall be paid in every instance by the purchaser or assignee of the Governmental Lender Note.

#### ARTICLE 111 PREPAYMENT

Section 3.1. Prepayment of the Governmental Lender Note from Prepayment under the Borrower Note. The Governmental Lender Note is subject to voluntary and mandatory prepayment as follows:

a) The Governmental Lender Note shall be subject to voluntary prepayment in full or in part by the Governmental Lender, from funds received by the Governmental Lender to the extent and in the manner and on any date that the Borrower Note is subject to voluntary prepayment as set forth therein, in the Borrower Loan Agreement or in the Loan Agreement, at a prepayment price equal to the principal balance of the Borrower Note to be prepaid, plus interest thereon to the date of prepayment and the amount of any Prepayment Premium payable under the Borrower Note, plus any Additional Borrower Payments due and payable under the Borrower Loan Agreement through the date of prepayment.

The Borrower shall not have the right to voluntarily prepay all or any portion of the Borrower Note, thereby causing the Governmental Lender Note to be prepaid, except as specifically permitted in the Borrower Note, without the prior Written Consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

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

Section 3.2. Notice of Prepayment. Notice of prepayment of the Governmental Lender Note shall be deemed given to the extent that notice of prepayment of the Borrower Note is timely and properly given to

- 15 -

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Funding Lender in accordance with the terms of the Borrower Note and the Borrower Loan Agreement, and no separate notice of prepayment of the Governmental Lender Note is required to be given.

#### ARTICLE IV SECURITY

Section 4.1. Security for the Funding Loan. To secure the payment of the Funding Loan and the Governmental Lender Note, to declare the terms and conditions on which the Funding Loan and the Governmental Lender Note are secured, and in consideration of the premises and of the funding of the Funding Loan by the Funding Lender, the Governmental Lender by these presents does grant, bargain, sell, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, set over and confirm to the Funding Lender (except as limited herein), a lien on and security interest in the following described property (excepting, however, in each case, the Unassigned Rights) (said property, rights and privileges being herein collectively called, the "Security"):

a) All right, title and interest of the Governmental Lender in, to and under the Borrower Loan Agreement and the Borrower Note, including, without limitation, all rents, revenues and receipts derived by the Governmental Lender from the Borrower relating to the 4% Project and including, without limitation, all Pledged Revenues, Borrower Loan Payments and Additional Borrower Payments derived by the Governmental Lender under and pursuant to, and subject to the provisions of, the Borrower Loan Agreement; provided that the pledge and assignment made under this Funding Loan Agreement shall not impair or diminish the obligations of the Governmental

Lender under the provisions of the Borrower Loan Agreement;

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

c) Any and all moneys and investments from time to time on deposit in, or forming a part of, all funds and accounts created and held under this Funding Loan Agreement and any amounts held at any time in the Remaining Funding Loan Proceeds Account and the Remaining Funding Loan Proceeds Account Earnings Subaccount, any Negative Arbitrage Deposit and any other amounts held under the Contingency Draw-Down Agreement, subject to the provisions of this Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth herein; and

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

The pledge and assignment of and the security interest granted in the Security pursuant to this Section 4.1 for the payment of the principal of, premium, if any, and interest on the Governmental Lender Note, in accordance with its terms and provisions, and for the payment of all other amounts due hereunder, shall attach and be valid and binding from and after the time of the delivery of the Governmental Lender Note to the Governmental Lender. The Security so pledged and then or thereafter received by the Funding Lender

- 16 -

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Lender shall immediately be subject to the lien of such pledge and security interest without any physical delivery or recording thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

Section 4.2. Delivery of Security. To provide security for the payment of the funding Loan and the Governmental Lender Note, the Governmental Lender has pledged and assigned to secure payment of the funding Loan and the Governmental Lender Note its right, title and interest in the Security to the Funding Lender. In connection with such pledge, assignment, transfer and conveyance, the Governmental Lender shall deliver to the Funding Lender the following documents or instruments promptly following their execution and, to the extent applicable, their recording or filing:

(a) The Borrower Note endorsed without recourse to the Funding Lender by the Governmental Lender;

b) The originally executed Borrower Loan Agreement and Regulatory Agreement;

c) The originally executed Security Instrument and all other Borrower Loan Documents existing at the time of delivery of the Borrower Note and an assignment for security of the Security Instrument from the Governmental Lender to the Funding Lender, in recordable form;

d) Uniform Commercial Code financing statements or other chattel security documents giving notice of the Funding Lender's status as an assignee of the Governmental Lender's security interest in any personal property forming part of the 4% Project, in form suitable for filing; and

e) Uniform Commercial Code financing statements giving notice of the pledge by the Governmental Lender of the Security pledged under this Funding Loan Agreement.

The Governmental Lender shall deliver and deposit with the Funding Lender such additional documents, financing statements, and instruments as the Funding Lender may reasonably require from time to time for the better perfecting and assuring to the Funding Lender of its lien and security interest in and to the Security including, at the request of the Funding Lender, any amounts held under the Contingency Draw-Down Agreement, at the expense of the Borrower.

## ARTICLE V LIMITED LIABILITY

Section 5. J. Source of Payment of Governmental Lender Note and Other Obligations; Disclaimer of General Liability. The Governmental Lender Note, together with premium, if any, and interest thereon, are special, limited obligations of the Governmental Lender, payable solely from the security pledged hereunder. The Governmental Lender Note is not a general obligation of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal of and premium, if any, and interest on the Governmental Lender Note, and the Governmental Lender Note is payable from no other source, but are special, limited obligations of the Governmental Lender, payable solely out of the security pledged hereunder and receipts of the Governmental Lender derived pursuant to this funding Loan Agreement. No holder of the Governmental Lender Note or any interest therein has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the Governmental Lender Note or the interest or premium, if any, thereon.

- 17 -

Section 5.2. Exempt from Individual Liability. No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the Governmental Lender Note or for any claim based thereon or any obligation, covenant or agreement in this funding Loan Agreement against any official, officer, agent, employee or independent contractor of the Governmental Lender or any person executing the Governmental Lender Note in his or her personal capacity. No covenant, stipulation, promise, agreement or obligation contained in the Governmental Lender Note, this funding Loan Agreement or any other document executed in connection herewith shall be deemed to be the covenant, stipulation, promise, agreement or obligation of any present or future official, officer, agent or employee of the Governmental Lender in his or her individual capacity and neither any official of the Governmental Lender nor any officers executing the Governmental Lender Note shall be liable personally on the Governmental Lender Note or under this funding Loan Agreement or be subject to any personal liability or accountability by reason of the execution and delivery of the Governmental Lender Note or the execution of this funding Loan Agreement.

## ARTICLE VI CLOSING CONDITIONS; APPLICATION OF FUNDS

Section 6.1. Conditions Precedent to Closing. Closing of the funding Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the funding Lender in its sole discretion of each of the conditions precedent to closing set forth in this funding Loan Agreement, including but not limited to the following:

- a) Receipt by the funding Lender of the original executed Borrower Note, endorsed to the funding Lender by the Governmental Lender;
- b) Receipt by the funding Lender of executed counterparts of this funding Loan Agreement, the Borrower Loan Agreement, the Construction funding Agreement, the Regulatory Agreement, the Tax Compliance Agreement, the Security Instrument, and any UCC financing statement required by the Security Instrument;
- c) A certified copy of the Ordinance;
- d) Executed Required Transferee Representations from the funding Lender;
- e) Delivery into escrow of all amounts required to be paid in connection with the origination of the Borrower loan and the

funding Loan and any underlying real estate transfers or transactions, including the Costs of funding Deposit, in accordance with Section 2.3(c)(ii) of the Borrower Loan Agreement;

(0 Receipt by the funding Lender of a fax Counsel Approving Opinion;

g) Receipt by the funding Lender of an Opinion of Counsel from fax Counsel to the effect that the Governmental Lender Note are exempt from registration under the Securities Act, and this funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;

h) Delivery of an opinion of counsel to the Borrower addressed to the Governmental Lender and the funding Lender to the effect that the Borrower Loan Documents and the Regulatory Agreement are valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their terms, subject to such exceptions and qualifications as are acceptable to the Governmental Lender and the funding Lender; and

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(i) Receipt by the Funding Lender of any other documents or opinions that the Funding Lender or Tax Counsel may reasonably require.

## ARTICLE VII FUNDS AND ACCOUNTS

Section 7.1. Authorization to Create Funds and Accounts. No funds or accounts shall be established in connection with the Funding Loan at the time of closing and origination of the Funding Loan. The Funding Lender and the Servicer, if any, are authorized to establish and create from time to time such other funds and accounts or subaccounts as may be necessary for the deposit of moneys (including, without limitation, insurance proceeds and/or condemnation awards), if any, received by the Governmental Lender, the Funding Lender or the Servicer pursuant to the terms hereof or any of the other Funding Loan Documents and not immediately transferred or disbursed pursuant to the terms of the Funding Loan Documents and/or the Borrower Loan Documents.

Section 7.2. Investment of Funds. Amounts held in any funds or accounts created under this Funding Loan Agreement shall be invested in Permitted Investments at the direction of the Borrower, subject in all cases to the restrictions of Section 8.7 hereof and of the Tax Compliance Agreement.

## ARTICLE VIII REPRESENTATIONS AND COVENANTS

Section 8.1. General Representations. The Governmental Lender makes the following representations as the basis for the undertakings on its part herein contained:

a) The Governmental Lender is a municipality and home rule unit of local government duly organized and validly existing under the Constitution and laws of the State. The Governmental Lender has power and lawful authority to adopt the Ordinance, to execute and deliver the Funding Loan Documents to which it is a party (the "Governmental Lender Documents"), to execute and deliver the Governmental Lender Note and receive the proceeds of the Funding Loan, to apply the proceeds of the Funding Loan to make the Borrower Loan, to assign the revenues derived and to be derived by the Governmental Lender from the Borrower Loan to the Funding Lender, and to perform and observe the provisions of the Governmental Lender Documents and the Governmental Lender Note on its part to be performed and observed.

b) The execution and delivery of the Funding Loan Documents to which it is a party and its compliance with the terms and conditions thereof will not conflict or constitute a default under or a violation of: (i) the Ordinance, (ii) to its knowledge, any other existing laws, rules, regulations, judgments, decrees and orders applicable to it, or (iii) to its knowledge, the provisions of any agreements and instruments to which the Governmental Lender is a party, a default under or violation of which would prevent it from entering into the Funding Loan Agreement, executing and delivering the Government Lender Note, financing the 4% Project,

executing and delivering the other Funding Loan Documents to which it is a party or consummating the transactions contemplated thereby, and to its knowledge, no event has occurred and is continuing under the provisions of any such agreement or instrument or otherwise that with the lapse of time or the giving of notice or both would constitute such a default or violation (it being understood, however, that the Governmental Lender is making no representation as to the necessity of registering the Governmental Lender Note or the Borrower Note pursuant to any securities laws or complying with any other requirement of securities laws).

c) To the knowledge of the Governmental Lender, no litigation, inquiry or investigation of any kind on or by any judicial or administrative court or agency is pending or threatened against the Governmental

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Lender with respect to (i) the organization and existence of the Governmental Lender, (ii) its authority to execute or deliver the funding Loan Documents to which it is a party, (iii) the validity or enforceability of any such funding Loan Documents or the transactions contemplated thereby, (iv) the title of any officer of the Governmental Lender who executed such funding Loan Documents or (v) any authority or proceedings relating to the execution and delivery of such funding Loan Documents on behalf of the Governmental Lender, and no such authority or proceedings have been repealed, revoked, rescinded or amended but are full force and effect.

d) The City Council of the Governmental Lender has approved the Ordinance and the Ordinance has not been amended, modified or rescinded and is in full force and effect as of the date hereof.

e) The Governmental Lender has duly authorized the execution and delivery of each of the funding Loan Agreement and the Governmental Lender Note and the performance of the obligations of the Governmental Lender thereunder.

(f) The Governmental Lender makes no representation or warranty, express or implied, that the proceeds of the funding Loan will be sufficient to finance the acquisition, construction and equipping of the 4% Project or that the 4% Project will be adequate or sufficient for the Borrower's intended purposes.

(g) The revenues and receipts to be derived from the Borrower Loan Agreement, the Borrower Note and this funding Loan Agreement have not been pledged previously by the Governmental Lender to secure any of its Note or bonds other than the repayment of the funding Loan.

Till: GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE 4% PROJECT AND DOES NOT REPRESENT OR WARRANT AS TO ANY STATEMENTS, MATERIALS, REPRESENTATIONS OR CERTIFICATIONS FURNISHED BY THE BORROWER IN CONNECTION WITH THE FUNDING LOAN OR THE BORROWER LOAN OR AS TO THE CORRECTNESS, COMPLETENESS OR ACCURACY THEREOF.

Section 8.2. Further Assurances. The Governmental Lender will do, execute, acknowledge, when appropriate, and deliver from time to time at the request of the Funding Lender, to the extent permitted by the Ordinance, such further acts, instruments, financing statements and other documents as are necessary or desirable to better assure, transfer, pledge or assign to the Funding Lender or holders of interest in the Funding Loan, and grant a security interest unto the Funding Lender or holders of interests in the Funding Loan in and to the Security and the other properties and revenues herein described and otherwise to carry out the intent and purpose of the Funding Loan Documents and the Funding Loan.

Section 8.3. Payment of Funding Loan Obligations. The Governmental Lender will pay or cause to be paid the principal of prepayment premium, if any, and the interest on the funding Loan as the same become due, but solely from the Security, as described in Section 5.1 of this funding Loan Agreement.

Section 8.4. Funding Loan Agreement Performance. The Funding Lender, on behalf of the Governmental Lender and with the Written Consent of the Governmental Lender, may (but shall not be required or obligated) perform and observe any such agreement

or covenant of the Governmental Lender under the Funding Loan Agreement, all to the end that the Governmental Lender's rights under the Funding Loan Agreement may be unimpaired and free from default.

Section 8.5. Servicer. The Funding Lender may appoint a Servicer to service and administer the Governmental Loan and the Borrower Loan on behalf of the Governmental Lender, including without limitation

- 20 -

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the fulfillment of rights and responsibilities granted by Governmental Lender to the funding Lender pursuant to Section 2.1 of the Borrower Loan Agreement; provided, however, that no appointment of a Servicer shall release the funding Lender from ultimate responsibility for any obligation hereunder.

Section 8.6. Tax Covenants. The Governmental Lender covenants to and for the benefit of the funding Lender and any other holders of an interest in the Governmental Lender Note that, notwithstanding any other provisions of this funding Loan Agreement or of any other instrument, it will:

- i) At all times do and perform all acts and things permitted by law and this funding Loan Agreement which are necessary or desirable in order to assure, and will not knowingly take any action which will adversely affect, the tax-exempt status of the Governmental Lender Note; and
- ii) Not use or knowingly permit the use of any proceeds of the funding Loan or other funds of the Governmental Lender, directly or indirectly, in any manner, and will not take or permit to be taken any other action or actions, which would result in any of the Governmental Lender Note being treated as an obligation not described in Section 142(a)(7) of the Code by reason of the Governmental Lender Note or interest thereon not meeting the requirements of Section 142(d) of the Code;

In furtherance of the covenants in this Section 8.6, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Compliance Agreement, which are by this reference incorporated into this Funding Loan Agreement and made a part of this funding Loan Agreement as if set forth in this funding Loan Agreement in full, and by its acceptance of this funding Loan Agreement the funding Lender acknowledges receipt of the Tax Compliance Agreement and acknowledges its incorporation in this funding Loan Agreement by this reference. The funding Lender agrees it will invest funds held under this funding Loan Agreement in Permitted Investments in accordance with the direction of the Borrower and the terms of this funding Loan Agreement and the Tax Compliance Agreement (this covenant shall extend throughout the term of the Funding Loan, to all funds and accounts created under or in connection with this Funding Loan Agreement and all moneys on deposit to the credit of any fund or Account); provided that the funding Lender shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows directions of the Borrower not inconsistent with the terms of this funding Loan Agreement and the Tax Compliance Agreement or otherwise complies with the provisions of the funding Loan Agreement relating to funds and accounts.

for purposes of this Section 8.6 the Governmental Lender's compliance shall be based solely on matters within the Governmental Lender's control and no acts, omissions or directions of the Borrower, the funding Lender or any other Persons shall be attributed to the Governmental Lender.

In complying with the foregoing covenants, the Governmental Lender and/or the funding Lender may rely from time to time on a Tax Counsel No Adverse Effect Opinion or other appropriate opinion of Tax Counsel.

Section 8.7. Performance by the Borrower. Without relieving the Governmental Lender from the responsibility for performance and observance of the agreements and covenants required to be performed and observed by it hereunder, the Borrower, on behalf of the Governmental Lender and with the Written Consent of the Governmental Lender, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists

Section 8.8. Repayment of funding Loan. Subject to the provisions of Article V hereof, the Governmental Lender will duly and



punctually repay, or cause to be repaid, but solely from the Security set forth in Article IV hereof, the funding Loan, as evidenced by the Governmental Lender Note, as and

- 21 -

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when the same shall become due, all in accordance with the terms of the Governmental Lender Note and this Funding Loan Agreement.

#### Section 8.9. Borrower Loan Agreement Performance.

a) The Servicer and the funding Lender, on behalf of the Governmental Lender, may (but shall not be required or obligated to) perform and observe any such agreement or covenant of the Governmental Lender under the Borrower Loan Agreement, all to the end that the Governmental Lender's rights under the Borrower Loan Agreement may be unimpaired and free from default.

b) The Governmental Lender will promptly notify the Borrower, the Servicer, the Equity Investor and the Funding Lender in writing of the occurrence of any Borrower Loan Agreement Default, provided that the Governmental Lender has received written notice or otherwise has actual knowledge of such event; and further provided that the Governmental Lender shall have no liability to any person for its failure to provide any such notice so long as it has made a good faith effort to comply with such provisions.

c) The Funding Lender will promptly notify the Borrower, the Servicer, if any, the Equity Investor and the Governmental Lender in writing of the occurrence of any Event of Default hereunder or any Borrower Loan Agreement Default known to the Funding Lender.

#### Section 8.10. Maintenance of Records; Inspection of Records.

a) The Funding Lender shall keep and maintain adequate records pertaining to the funds and accounts, if any, established hereunder, including all deposits to and disbursements from said funds and accounts and shall keep and maintain the registration books for the Funding Loan and interests therein. The Funding Lender shall retain in its possession all certifications and other documents presented to it, all such records and all records of principal, interest and prepayment premium, if any, paid on the Funding Loan, subject to the inspection of the Borrower, the Governmental Lender, the Servicer and their representatives at all reasonable times and upon reasonable prior notice.

b) The Governmental Lender will at any and all times, upon the reasonable request of the Servicer, the Borrower or the Funding Lender, afford and procure a reasonable opportunity by their respective representatives to inspect the books, records, reports and other papers of the Governmental Lender relating to the 4% Project and the Funding Loan, if any, and to make copies thereof.

Section 8.11. Representations and Warranties of the Funding Lender. The Funding Lender hereby represents to the Governmental Lender and the Borrower that it is duly authorized to enter into and perform this Funding Loan Agreement, and has full authority to take such action as it may deem advisable with respect to all matters pertaining to this Funding Loan Agreement.

### ARTICLE IX DEFAULT; REMEDIES

Section 9.1. Events of Default. Any one or more of the following shall constitute an event of default (an "Event of Default") under this Funding Loan Agreement (whatever the reason for such event and whether it shall be voluntary or involuntary or be effected by operation of law or pursuant to any judgment, decree or order of any court or any order, rule or regulation of any administrative or governmental body):

(a) A default in the payment of any interest upon the Governmental Lender Note when such interest becomes due and payable, or

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b) A default in the payment of principal of, or premium on, the Governmental Lender Note when such principal or premium becomes due and payable, whether at its stated maturity, by declaration of acceleration or call for mandatory prepayment or otherwise; or

c) Subject to Section 8.7 hereof, default in the performance or breach of any material covenant or warranty of the Governmental Lender in this Funding Loan Agreement (other than a covenant or warranty or default in the performance or breach of which is elsewhere in this Section specifically dealt with), and continuance of such default or breach for a period of 30 days after there has been given written notice, as provided in Section 11.1 hereof, to the Governmental Lender and the Borrower by the Funding Lender or the Servicer, specifying such default or breach and requiring it to be remedied and stating that such notice is a "Notice of Default" under this Funding Loan Agreement; provided that, so long as the Governmental Lender, Borrower, or Equity Investor has commenced to cure such failure to observe or perform within the thirty (30) day cure period and the subject matter of the default is not capable of cure within said thirty (30) day period and the Governmental Lender, Borrower or Equity Investor is diligently pursuing such cure to the Funding Lender's satisfaction, with the Funding Lender's Written Direction or Written Consent, then the Governmental Lender shall have an additional period of time as reasonably necessary (not to exceed 30 days unless extended in writing by the Funding Lender) within which to cure such default; or

d) A default in the payment of any Additional Borrower Payments; or

e) Any other "Default" or "Event of Default" under any of the other Funding Loan Documents (taking into account any applicable grace periods therein).

#### **Section 9.2. Acceleration of Maturity; Rescission and Annulment.**

a) Subject to the provisions of Section 9.9 hereof, upon the occurrence of an Event of Default under Section 9.1 hereof, then and in every such case, the Funding Lender may declare the principal of the Funding Loan and the Governmental Lender "Note and the interest accrued to be immediately due and payable, by notice to the Governmental Lender and the Borrower and upon any such declaration, all principal of and Prepayment Premium, if any, and interest on the Funding Loan and the Governmental Lender Note shall become immediately due and payable.

b) At any time after a declaration of acceleration has been made pursuant to subsection (a) of this Section, the Funding Lender may by Written Notice to the Governmental Lender, rescind and annul such declaration and its consequences if:

There has been deposited with the Funding Lender a sum sufficient to pay (1) all overdue installments of interest on the Governmental Lender Note. (2) the principal of and Prepayment Premium on the Governmental Lender Note that has become due otherwise than by such declaration of acceleration and interest thereon at the rate or rates prescribed therefor in the Governmental Lender Note. (3) to the extent that payment of such interest is lawful, interest upon overdue installments of interest at the rate or rates prescribed therefor in the Governmental Lender Note, and (4) all sums paid or advanced by the Funding Lender and the reasonable compensation, expenses, disbursements and advances of the Funding Lender, its agents and counsel (but only to the extent not duplicative with subclauses (1) and (3) above): and

All Events of Default, other than the non-payment of the principal of the Government Lender Note which have become due solely by such declaration of acceleration, have been cured or have been waived in writing as provided in Section 9.9 hereof

No such rescission and annulment shall affect any subsequent default or impair any right consequent thereon.

Notwithstanding the occurrence and continuation of an Event of Default, it is understood that the Funding Lender shall pursue no remedies against the Borrower or the 4% Project if no Borrower Loan Agreement Default has occurred and is continuing. An Event of Default hereunder shall not in and of itself constitute a Borrower Loan Agreement Default or a default under any other Funding Loan Document.

Section 9.3. Additional Remedies; Funding Lender Enforcement.

a) Upon the occurrence of an Event of Default, the Funding Lender may, subject to the provisions of this Section 9.3 and Section 9.9 hereof, proceed to protect and enforce its rights by mandamus or other suit, action or proceeding at law or in equity. No remedy conferred by this Funding Loan Agreement upon or remedy reserved to the Funding Lender is intended to be exclusive of any other remedy, but each such remedy shall be cumulative and shall be in addition to any other remedy given to the Funding Lender hereunder or now or hereafter existing at law or in equity or by statute.

b) Upon the occurrence and continuation of any Event of Default, the Funding Lender may proceed forthwith to protect and enforce its rights and this Funding Loan Agreement by such suits, actions or proceedings as the Funding Lender, in its sole discretion, shall deem expedient. Funding Lender shall have upon the occurrence and continuation of any Event of Default all rights, powers, and remedies with respect to the Security as are available under the Uniform Commercial Code applicable thereto or as are available under any other applicable law at the time in effect and, without limiting the generality of the foregoing, the Funding Lender may proceed at law or in equity or otherwise, to the extent permitted by applicable law:

i) to take possession of the Security or any part thereof, with or without legal process, and to hold, service, administer and enforce any rights thereunder or thereto, and otherwise exercise all rights of ownership thereof, including (but not limited to) the sale of all or part of the Security;

ii) to become mortgagee of record for the Borrower Loan including, without limitation, completing the assignment of the Security Instrument by the Governmental Lender to the Funding Lender as anticipated by this Funding Loan Agreement, and recording the same in the real estate records of the jurisdiction in which the 4% Project is located, without further act or consent of the Governmental Lender, and to service and administer the same for its own account;

iii) to service and administer the Funding Loan as agent and on behalf of the Governmental Lender or otherwise, and, if applicable, to take such actions necessary to enforce the Borrower Loan Documents and the Funding Loan Documents on its own behalf, and to take such alternative courses of action, as it may deem appropriate; or

iv) to take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or agreement in the Governmental Lender Note, this Funding Loan Agreement or the other Funding Loan Documents, or the Borrower Loan Documents, or in and of the execution of any power herein granted, or for foreclosure hereunder, or for enforcement of any other appropriate legal or equitable remedy or otherwise as the Funding Lender may elect

Whether or not an Event of Default has occurred, and except as provided in Section 9.5, the Funding Lender, in its sole discretion, shall have the sole right to waive or forbear any term, condition, covenant or agreement of the Security Instrument, the Borrower Loan Agreement, the Borrower Note or

any other Borrower Loan Documents or Funding Loan Documents applicable to the Borrower, or any breach thereof, other than a covenant that would adversely impact the tax-exempt status of the interest on the Governmental Lender Note, and provided that the Governmental Lender may enforce specific performance with respect to the Assigned Rights.

If the Borrower defaults in the performance or observance of any covenant, agreement or obligation of the Borrower set forth in the Regulatory Agreement, and if such default remains uncured for a period of 60 days after the Borrower and the Funding Lender

receive Written Notice stating that a default under the Regulatory Agreement has occurred and specifying the nature of the default, the Funding Lender shall have the right to seek specific performance of the provisions of the Regulatory Agreement or to exercise its other rights or remedies thereunder.

If the Borrower defaults in the performance of its obligations under the Borrower Loan Agreement to make rebate payments, to comply with any applicable continuing disclosure requirements, or to make payments owed pursuant to Sections 2.4, 2.5, 5.14 or 5.15 of the Borrower Loan Agreement for fees, expenses or indemnification, the Funding Lender shall have the right to exercise all its rights and remedies thereunder.

**Section 9.4. Application of Money Collected.** Any money collected by the Funding Lender pursuant to this Article and any other sums then held by the Funding Lender as part of the Security, shall be applied in the following order, at the date or dates fixed by the Funding Lender:

- a) First: To the payment of any and all fees due the Governmental Lender, the Servicer or the Rebate Analyst under the Borrower Loan Documents;
- b) Second: To the payment of any and all amounts due under the Funding Loan Documents other than with respect to principal and interest accrued on the Funding Loan;
- c) Third: To the payment of the whole amount of the Funding Loan, as evidenced by the Governmental Lender Note, then due and unpaid in respect of which or for the benefit of which such money has been collected, with interest (to the extent that such interest has been collected or a sum sufficient therefor has been so collected and payment thereof is legally enforceable at the respective rate or rates prescribed therefor in the Governmental Lender Note) on overdue principal of, and Prepayment Premium and overdue installments of interest on the Governmental Lender Note; provided, however, that partial interests in any portion of the Governmental Lender Note shall be paid in such order of priority as may be prescribed by Written Direction of the Funding Lender in its sole and absolute discretion; and
- d) Fourth: The payment of the remainder, if any, to the Borrower or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdiction may direct.
- e) If and to the extent this Section 9.4 conflicts with the provisions of the Loan Agreement or the Servicing Agreement, the provisions of the Loan Agreement or Servicing Agreement shall control. Capitalized terms used in this Section 9.4 but not otherwise defined in this Funding Loan Agreement shall have the meanings given such terms in the Servicing Agreement.

**Section 9.5. Remedies Vested in Funding Lender.** All rights of action and claims under this Funding Loan Agreement or the Governmental Lender Note may be prosecuted and enforced by the Funding Lender without the possession of the Governmental Lender Note or the production thereof in any proceeding relating thereto

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**Section 9.6. Restoration of Positions.** If the Funding Lender shall have instituted any proceeding to enforce any right or remedy under this Funding Loan Agreement and such proceeding shall have been discontinued or abandoned for any reason or shall have been determined adversely to the Funding Lender, then and in every such case the Governmental Lender and the Funding Lender shall, subject to any determination in such proceeding, be restored to their former positions hereunder, and thereafter all rights and remedies of the Governmental Lender and the Funding Lender shall continue as though no such proceeding had been instituted.

**Section 9.7. Rights and Remedies Cumulative.** No right or remedy herein conferred upon or reserved to the Funding Lender is intended to be exclusive of any other right or remedy, and every right and remedy shall, to the extent permitted by law, be cumulative and in addition to every other right and remedy given hereunder or now or hereafter existing at law or in equity or otherwise. The assertion or employment of any right or remedy hereunder, or otherwise, shall not prevent the concurrent assertion or employment of

any other appropriate right or remedy.

Section 9.8. Delay or Omission Not Waiver. No delay or omission of the Funding Lender to exercise any right or remedy accruing upon an Event of Default shall impair any such right or remedy or constitute a waiver of any such Event of Default or an acquiescence therein. Every right and remedy given by this Article or by law to the Funding Lender may be exercised from time to time, and as often as may be deemed expedient, by Funding Lender. No waiver of any default or Event of Default pursuant to Section 9.9 hereof shall extend to or shall affect any subsequent default or Event of Default hereunder or shall impair any rights or remedies consequent thereon.

Section 9.9. Waiver of Past Defaults. Before any judgment or decree for payment of money due has been obtained by the Funding Lender, the Funding Lender may, subject to Section 9.6 hereof, by Written Notice to the Governmental Lender and the Borrower, waive any past default hereunder or under the Borrower Loan Agreement and its consequences except for default in obligations due the Governmental Lender pursuant to or under the Unassigned Rights. Upon any such waiver, such default shall cease to exist, and any Event of Default arising therefrom shall be deemed to have been cured, for every purpose of this Funding Loan Agreement and the Borrower Loan Agreement; but no such waiver shall extend to any subsequent or other default or impair any right consequent thereon.

Section 9.10. Remedies Under Borrower Loan Agreement or Borrower Note. As set forth in this Section 9.10 but subject to Section 9.9 hereof, the Funding Lender shall have the right, in its own name or on behalf of the Governmental Lender, to declare any default and exercise any remedies under the Borrower Loan Agreement or the Borrower Note, whether the Governmental Lender Note has been accelerated or declared due and payable by reason of an Event of Default.

**Section 9.11. Waiver of Appraisal and Other Laws.**

(a) To the extent permitted by law, the Governmental Lender will not at any time insist upon, plead, claim or take the benefit or advantage of, any appraisal, valuation, stay, extension or redemption law now or hereafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim under it, so far as it or they now or hereafter may lawfully do so, hereby waives the benefit of all such laws, the Governmental Lender, for itself and all who may claim under it, waives, to the extent that it may lawfully do so, all right to have the property in the Security marshaled upon any enforcement hereof

- 26 -

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(h) If any law now in effect prohibiting the waiver referred to in Section 9.11(a) shall hereafter be repealed or cease to be in force, such law shall not thereafter be deemed to constitute any part of the contract herein contained or to preclude the application of this Section 9.11.

Section 9.12. Suits to Protect the Security. The Funding Lender shall have power to institute and to maintain such proceedings as it may deem expedient to prevent any impairment of the Security by any acts that may be unlawful or in violation of this Funding Loan Agreement and to protect its interests in the Security and in the rents, issues, profits, revenues and other income arising therefrom, including power to institute and maintain proceedings to restrain the enforcement of or compliance with any Governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order would impair the security hereunder or be prejudicial to the interests of the Funding Lender.

Section 9.13. Remedies Subject to Applicable Law. All rights, remedies and powers provided by this Article may be exercised only to the extent that the exercise thereof does not violate any applicable provision of law in the premises, and all the provisions of this Article are intended to be subject to all applicable mandatory provisions of law which may be controlling in the premises and to be limited to the extent necessary so that they will not render this Funding Loan Agreement invalid, unenforceable or not entitled to be recorded, registered or filed under the provisions of any applicable law.

Section 9.14. Assumption of Obligations. In the event that the Funding Lender or its permitted assignee or designee in accordance with Section 2.4 hereof shall become the legal or beneficial owner of the 4% Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under the Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement and any other Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default hereunder, rights and remedies may be pursued pursuant to the terms of the Funding Loan Documents, subject to the last paragraph of Section 9.2.

Section 9.15. Remedies upon Unremedied Material Funding Lender Event. Upon the occurrence of a Material Funding Lender Event which shall continue unremedied for a period of 60 days (a "Funding Lender Event of Default"), the Governmental Lender may direct that the Governmental Lender Note be transferred to and obligations and liabilities thereunder be assumed by another lender approved to act as Funding Lender by the Borrower pursuant to Section 2.4(b) hereof and acceptable to the Governmental Lender; provided, however, that no such transfer shall become effective until (a) the Funding Lender has been fully reimbursed for all advances made and all expenses incurred and all other amounts owed to Funding Lender with respect to the Governmental Lender Note through the date of transfer, (b) the Funding Lender shall be fully released in writing by the Governmental Lender, the Borrower and the successor Funding Lender from any and all continuing obligations and liabilities with respect to the Funding Loan, (c) such other lender shall have executed and delivered to the Funding Lender the Required Transferee Representations and (d) Funding Lender shall be indemnified by the Borrower for any losses incurred by Funding Lender with respect to the Funding Loan (except losses arising from Funding Lender's gross negligence or willful misconduct). Notwithstanding anything herein to the contrary contained, Funding Lender shall not be liable to the Governmental Lender or the Borrower for any loss of tax-exemption, tax or other charge that may be imposed in connection with any such sale or assignment or for any fees and expenses incurred by the Governmental Lender or Borrower in connection therewith, nor shall the Funding Lender be liable to the Governmental Lender or Borrower for any special, indirect, consequential.

exemplary or punitive damages, all such liability being expressly waived, to the fullest extent permitted by law.

## **ARTICLE X AMENDMENT; AMENDMENT OF BORROWER LOAN AGREEMENT AND OTHER DOCUMENTS**

Section 10.1. Amendment of Funding Loan Agreement. Any of the terms of this Funding Loan Agreement and the Governmental Lender Note may be amended or waived only by an instrument signed by the Funding Lender and the Governmental Lender, provided, however, no such amendment which materially affects the rights, duties, obligations or other interests of the Borrower shall be made without the consent of the Borrower, and, provided further, that if the Borrower is in default under any Funding Loan Document, no Borrower consent shall be required unless such amendment has a material adverse effect on the rights, duties, obligations or other interests of the Borrower. All of the terms of this Funding Loan Agreement shall be binding upon the successors and assigns of and all persons claiming under or through the Governmental Lender or any such successor or assign, and shall inure to the benefit of and be enforceable by the successors and assigns of the Funding Lender.

Section 10.2. Amendments Requiring Funding Lender Consent. The Governmental Lender shall not consent to any amendment, change or modification of the Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document without the prior Written Consent of the Funding Lender; provided, however, that such prior Written Consent shall not be required with respect to any such amendment, change or modification undertaken by the Governmental Lender in order to preserve one or more of its Unassigned Rights. Governmental Lender agrees to provide the Funding Lender with prompt notification of any such amendments, modifications or changes not requiring the prior Written Consent of the Funding Lender.

Section 10.3. Consents and Opinions. No amendment to this Funding Loan Agreement or any other Funding Loan Document entered into under this Article X or any amendment, change or modification otherwise permitted under this Article X shall become effective

unless and until (i) the Funding Lender shall have approved the same in writing in its sole discretion and (ii) the Funding Lender and the Governmental Lender shall have received, at the expense of the Borrower, a fax Counsel No Adverse Effect Opinion and an Opinion of Counsel to the effect that any such proposed amendment is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations. No modification or amendment of the terms of the Borrower Loan Agreement or the Borrower Note may be undertaken without the prior Written Consent of the Funding Lender and, if requested by the Funding Lender, the provision to the Funding Lender and the Governmental Lender, at the expense of the Borrower, of a Tax Counsel No Adverse Effect Opinion with regard to such proposed modification. In addition, if such modification of the Borrower Loan Agreement or the Borrower Note would cause a reissuance of the Governmental Lender Note or otherwise adversely affect the tax-exempt status of the interest on the Governmental Note, Governmental Lender's consent shall also be required, together with a fax Counsel No Adverse Effect Opinion.

Section 10.-t. Any consents required pursuant to this Article X from, or on behalf of, the Governmental Lender may be executed by an Authorized City Representative.

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#### ARTICLE XI MISCELLANEOUS

##### Section ILL Notices.

(a) All notices, demands, requests and other communications required or permitted to be given by any provision of this Funding Loan Agreement shall be in writing and sent by first class, regular, registered or certified mail, commercial delivery service, overnight courier, telegraph, telex, telecopier or facsimile transmission, air or other courier, or hand delivery to the party to be notified addressed as follows.

If to the Governmental Lender:

City of Chicago  
Department of Housing  
121 North LaSalle Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attention: Commissioner, Department of Housing Telephone: (312) 744-4190 Facsimile: (312) 742-2271

and with a copy to:

City of Chicago  
Office of Corporation Counsel  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division  
Telephone: (312) 744-0200  
Facsimile: (312) 742-0277  
(refer to "Finance & Econ. Development Division" on cover sheet)

City of Chicago

Office of the City Comptroller's Office 121 North LaSalle Street, Suite 700 Chicago, Illinois 60602 Attention: City Comptroller  
Telephone: (312) 744-7106 Facsimile: (312) 742-6544

II to the Borrower (before April 1, 2022):

Chicago Lighthouse Residences 4, LLC c/o Brinshore Development, LLC 666 Dundee Road, Suite 1 102 Northbrook, Illinois 60062

If to the Borrower (after April 1, 2022)-

Chicago Lighthouse Residences 4, LLC c/o Brinshore Development, L.L.C 1603 Orrington Suite 450 Evanston, Illinois 60201

If to the funding lender prior to the  
Assignment Event

CIBC Bank USA  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attention: \_\_\_\_\_, Managing Director  
and

Charity & Associates, P.C. 20 North Clark Street,  
Suite 3300 Chicago, Illinois 60602 Attention: Elvin E.  
Charity

If to the funding Lender after the Assignment Event:

JPMorgan Chase Bank, N.A. Community Development Real Estate Group Chase  
Tower/Mail Code IE1-0953 10 South Dearborn Street Chicago, Illinois 60603  
Attention: Dell McCoy

And

JPMorgan Chase Bank, N.A. 4 New York Plaza, 19<sup>th</sup> Floor Mail  
Code: NY 1-E092 Attention: CDRE Counsel New York, New York  
10004

And

Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300 Scottsdale, Arizona 85252 Attn:  
Heather Aeschleman

If to the Fidelity Investor:

And to:

NEF Assignment Corporation c/o National Equity Fund, Inc. 10 South  
Riverside Plaza, Suite 1700 Chicago, Illinois 60606  
Attention: Asset Management-Chicago Lighthouse

And with a copy to

Holland & Knight LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
Attention: Sameer Patel

[ADD ANY ADDITIONAL ADDRESSEES]

Any such notice, demand, request or communication shall be deemed to have been given and received for all purposes under this  
Mortgage Loan Agreement, (i) three Business Days after the same is

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deposited in any official depository or receptacle of the United States Postal Service first class, or, if applicable, certified mail, return receipt requested, postage prepaid; (ii) on the date of transmission when delivered by telecopier or facsimile transmission, telex, telegraph or other telecommunication device, if listed above, provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day; (iii) on the next Business Day after the same is deposited with a nationally-recognized overnight delivery service that guarantees overnight delivery; and (iv) on the date of actual delivery to such party by any other means; provided, however, if the day such notice, demand, request or communication shall be deemed to have been given and received as aforesaid is not a Business Day, such notice, demand, request or communication shall be deemed to have been given and received on the next Business Day; and provided further that notice to the Governmental Lender shall not be deemed to have been given until actually received by the Governmental Lender. Any facsimile signature by a Person on a document, notice, demand, request or communication required or permitted by this Funding Loan Agreement shall constitute a legal, valid and binding execution thereof by such Person.

Any party to this Funding Loan Agreement may change such party's address for the purpose of notice, demands, requests and communications required or permitted under this Funding Loan Agreement by providing written notice of such change of address to all of the parties by written notice as provided herein.

Section 11.2. Term of Funding Loan Agreement. This Funding Loan Agreement shall be in full force and effect until all payment obligations of the Governmental Lender hereunder have been paid in full and the Funding Loan has been retired or the payment thereof has been provided for (such payment or provision to be solely from the Security set forth in Article IV hereof as further provided in Section 8.8 hereof); except that on and after payment in full of the Governmental Lender Note, this Funding Loan Agreement shall be terminated, without further action by the parties hereto.

Section 11.3. Successors and Assigns. All covenants and agreements in this Funding Loan Agreement by the Governmental Lender shall bind its successors and assigns, whether so expressed or not.

Section 11.4. Legal Holidays. In any case in which the date of payment of any amount due hereunder or the date on which any other act is to be performed pursuant to this Funding Loan Agreement shall be a day that is not a Business Day, then payment of such amount or such act need not be made on such date but may be made on the next succeeding Business Day, and such later payment or such act shall have the same force and effect as if made on the date of payment or the date fixed for prepayment or the date fixed for such act, and no additional interest shall accrue for the period after such date and prior to the date of payment.

Section 11.5. Governing Law. This Funding Loan Agreement shall be governed by and shall be enforceable in accordance with the laws of the State.

Section 11.6. Severability. If any provision of this Funding Loan Agreement shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired. In case any covenant, stipulation, obligation or agreement contained in the Governmental Lender Note or in this Funding Loan Agreement shall for any reason be held to be usurious or in violation of law, then such covenant, stipulation, obligation or agreement shall be deemed to be the covenant, stipulation, obligation or agreement of the Governmental Lender or the Funding Lender only to the full extent permitted by law.

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Section 11.7. Execution in Several Counterparts. This Funding Loan Agreement may be contemporaneously executed in several counterparts, all of which shall constitute one and the same instrument and each of which shall be, and shall be deemed to be, an original.

Section 11.8. Reserved.

**Section 11.9. Reserved.**

Section 1.1.10. Electronic Transactions. The transactions described in this Funding Loan Agreement may be conducted, and related documents and may be stored, by electronic means. Copies, telecopies, facsimiles, electronic files and other reproductions of original executed documents shall be deemed to be authentic and valid counterparts of such original documents for all purposes, including the filing of any claim, action or suit in the appropriate court of law.

Section 1.1.11. Reference Date. This Funding Loan Agreement is dated for reference purposes only as of  
the first day of \_\_\_\_\_, 2022.

(Remainder of this page intentionally left blank)

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IN WITNESS WHEREOF, the Funding Lender and the Governmental Lender have caused this Funding Loan Agreement to be duly executed as of the date first written above.

**CIBC BANK USA, an Illinois state-chartered bank**

By: \_ Name: Title:

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**CITY OF CHICAGO**

By:

Name: Jennie Huang Bennett Title: Chief Financial Officer

[SFAL] Attest:

By:

Name: Andrea M. Valencia Title: City Clerk

**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

**THIS NOTE MAY BE OWNED ONLY BY A PERMITTED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT, AND THE HOLDER HEREOF, BY THE ACCEPTANCE OF THIS FUNDING LOAN AGREEMENT (A) REPRESENTS THAT IT IS A PERMITTED TRANSFEREE AND (B) ACKNOWLEDGES THAT IT CAN ONLY TRANSFER THIS GOVERNMENTAL LENDER NOTE TO ANOTHER PERMITTED TRANSFEREE IN ACCORDANCE WITH THE TERMS OF THE FUNDING LOAN AGREEMENT.**

**CITY OF CHICAGO**

**\$**

**MULTI-FAMILY HOUSING REVENUE NOTE, (CHICAGO LIGHTHOUSE RESIDENCES 4 PROJECT), SERIES 2022**

DATED \_\_\_\_\_, 2022 not to exceed \$[ 15,862,000]

FOR VALUE RECEIVED, the undersigned CITY OF CHICAGO ("Obligor") promises to pay to the order of CIBC BANK USA and its successors and assigns ("Holder") the maximum principal sum of [Fifteen Million, Eight Hundred Sixty- Two] Thousand and no/100 Dollars \$[ 15,862,000], on \_\_\_\_\_, 20\_\_\_\_, or earlier as provided herein, together with interest thereon at the rates, at the times and in the amounts provided below.

Obligor shall pay to the Holder on or before each date on which payment is due under that certain Funding Loan Agreement, dated as of \_\_\_\_\_, 2022 (the "Funding Loan Agreement"), between Obligor and Holder, an amount in immediately available funds sufficient to pay the principal amount of and Prepayment Premium, if any, on the Funding Loan then due and payable, whether by maturity, acceleration, prepayment or otherwise. In the event that amounts held derived from proceeds of the Borrower Loan, condemnation awards or insurance proceeds or investment earnings thereon are applied to the payment of principal due on the Funding Loan in accordance with the Funding Loan Agreement, the principal amount due hereunder shall be reduced to the extent of the principal amount of the Funding Loan so paid. Capitalized terms not otherwise defined herein shall have the meaning assigned in the Funding Loan Agreement.

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

The Funding Loan and this Governmental Lender Note are pass-through obligations relating to a loan (the "Borrower Loan") made by Obligor from proceeds of the Funding Loan to Chicago Lighthouse Residences <1. LLC, an Illinois limited liability company, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of \_\_\_\_\_, 2022 (as the same may be modified, amended or supplemented from time to time, the "Borrower Loan Agreement"), between the Obligor and the Borrower, evidenced by the Borrower Note (as defined in the Borrower Loan Agreement). Reference is made to the Borrower Loan Agreement and to the Borrower Note for complete payment and prepayment terms of the Borrower Note. Payments on which are passed through under the Governmental Lender Note.

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This Governmental Lender Note is a limited obligation of the Obligor, payable solely from the Pledged Revenues and other funds and moneys and Security pledged and assigned under the Funding Loan Agreement. This Governmental Lender Note is not a general obligation of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal of and, premium, if any, and interest on this Governmental Lender Note, and the Governmental Lender Note is payable from no other source, but are special, limited obligations of the Governmental Lender, payable solely out of the security pledged hereunder and receipts of the Governmental Lender derived pursuant to this Funding Loan Agreement. No holder of this Governmental Lender Note or any interest therein has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the Governmental Lender Note or the interest or premium, if any, thereon.

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

This Governmental Lender Note is subject to the express condition that at no time shall interest be payable on this Governmental Lender Note or (he Funding Loan at a rate in excess of the Maximum Rate provided in the Funding Loan Agreement; and Obligor shall not be obligated or required to pay, nor shall the Holder be permitted to charge or collect, interest at a rate in excess of such Maximum Rate. If by the terms of this Governmental Lender Note or of the Funding Loan Agreement, Obligor is required to pay interest at a rate in excess of such Maximum Rate, the rate of interest hereunder or thereunder shall be deemed to be reduced immediately and automatically to such Maximum Rate, and any such excess payment previously made shall be immediately and automatically applied to the unpaid balance of the principal sum hereof and not to the payment of interest.

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

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

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

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

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

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

(Remainder of this page intentionally left blank)

IN WITNESS WHEREOF, the undersigned has duly executed and delivered this Governmental Lender Note or caused this Governmental Lender Note to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**OBLIGOR:**

**CITY OF CHICAGO**

By:

Name: Jennie Huang Bennett Title: Chief  
Financial Officer

[SEAL] Attest:

**By:**

Name: Andrea M. Valencia Title: City Clerk

**EXHIBIT B**

**FORM OF REQUIRED TRANSFEREE REPRESENTATIONS**

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

The undersigned, as holder (the "Holder" or the "Funding Lender") of the not to exceed \$[15,862,000] Multi-Family Housing Revenue Note (Chicago Lighthouse Residences 4 Project), Series 2022, dated as of the Closing Date (the "Governmental Lender Note") issued pursuant to an Ordinance adopted on February \_\_, 2022 (the "Ordinance") by the City of Chicago (the "Governmental Lender") and under a Funding Loan Agreement dated as of \_\_\_\_\_, 2022 (the "Funding Loan Agreement") between the Governmental Lender and Folder, as Funding Lender, hereby represents that:

1. The Funding Lender hereby acknowledges the execution and delivery of the Governmental Lender Note in the original aggregate principal amount of up to \$[15,862,000],
2. The Funding Lender has authority to make the Funding Loan and to execute and deliver these representations and any other instrument and documents required to be executed by the Funding Lender in connection with the execution and delivery of the Governmental Lender Note.

3. The Fldolder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the 4% Project to be able to evaluate the risk and merits of the investment represented by the Governmental Lender Note. We are able to bear the economic risks of such investment.

4. The Fldolder acknowledges that it has either been supplied with or been given access to information, including financial statements and other financial information, to which a reasonable lender would attach significance in making investment decisions, and the Fldolder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the 4% Project, the use of proceeds of the Governmental Lender Note, the Funding Loan Agreement and the Funding Loan and the security therefor so that, as a reasonable lender, the Fldolder has been able to make its decision to extend the Funding Loan [or an interest therein] and purchase the Governmental Lender Note [or an interest therein]. The Funding Lender understands that the Governmental Lender Note and the Borrower Loan Agreement are not registered under the Securities Act of 1933, as amended, and that such registration is not legally required as of the date hereof; and further understands that the Governmental Lender Note and the Borrower Loan Agreement (i) are not being registered or otherwise qualified for sale under the "Blue Sky" laws and regulations of any state, (ii) will not be listed in any stock or other securities exchange, (iii) will not carry a rating from any rating service and (iv) will be delivered in a form which is not readily marketable. The Holder acknowledges that it has not relied upon the Governmental Lender for any information in connection with the Fldolder's purchase of the Governmental Lender Note [or an interest therein].

5. The fldolder is an Approved Institutional Buyer (as defined in the Funding Loan Agreement).

6 The Fldolder acknowledges that it is purchasing [an interest in] the Governmental Lender Note for investment for its own account and not with a present view toward resale or the distribution thereof in that we do not now intend to resell or otherwise dispose of all or any part of our interests in the Governmental Lender Note. Subject to paragraph 7 below, the Funding Lender acknowledges and agrees that the Governmental Lender Note, or interests therein, can be sold and subsequently transferred only to purchasers that execute and deliver to the Governmental Lender an representations from the transferee to substantially the same effect as these required transferee representations or in such other form authorized under the

Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

7. In the event any placement memorandum to be provided to any subsequent buyer or beneficial owner of such portion of the Governmental Lender Note will not disclose information with respect to the Governmental Lender other than its name, location and type of political subdivision and general information with respect to the Funding Loan and Borrower Loan and related documents, the Fldolder will provide the Governmental Lender with a draft of such placement memorandum and the Governmental Lender shall have the right to approve any description of the Governmental Lender therein (which approval shall not be unreasonably withheld).

8. The Funding Lender understands that the Governmental Lender Note is a limited obligation of the Governmental Lender; payable solely from funds and moneys pledged and assigned under the Funding Loan Agreement, and that the liabilities and obligations of the Governmental Lender with respect to the Governmental Lender Note are expressly limited as set forth in the Funding Loan Agreement and related documents. The Funding Lender acknowledges that the Governmental Lender Note is not an indebtedness of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal of and, premium, if any, and interest on the Governmental Lender Note, and the Governmental Lender Note is payable from no other source, but are special, limited obligations of the Governmental Lender, payable solely out of the Security and receipts of the Governmental Lender derived pursuant to the Funding Loan Agreement and the Borrower Loan Agreement. The Funding Lender acknowledges that no holder of the Governmental Lender Note, or any interest therein, has the right to compel any exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the Governmental Lender Note or the interest or premium, if any, thereon.

9. Capitalized terms used herein and not otherwise defined have the meanings given such terms in the Funding Loan

Agreement.

[Remainder of page intentionally left blank.]

[Signature Page to Required Transferee Representations]

, as Holder

By:

Name: Its:



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Ordinance Exhibit C

Form of Borrower Lo^n a

wtr Loan Agreement

See Attached

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**BORROWER LOAN AGREEMENT**

**Between**

**CITY OF CHICAGO, as Governmental  
Lender,**

**and**

***THE CHICAGO LIGHTHOUSE RESIDENCES 4, LLC, an Illinois limited  
liability company, as Borrower***

**Dated as of \_\_\_\_\_, 2022**

**Relating to: \$[15,862,000]**

**Funding Loan originated by CIBC BANK USA, as Funding Lender**

The interest of the City of Chicago (the "Governmental Lender") in this Borrower Loan Agreement (except for certain rights described herein) has been initially pledged and assigned to CIBC Bank LJSA, an Illinois state chartered bank, as funding lender (the "Funding Lender"), under that certain Funding Loan Agreement, of even date herewith, by and between the Governmental Lender and the Funding Lender, under which the Funding Lender is originating a loan to the Governmental Lender the proceeds of which are to be used to fund the Borrower Loan made under this Borrower Loan Agreement.

**TABLE OF CONTENTS**

**Page**

ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION	2
Section 1.1.    Specific Definitions	2
Section 1.2.    Definitions	2
ARTICLE II GENERAL	16
Section 2.1.    Origination of Borrower Loan	16
Section 2.2.    Security for (he Funding Loan	16
Section 2.3.    Loan; Borrower Note; Conditions to Closing	17
Section 2.4.    Borrower Loan Payments	18
Section 2.5.    Additional Borrower Payments	19
Section 2.6.    Overdue Payments; Payments if Default	20
Section 2.7.        Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds	20
Section 2.8.    Grant of Security Interest; Application of Funds	20
Section 2.9.    Marshalling; Payments Set Aside	20
Section 2.10.   Borrower Loan Disbursements	21
ARTICLE III [RESERVED]	21
ARTICLE IV REPRESENTATIONS AND WARRANTIES	21
Section 4.1.    Borrower Representations	21
Section 4.1.1    Organization; Special Purpose	21
Section 4.1.2    Proceedings; Enforceability	21
Section 4.1.3    No Conflicts	21
Section 4.1.4    Litigation; Adverse Facts	22
Section 4.1.5    Agreements; Consents; Approvals	22
Section 4.1.6    Title	23
Section 4.1.7    Survey	23
Section 4.1.8    No Bankruptcy Filing	23
Section 4.1.9    Full and Accurate Disclosure	23
Section 4.1.10   No Plan Assets	23
Section 4.1.11   Compliance	23
Section 4.1.12   Contracts	24
Section 4.1.13   Financial Information	24
Section 4.1.14   Condemnation	24
Section 4.1.15   Federal Reserve Regulations	24
Section 4.1.16   Utilities and Public Access	24
Section 4.1.17   Not a Foreign Person	24
Section 4.1.18   Separate Lots	25
Section 4.1.19   Assessments	25
Section 4.1.20   Enforceability	25
Section 4.1.21   Insurance	25
Section 4.1.22   Use of Property: Licenses	25
Section 4.1.23   Flood Zone	25
Section 4.1.24   Physical Condition	25
Section 4.1.25   Encroachments	25
Section 4.1.26   Slate Law Requirements	26
Section 4.1.27   Filing and Recording Taxes	26
Section 4.1.28   Investment Company Act	26

Section 4.1.29	Fraudulent Transfer	26
Section 4.1.30	Ownership of the Borrower	26
Section 4.1.31	Environmental Matters	26
Section 4.1.32	Name; Principal Place of Business	27
Section 4.1.33	Subordinated Debt	27
Section 4.1.34	Filing of Taxes	27
Section 4.1.35	General Tax	27
Section 4.1.36	Approval of the Borrower Loan Documents and Funding Loan Documents	27
Section 4.1.37	Funding Loan Agreement	27
Section 4.1.38	Americans with Disabilities Act	27
Section 4.1.39	Requirements of Code and Regulations	27
Section 4.1.40	Regulatory Agreement	27
Section 4.1.41	Intention to Hold 4% Project	28
Section 4.2.	Concerning Managing Member	28
Section 4.2.2	Government and Private Approvals	28
Section 4.2.3	Concerning Guarantors	29
Section 4.2.4	No Material Defaults	29
Section 4.2.5	Payment of Taxes	29
Section 4.2.6	Rights to 4% Project Agreements and Licenses	29
Section 4.2.7	Patriot Act Compliance	30
Section 4.2.8	Rent Schedule	30
Section 4.2.9	Other Documents	30
Section 4.2.10	Subordinate Loan Documents	30
Section 4.2.11	Ground Lease	30
Section 4.3.	Survival of Representations and Covenants	30
ARTICLE V AFFIRMATIVE COVENANTS		31
Section 5.1.	Existence	31
Section 5.2.	Taxes and Other Charges	31
Section 5.3.	Repairs; Maintenance and Compliance; Physical Condition	31
Section 5.4.	Litigation	31
Section 5.5.	Performance of Other Agreements	31
Section 5.6.	Notices	32
Section 5.7.	Cooperate in Legal Proceedings	32
Section 5.8.	Further Assurances	32
Section 5.9.	Delivery of Financial Information	32
Section 5.10.	Environmental Matters	32
Section 5.11.	Governmental Lender's and Funding Lender's Fees	33
Section 5.12.	Estoppel Statement	33
Section 5.13.	Defense of Actions	33
Section 5.14.	Expenses	34
Section 5.15.	Indemnity	34
Section 5.16.	No Warranty of Condition or Suitability by the Governmental Funding Lender	37
Section 5.17.	Right of Access to the 4% Project	37
Section 5.18.	Notice of Default	37
Section 5.19.	Covenant with Governmental Lender and Funding Lender	37
Section 5.20.	Obligation of the Borrower to Construct or Rehabilitate the 4% Project	37

Section 5.21.	Maintenance of Insurance	37
Section 5.22.	Information; Statements and Reports	38
Section 5.23.	Additional Notices	3!>
Section 5.24.	Compliance with Other Agreements; Legal Requirements	39
Section 5.25.	Completion and Maintenance of 4% Project	40
Section 5.26.	Fixtures	40
Section 5.27.	Income from 4% Project	40
Section 5.28.	Leases and Occupancy Agreements	40
Section 5.29.	4% Project Agreements and Licenses	41
Section 5.30.	Payment of Debt Payments	41
Section 5.31.	ERISA	41
Section 5.32.	Patriot Act Compliance	42
Section 5.33.	Funds from Equity Investor	42
Section 5.34.	Tax Covenants	42
Section 5.35.	Payment of Rebate	46
Section 5.36.	Covenants under Funding Loan Agreement	48
Section 5.37.	Notice of Default	49
Section 5.38.	Continuing Disclosure Agreement	49
Section 5.39.	Compliance with Ground Lease	49
Section 5.40.	Compliance with Permanent Loan Commitment	49
Section 5.40.1	Compliance with Redevelopment Agreement	Error! Bookmark not defined.
ARTICLE VI NEGATIVE COVENANTS		49
Section 6.1.	Management Agreement	49
Section 6.2.	Dissolution	49
Section 6.3.	Change in Business or Operation of Property	49
Section 6.4.	Debt Cancellation	50
Section 6.5.	Assets	50
Section 6.6.	Transfers	50
Section 6.7.	Debt	50
Section 6.8.	Assignment of Rights	50
Section 6.9.	Principal Place of Business	50
Section 6.10.	Partnership Agreement	50
Section 6.11.	ERISA	50
Section 6.12.	No Hedging Arrangements	50
Section 6.13.	Loans and Investments; Distributions; Related Payments	51
Section 6.14.	Amendment of Related Documents or CC&R's	51
Section 6.15.	Personal Property	51
Section 6.16.	Fiscal Year	51
Section 6.17.	Publicity	51
Section 6.18.	Subordinate Loan Documents	52
Section 6.19.	Ground Lease	i..52
ARTICLE VII RESERVED		52
ARTICLE VIII DEFAULTS		52
Section 8.1.	Events of Default	52
Section 8.2.	Remedies	55
Section 8.2.1	Acceleration	55

Section 8.2.2	Remedies Cumulative	
Section 8.2.3	Delay	
Section 8.2.4	Set 6IT; Waiver of Set OH.	J
Section 8.2.5	Assumption of Obligations	
Section 8.2.6	Accounts Receivable	
Section 8.2.7	Defaults under Other Documents	
Section 8.2.8	Abatement of Disbursements	
Section 8.2.9	Completion of Improvements	:
Section 8.2.10	Right to Directly Enforce	
Section 8.2.11	Power of Attorney	

#### ARTICLE IX SPECIAL PROVISIONS

Section 9.1.	Sale of Notes and Secondary Market Transaction	
Section 9.1.1	Cooperation	
Section 9.1.2	Use of Information	
Section 9.1.3	Borrower Obligations Regarding Secondary Market Disclosure Documents	
Section 9.1.4	Borrower Indemnity Regarding Filings	
Section 9.1.5	Indemnification Procedure	
Section 9.1.6	Contribution	'

Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect

Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect Sect

#### ARTICLE X MISCELLANEOUS.

on 10.1.	Notices	
on 10.2.	Brokers and Financial Advisors	
on 10.3.	Survival	
on 10.4.	Preferences	
on 10.5.	Waiver of Notice	
on 10.6.	Offsets, Counterclaims and Defenses	
on 10.7.	Publicity	
on 10.8.	Construction of Documents	
on 10.9.	No Third Party Beneficiaries	
on 10.10.	Assignment	
on 10.11.	[Intentionally Omitted]	;
on 10.12.	Governmental Lender, Funding Lender and Servicer Not in Control; No Partnership	
on 10.13.	Release	
on 10.14.	Term of Borrower Loan Agreement	
on 10.15.	Reimbursement of Expenses	
on 10.16.	Permitted Contests	
on 10.17.	Funding Lender Approval of Instruments and Parties	
on 10.18.	Funding Lender Determination of Facts	
on 10.19.	Calendar Months	
on 10.20.	Determinations by Lender	
on 10.21.	Governing Law	
on 10.22.	Consent to Jurisdiction and Venue	
on 10.23.	Successors and Assigns	
on 10.24.	Severability	
on 10.25.	Entire Agreement; Amendment and Waiver	
on 10.26.	Counterparts	
on 10.27.	Captions	
on 10.28.	Servicer	

IV

Section 10.29. Beneficiary Parties as Third Party Beneficiary	69	
Section 10.30. Waiver of Trial by Jury	69	
Section 10.31. Time of the Essence	69	
Section 10.32. Modifications	69	
Section 10.33. Reference Date	69	
ARTICLE XI LIMITATIONS ON LIABILITY	69	
Section 11.1. Limitation on Liability	69	
Section 11.2. Limitation on Liability of Governmental Lender	69	
Section 11.3. Waiver of Personal Liability	70	
Section 11.4. Limitation on Liability of Funding Lender's Officers, Employees, Etc		70
Section 11.5. Delivery of Reports, Etc	71	
EXHIBIT A-Section 10.32 Modifications		

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BORROWER LOAN AGREEMENT

THIS BORROWER LOAN AGREEMENT (hereinafter "Borrower Loan Agreement") is entered into as of the 1st day of \_\_\_\_\_, 2022, between the CITY OF CHICAGO, a municipality and home rule unit of local government duly organized and validly existing under the constitution and laws of the State of Illinois (together with its successors and assigns, the "Governmental Lender"), and THE CHICAGO LIGHTHOUSE RESIDENCES 4, LLC, an Illinois limited liability company (together with its successors and assigns, the "Borrower").

WITNESSETH: RECITALS

WHEREAS, the Governmental Lender has been duly created and organized pursuant to and in accordance with the provisions of Article VII, Section 6 of the 1970 Constitution of the State of Illinois, for the purpose of providing a means of financing the costs of residential ownership and development that will provide decent, safe and sanitary housing for persons of low and moderate income at prices or rentals they can afford; and

WHEREAS, the Governmental Lender is authorized: (a) to make loans to any person to provide financing for rental residential developments located within the jurisdiction of the Governmental Lender and intended to be occupied in part by persons of low and moderate income, as determined by the Governmental Lender; (b) to incur indebtedness for the purpose of obtaining moneys to make such loans and provide such financing, to establish necessary reserve funds and to pay administrative costs and other costs incurred in connection with the incurrence of such indebtedness of the Governmental Lender; and (c) to pledge all or any part of the revenues, receipts or resources of the Governmental Lender, including the revenues and receipts to be received by the Governmental Lender from or in connection with such loans, and to mortgage, pledge or grant security interests in such loans or other property of the Governmental Lender in order to secure the payment of the principal or redemption price of and interest on such indebtedness of the Governmental Lender; and

WHEREAS, the Borrower has applied to the Governmental Lender for a loan (the "Borrower Loan") for a certain mixed-use development project consisting of the acquisition of real property located at 1134 South Wood Street in the City (the "Property") and the construction thereon and equipping of a portion of a mixed-use building comprised of 45 residential units that include 6 studio units, 27 one bedroom units and 12 two bedroom units, which will be affordable units, together with common areas and approximately 34 parking spaces (the "4% Project"), which will constitute a separate and distinct condominium unit within a larger mixed-use building, and

WHEREAS, the Borrower's repayment obligations under this Borrower Loan Agreement are evidenced by the Borrower Note, as defined herein, and

WHEREAS, the Borrower has requested the Governmental Lender to enter into that certain funding Loan Agreement, of even date herewith (the "Funding Loan Agreement"), between the Governmental Lender and CIBC Bank USA, an Illinois state chartered bank (the "Funding Lender"), under which the funding Lender will make a loan (the "Funding Loan") to the Governmental Lender, the proceeds of which will be loaned under this Borrower Loan Agreement to the Borrower to finance the acquisition, construction, development, equipping and/or operation of the 4% Project; and

WHEREAS, the Borrower Loan is secured by, among other things, that certain Construction Mortgage, Security Agreement, Assignment of Leases and Easements, and fixture filing (as amended, restated

and/or supplemented from time to time, including, without limitation, an amended and restated mortgage to be executed by the



Borrower for the benefit of Chase upon the occurrence of the Assignment I-vent) the "Security Instrument"), of even date herewith and assigned to the funding Lender to secure the funding Loan, encumbering the 4% Project, and will be advanced to Borrower pursuant to this Borrower Loan Agreement and the Construction funding Agreement.

NOW, THEREFORE, in consideration of the premises and the mutual representations, covenants and agreements herein contained, the parties hereto do hereby agree as follows:

## **ARTICLE I DEFINITIONS; PRINCIPLES OF CONSTRUCTION**

Section 1.1. Specific Definitions. For all purposes of this Borrower Loan Agreement, except as otherwise expressly provided or unless the context otherwise requires:

Unless specifically defined herein, all capitalized terms shall have the meanings ascribed thereto in the Security Instrument or, if not defined in the Security Instrument, in the Funding Loan Agreement.

All accounting terms not otherwise defined herein shall have the meanings assigned to them, and all computations herein provided for shall be made, in accordance with GAAP.

All references in this instrument to designated "Articles," "Sections" and other subdivisions are to the designated Articles, Sections and subdivisions of this instrument as originally executed.

All references in this instrument to a separate instrument are to such separate instrument as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

Unless otherwise specified, (i) all references to sections and schedules are to those in this Borrower Loan Agreement, (ii) the words "hereof," "herein" and "hereunder" and words of similar import refer to this Borrower Loan Agreement as a whole and not to any particular provision, (iii) all definitions are equally applicable to the singular and plural forms of the terms defined and (iv) the word "including" means "including but not limited to."

Section 1.2. Definitions The following terms, when used in this Borrower Loan Agreement (including when used in the above recitals), shall have the following meanings:

"Act of Bankruptcy" shall mean the filing of a petition in bankruptcy (or any other commencement of a bankruptcy or similar proceeding) under any applicable bankruptcy, insolvency, reorganization, or similar law, now- or hereafter in effect: provided that, in the case of an involuntary proceeding, such proceeding is not dismissed within ninety (90) days after the commencement thereof

"ADA" shall have the meaning set forth in Section 4.1 3S hereof.

"Additional Borrower Payments" shall mean the payments payable pursuant to Section 2.5 (Additional Borrower Payments). Section 2.6 (Overdue Payments: Payments in Default). [Section 3.3.3 | of the Construction funding Agreement (Borrower Loan in Balance). [Section 7.1] of the Construction funding Agreement (Mandatory Payments of Borrower Loan). Section 5.14 (Expenses') and Section 10 of the Borrower Note (Voluntary and Involuntary Prepayments). [confirm additional cross-references to the Term Loan Agreement when drafted]

"Affiliate" or "Affiliate of Borrower" means, as to the Borrower or its Managing Member. (i) any entity that directly or indirectly owns, controls, or holds with power to vote. 20 percent or more of the outstanding voting securities of Borrower or its Managing Member, (ii) any corporation 20 percent or more of whose outstanding voting securities are directly or indirectly owned,

controlled or held with power to vote by the Borrower or its Managing Member, (iii) any partner, shareholder or. il" a limited liability company, member ofthe Borrower or its Managing Member, or (iv) any other person that is related by blood or marriage to the Borrower or its Managing Member (to the extent any of the Borrower or its Managing Member is a natural person).

"Agreement of Environmental Indemnification" shall mean the Agreement of Environmental Indemnification, of even date herewith, executed by the Borrower and Guarantor for the benefit ofthe funding Lender and any lawful holder, owner or pledgee ofthe Borrower Note from time to time, as amended and restated from time to time, including, without limitation, in connection with the Assignment Event.

"Appraisal" shall mean an appraisal ofthe 4% Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by funding Lender, and (ii) satisfactory to funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by funding Lender) in all respects.

"Approved Developer Fee Payment Schedule"" has the meaning assigned to such term in the Construction funding Agreement.

"Architect" shall mean any licensed architect, space planner or design professional that Borrower may engage from time lo time, with the approval of funding Lender, to design any portion of the Improvements, including the preparation ofthe Plans and Specifications.

"Architect's Agreement" shall mean any agreement that Borrower and any Architect from time to time may execute pursuant to which Borrower engages such Architect to design any portion of the Improvements, including the preparation ofthe Plans and Specifications, as approved by funding Lender.

"Assignment Event" shall mean the date, if the conditions of the forward Loan Assignment Agreement are met, of the assignment by CIBC Bank USA, an Illinois state chartered bank, of its right, title and interest hereunder, lo the Governmental Lender Note, the Security Agreement, certain of the Borrower Loan Documents, and the Security to Chase, after which event Chase shall be recognized for all purposes hereunder as the funding Lender.

"Authorized Borrower Representative" shall mean a person at the time designated and authorized to act on behalf of the Borrower by a written certificate furnished to the Governmental Lender, the funding Lender and the Servicer and containing the specimen signature of such person and signed on behalf of the Borrower by its Borrower Controlling Entity which certificate may designate one or more alternates.

"Bankruptcy Code" shall mean the United States Bankruptcy Reform Act of 1978. as amended from time to time, or any substitute or replacement legislation

"Bankruptcy Event" shall have the meaning given to that term in the Loan Agreement, or if noi defined therein, shall mean the commencement or filing ol a voluntarv or involuntary proceeding seeking (i) liquidation, reorganization or other similar rebel under any ledcral. state or foreign bankruptcy, insolvencv. receivership or siniilai law now or herealler in ellecl or (in the appointment ol a receiver, trustee, custodian, sequestrator conservator or similar ollicial as the result ol a Bankruptcy Proceeding

"Bankruptcy Proceeding" shall have ihe meaning set forth in Section '1.1 8 hereof.

"Beneficiary Parties"" shall mean, collectively. (heTunding Lender and the Governmental Lender.

"Borrower" shall have the meaning set forth in the recitals lo this Borrower Loan Agreement.

"Borrower Controlling Entity" shall mean, ifthe Borrower is a partnership, any general partner ofthe Borrower, or ifthe Borrower is a limited liability company, the manager or managing member of the Borrower.

"Borrower Deferred Equity" shall mean the Equity Contributions to be made by the Equity-Investor to Borrower pursuant to the Operating Agreement (and subject to the conditions precedent, adjustments, and other terms and conditions contained therein) other than Borrower Initial Equity, in accordance with the following schedule:

Amount: Date:

"Borrower Initial Equity" shall mean an initial installment of the Equity Contributions made to Borrower by the Equity Investor in an amount of at least \$[ ] to be made on or prior to the Closing Date.

"Borrower Loan" shall mean the mortgage loan made by the Governmental Lender to the Borrower pursuant to this Borrower Loan Agreement, in the maximum principal amount of the Borrower Loan Amount, as evidenced by the Borrower "Note."

"Borrower Loan Agreement" shall mean this Borrower Loan Agreement.

"Borrower Loan Amount" shall mean not to exceed \$[15,862,000], the original maximum aggregate principal amount of the Borrower Note.

"Borrower Loan Documents" shall mean this Borrower Loan Agreement, the Loan Agreement, the Borrower Note, the Guaranty, the Security Instrument, the Collateral Assignments, the Agreement of Environmental Indemnification, the Contingency Draw-Down Agreement and all other documents or agreements evidencing or relating to the Borrower Loan, whether executed on the date hereof or in connection with the Assignment Event.

"Borrower Loan Payment Date" shall mean (i) the date upon which regularly scheduled Borrower Loan Payments are due pursuant to the Borrower Note, or (ii) any other date on which the Borrower Note is prepaid or paid, whether at the scheduled maturity or upon the acceleration of the maturity thereof.

"Borrower Loan Payments" shall mean the monthly loan payments payable pursuant to the Borrower Note

"Borrower Loan Proceeds" shall mean proceeds of the Borrower Loan, to be disbursed in accordance with Section 2.10 of this Borrower Loan Agreement and the Lender's funding Agreement

- I -

"Borrower Note" shall mean that certain Multifamily Mortgage Revenue Note, Series 2022, dated as of the Closing Date in the original maximum principal amount of not to exceed \$[ 15,862,000] made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Lending Lender, as it may be amended, supplemented, restated or replaced from time to time.

"Borrower Payment Obligations" shall mean all payment obligations of the Borrower under the Borrower Loan Documents, including, but not limited to, the Borrower Loan Payments and the Additional Borrower Payments.

"Business Day" shall have the meaning set forth in the Loan Agreement.

"Calendar Month" shall mean each of the twelve (12) calendar months of the year.

"CC&R's" shall mean any covenants, conditions, restrictions, maintenance agreements or reciprocal easement agreements

affecting the 4% Project or the Mortgaged Property, including, without limitation, the Regulatory Agreement, and the condominium declarations.

"Chase" shall mean JPMorgan Chase Bank, N.A., a national banking association.

"City" shall mean the City of Chicago, Illinois.

"Closing Date" shall mean \_\_\_\_\_, 2022, the date that the initial Borrower Loan Proceeds are disbursed hereunder.

"Code" shall mean the Internal Revenue Code of 1986 as in effect on the Closing Date or (except as otherwise referenced herein) as it may be amended to apply to obligations issued on the Closing Date, together with applicable proposed, temporary and final regulations promulgated, and applicable official public guidance published, under the Code.

"Collateral" shall mean all collateral described in (i) this Borrower Loan Agreement (including, without limitation, all property in which the Funding Lender is granted a security interest pursuant to any provision of this Borrower Loan Agreement), (ii) the Security Instrument, or (iii) any other Security Document, which Collateral shall include the 4% Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

"Collateral Assignments" means all pledges and assignments made by the Borrower, Developer and/or Managing Member of ownership interests therein or in the Property or any contracts, agreements, leases, subleases, licenses, permits, plans and specifications, accounts and other property, real or personal, related to the Property and/or the construction and operation of the Improvements, [including, without limitation the Cash Collateral Agreement (as defined in the Construction Funding Agreement)].

"Completion" shall have the meaning set forth in Section 5.25

"Completion Date" shall have the meaning in the Construction Funding Agreement.

"Computation Date" shall have the meaning ascribed thereto in Section LI48-3(e) of the Regulations.

"Condemnation" shall mean any action or proceeding or notice relating to any proposed or actual condemnation or other taking, or conveyance in lieu thereof of all or any part of the 4% Project, whether direct or indirect

"Construction Consultant" shall mean a third-party architect or engineer selected and retained by the Funding Lender, at the reasonable cost and expense of Borrower, to monitor the progress of construction and/or rehabilitation of the 4% Project and to inspect the Improvements to confirm compliance with this Borrower Loan Agreement.

"Construction Contract" shall mean any agreement that Borrower and any Contractor from time to time may execute pursuant to which Borrower engages the Contractor to construct any portion of the Improvements, as approved by Funding Lender.

"Construction Escrow Agreement" shall mean that certain Construction Escrow and Disbursement Agreement, dated as of \_\_\_\_\_, 2022, among the Title Company named therein, in its capacity as escrow agent, Governmental Lender, Funding Lender, certain subordinate lenders named therein, and Borrower, as such agreement may be amended, modified, supplemented and replaced from time to time.

"Construction Funding Agreement" means that certain Construction Funding Agreement of even date herewith, between the Funding Lender, as agent for the Governmental Lender, and Borrower, pursuant to which the Borrower Loan will be advanced by the Funding Lender (or the Servicer on its behalf), as agent of the Governmental Lender, to the Borrower and setting forth certain provisions relating to disbursement of the Borrower Loan during construction, insurance and other matters, as such agreement may be amended, modified, supplemented and replaced from time to time.

"Construction Schedule" shall mean a schedule of construction or rehabilitation progress with the anticipated commencement and completion dates of each phase of construction or rehabilitation, as the case may be, and the anticipated date and amounts of each Disbursement for the same, as approved by Funding Lender, as assignee of the Governmental Lender.

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

"Continuing Disclosure Agreement" shall mean that certain Continuing Disclosure Agreement of even date herewith, between the Borrower and the Funding Lender, pursuant to which the Borrower agrees to provide certain information with respect to the 4% Project, the Borrower and the Funding Loan subsequent to the Closing Date, as amended, supplemented or restated from time to time.

"Contractor" shall mean any licensed general contractor or subcontractor that Borrower may directly engage from time to time, with the approval of Funding Lender, to construct and/or rehabilitate any portion of the Improvements.

"Contractual Obligation" shall mean, for any Person, any debt or equity security issued by that Person, and any indenture, mortgage, deed of trust, contract, undertaking, instrument or agreement (written or oral) to which such Person is a party or by which it is bound, or to which it or any of its assets is subject.

"Cost Breakdown" shall mean the schedule of costs for the Improvements, as set forth in the Construction Funding Agreement and as the same may be amended from time to time with Funding Lender's consent.

"Costs of Funding" shall mean the Governmental Lender's Closing Fee and the fees, costs, expenses and other charges incurred in connection with the binding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower

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Loan Documents and Funding Loan Documents and shall include, but shall not be limited to, the following: (i) counsel fees (including but not limited to fax Counsel, counsel to the Governmental Lender, Borrower's counsel, and Funding Lender's counsel); (ii) financial advisor fees incurred in connection with the closing of the Borrower Loan and the Funding Loan; (iii) certifying and authenticating agent fees and expenses related to funding of the Funding Loan; (iv) printing costs (for any preliminary and final offering materials relating to the Funding Loan); (v) any recording fees; (vi) any additional fees charged by the Governmental Lender; and (vii) costs incurred in connection with the required public notices generally and costs of the public hearing.

"Costs of Funding Deposit" shall mean the amount required to be deposited by the Borrower with the Title Company (or a separate escrow company, if applicable) to pay Costs of Funding in connection with the closing of the Borrower Loan and the Funding Loan on the Closing Date.

"Cost of Improvements" shall mean the costs for the Improvements, as set forth on the Cost Breakdown.

"County" shall mean Cook County, Illinois.

"Date of Disbursement" shall mean the date of a Disbursement.

"Day" or "Days" shall mean calendar days unless expressly stated to be Business Days.

"Debt" shall mean, as to any Person, any of such Person's liabilities, including all indebtedness (whether recourse and nonrecourse, short term and long term, direct and contingent), all committed and unfunded liabilities, and all unfunded liabilities, that would appear upon a balance sheet of such Person prepared in accordance with GAAP.

"Default Rate" shall have the meaning given to that term in the Borrower Note.

"Determination of Taxability" shall mean (i) a determination by the Commissioner or any District Director of the Internal Revenue Service in the form of a final advice determination, (ii) a private ruling or Technical Advice Memorandum concerning the Governmental Lender Note issued by the National Office of the Internal Revenue Service in which Governmental Lender and Borrower were afforded the opportunity to participate, (iii) a determination by any court of competent jurisdiction, (iv) the enactment of legislation or (v) receipt by the Funding Lender, at the request of the Governmental Lender, the Borrower or the Funding Lender, of an opinion of Tax Counsel, in each case to the effect that the interest on the Governmental Lender Note is includable in gross income for federal income tax purposes of any holder or any former holder of all or a portion of the Governmental Lender Note, other than a holder who is a "substantial user" of the 4% Project or a "related person" (as such terms are defined in Section 147(a) of the Code) to a "substantial user"; provided, however, that no such Determination of Taxability under clause (i) or (iii) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower), the Funding Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good Faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (a) a final determination from which no appeal may be taken with respect to such determination, (b) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (c) one year from the date of initial determination.

"Developer Fee" shall mean the fees and/or compensation payable to Brinshore Development, L.L.C. pursuant to the | Development Services Agreement | dated as of \_\_ \_\_ I. [2022]. between Borrower and such developer, which fees and/or compensation shall not be paid except as otherwise permitted pursuant to Section 6.L.(b).

"Disbursement" means a disbursement of Borrower Loan Proceeds and Other Borrower Moneys pursuant to this Borrower Loan Agreement and the Construction Lending Agreement.

"Engineer" shall mean any licensed civil, structural, mechanical, electrical, soils, environmental or other engineer that Borrower may engage from time to time, with the approval of Funding Lender, to perform any engineering services with respect to any portion of the Improvements.

"Engineer's Contract" shall mean any agreement that Borrower and any Engineer from time to time may execute pursuant to which Borrower engages such Engineer to perform any engineering services with respect to any portion of the Improvements, as approved by Funding Lender.

"Equity Contributions" shall mean the equity to be contributed by, or on behalf of, the Equity Investor to Borrower, in accordance with and subject to the terms of the Operating Agreement.

"Equity Investor" shall mean NEF Assignment Corporation, an Illinois nonprofit corporation, and its successors and assigns.

"ERISA" shall mean the Employment Retirement Income Security Act of 1974, as amended from time to time, and the rules and regulations promulgated thereunder.

"ERISA Affiliate" shall mean all members of a controlled group of corporations and all trades and business (whether or not incorporated) under common control and all other entities which, together with the Borrower, are treated as a single employer under any or all of Section 414(b), (c), (m) or (o) of the Code.

"Event of Default" shall mean any Event of Default set forth in Section 8.1 of this Borrower Loan Agreement. An Event of Default shall "exist" if a Potential Default shall have occurred and be continuing beyond any applicable cure period.

"Excess Revenues" means, for any period, the net cash flow of the Borrower available for distribution to shareholders, members or partners (as the case may be) for such period, after the payment of principal and interest on all indebtedness coming due during such period (whether in installments or at maturity, by acceleration or otherwise), the payment of all fees, costs and expenses on an occasional or recurring basis in connection with the Borrower Loan or the Funding Loan, the payment of all operating,

overhead, ownership and other expenditures of the Borrower directly or indirectly in connection with the 4% Project (whether any such expenditures are current, capital or extraordinary expenditures), and the setting aside of all reserves for taxes, insurance, water and sewer charges or other similar impositions, capital expenditures, repairs and replacements and all other amounts which the Borrower is required to set aside pursuant to the Operating Agreement, the Subordinate Loan Documents or any other agreement relating to the Property, but excluding depreciation and amortization of intangibles.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Expenses of the 4% Project" shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the 4% Project, as calculated in accordance with GAAP, and shall include, without limiting the generality of the foregoing, salaries, wages, employee benefits, cost of materials and supplies, costs of routine repairs, renewals, replacements and alterations occurring in the usual course of business, costs and expenses properly designated as capital expenditures (e.g. repairs which would not be payable from amounts on deposit in a repair and replacement fund held pursuant to the Borrower loan Documents), a management fee (however calculated) not to exceed [ ] % of Gross Income, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the 4% Project

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shall not include any payments, however characterized, on account of any subordinate financing in respect of the 4% Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid, any loss or expense resulting from or related to any extraordinary non-recurring item, or any expenses paid from reserves

"Fair Market Value" shall mean the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above and as further defined in the Code) if (i) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (ii) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (iii) the investment is a United States Treasury Security State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (iv) the investment is an interest in any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

"Fitch" shall mean Fitch, Inc.

"Forward Loan Assignment Agreement" shall mean that certain Forward Loan Assignment Agreement dated as of the Closing Date by and between CIBC Bank USA and Chase.

"Funding Lender" shall mean (i) prior to the Assignment Event, CIBC Bank USA, an Illinois state-chartered bank, and (ii) after the Assignment Event, Chase, and in either case, any assignee thereof, in its capacity as lender under the Funding Loan.

"Funding Loan" means the Funding Loan in the original maximum principal amount of \$[15,862,000] made by Funding Lender to Governmental Lender under the Funding Loan Agreement, the proceeds of which are used by the Governmental Lender to make the Borrower Loan.

"Funding Loan Agreement" means the Funding Loan Agreement, of even date herewith, between the Governmental Lender and the Funding Lender, as it may from time to time be supplemented, modified or amended by one or more amendments or other instruments supplemental thereto entered into pursuant to the applicable provisions thereof.

"Funding Loan Documents" shall have the meaning given to that term in the Funding Loan Agreement.

"GAAP" shall mean generally accepted accounting principles as in effect on the date of the application thereof and consistently applied throughout the periods covered by the applicable financial statements.

"Governmental Authority" shall mean (i) any governmental municipality or political subdivision thereof, (ii) any governmental or quasi-governmental agency, authority, board, bureau, commission, department, instrumentality or public body, or (iii) any court, administrative tribunal or public utility, agency, commission, office or authority of any nature whatsoever for any governmental unit (federal, state, county, district, municipal, city or otherwise), now or hereafter in existence

- o -

"Governmental Lender" shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

"Governmental Lender Note" shall mean that certain City of Chicago Multifamily Housing Revenue Note (Chicago Lighthouse Residences 4 Project), Series 2022, dated the Closing Date in the original maximum principal amount of \$[ 15,862,000], made by the Governmental Lender and payable to Funding Lender, as it may be amended, supplemented, restated or replaced from time to time.

"Governmental Lender's Closing Fee" shall mean an amount equal to 0.125% of the original principal amount of the Governmental Lender Note payable on the Closing Date and 1.500% of the Outstanding principal amount of the Governmental Lender Note payable upon and subsequent to the occurrence of the Assignment Event. The Governmental Lender's Closing fee is payable to the Governmental Lender pursuant to Section 2.3(c)(iii) hereof.

"Gross Income" shall mean all receipts, revenues, income and other moneys received or collected by or on behalf of Borrower and derived from the ownership or operation of the 4% Project, if any, and all rights to receive the same, whether in the form of accounts, accounts receivable, contract rights or other rights, and the proceeds of such rights, and whether now owned or held or hereafter coming into existence and proceeds received upon the foreclosure sale of the 4% Project. Gross Income shall not include loan proceeds, net proceeds of insurance and condemnation awards, amounts disbursed from reserves, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with applicable law or any extraordinary or non-recurring items (including any real property tax refunds).

"Gross Proceeds" shall mean, without duplication, the aggregate of:

- a) the net amount (after payment of all expenses of originating the Funding Loan) of Funding Loan proceeds received by the Governmental Lender as a result of the origination of the Funding Loan;
- b) all amounts received by the Governmental Lender as a result of the investment of the Funding Loan proceeds;
- c) any amounts held in any fund or account to the extent that the Governmental Lender reasonably expects to use the amounts in such fund to pay any portion of the Funding Loan; and
- d) any securities or obligations pledged by the Governmental Lender or by the Borrower as security for the payment of any portion of the Funding Loan.

"Guarantors" shall mean [ ] or any other person or entity which may hereafter become a Guarantor of any of the Borrower's obligations under the Borrower Loan.

"Guaranty" shall mean, collectively the [Completion and Repayment Guaranty], of even date herewith, by the Guarantors for the benefit of the Funding Lender.

"Improvements" shall mean the multifamily residential 4% Project together with related common areas along with parking



lot facilities, to be constructed upon the Land and known or to be known as Chicago Lighthouse Residences, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property constituting a part of the 4% Project to be constructed, rehabilitated and/or installed at or on the Land in accordance with the (.. osi Breakdown and the Plans and Specifications.

"Indemnified Party" shall have the meaning set forth in Section 5.15 hereof.

- 10 -

"Installment Computation Date" shall mean any Computation Date other than the first Computation Date or the final Computation Date.

"Interest Rate" shall mean with respect to the Borrower Note the rate of interest accruing on the Borrower Note.

"Land" means the real property described on Exhibit A to the Security Instrument.

"Late Charge" shall mean the amount due and payable as a late charge on overdue payments under the Borrower Note, as provided in [Section 1\ of the Borrower Note and Section 2.5 hereof.

"Legal Action" shall mean an action, suit, investigation, inquiry, proceeding or arbitration at law or in equity or before or by any foreign or domestic court, arbitrator, or other Governmental Authority.

"Legal Requirements" shall mean statutes, laws, rules, orders, regulations, ordinances, judgments, decrees and injunctions of Governmental Authorities affecting all or part of the 4% Project or any property (including the 4% Project) or the construction, rehabilitation, use, alteration or operation thereof, whether now or hereafter enacted and in force, and all permits, licenses and authorizations and regulations relating thereto, the CC&R's and all other covenants, agreements, restrictions and encumbrances contained in any instrument, either of record or known to the Borrower, at any time in force affecting all or part of the 4% Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the 4% Project, or (ii) in any way limit the use and enjoyment thereof.

"Liabilities" shall have the meaning set forth in Section 5.15 hereof.

"Licenses" shall have the meaning set forth in Section 4.1.22 hereof.

"Lien" shall mean any interest, or claim thereof, in the 4% Project securing an obligation owed to, or a claim by, any Person other than the owner of the 4% Project, whether such interest is based on common law, statute or contract, including the lien or security interest arising from a deed of trust, mortgage, deed to secure debt, assignment, encumbrance, pledge, security agreement, conditional sale or trust receipt or a lease, consignment or bailment for security purposes. The term "Lien" shall include reservations, exceptions, encroachments, easements, rights of way, covenants, conditions, restrictions, leases and other title exceptions and encumbrances affecting the 4% Project.

"Loan Agreement" means (i) prior to the Assignment Event, the Construction Funding Agreement, and (ii) after the Assignment Event, the Term Loan Agreement.

"Management Agreement" shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the 4% Project, as same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

"Manager" shall mean the management company to be employed by the Borrower and approved by the Funding Lender in accordance with the terms of the Security Instrument, this Borrower Loan Agreement or any of the other Borrower Loan Documents.

"Managing Member" shall mean The Lighthouse Residences I Manager, an Illinois limited liability company, its successors

and assigns

"Material Adverse Change" means a set of circumstances or events which (a) has or could reasonably be expected to have any material adverse effect whatsoever upon the validity or enforceability

11 -

of this Borrower Loan Agreement or any other Borrower Loan Document: (f) is or could reasonably be expected to be material and adverse to the business, properties, assets, financial condition, results of operations or prospects of the Borrower, Managing Member, any Guarantor or the Mortgaged Property; (e) could reasonably be expected to impair materially the ability of the Borrower, Managing Member or any Guarantor to duly and punctually pay or perform any of their respective obligations under any of the Borrower Loan Documents to which they are a party; or (d) impairs materially or could reasonably be expected to impair materially any rights of or benefits available to the Governmental Lender under this Borrower Loan Agreement or any other Borrower Loan Document, including, without limitation, the ability of Governmental Lender or, upon the assignment of the Borrower Loan to it, of the funding Lender, to the extent permitted, to enforce its legal remedies pursuant to this Borrower Loan Agreement or any other Borrower Loan Document.

"Moody's" shall mean Moody's Investors Service, Inc., or its successor.

"Mortgaged Property" shall have the meaning given to that term in the Security Instrument, [confirm cross-reference once permanent mortgage is drafted]

"Net Operating Income" shall mean: (i) the Gross Income, less (ii) the Expenses of the 4% Project.

"Nonpurpose Investment" shall mean any investment property (as defined in Section 148(b) of the Code) that is acquired with the Gross Proceeds of the Funding Loan and which is not acquired to carry out the governmental purpose of the Funding Loan.

"Ongoing Governmental Lender Fee" shall mean the annual fee of the Governmental Lender in the amount of \$            prior to the occurrence of the Assignment Event and \$            following the occurrence of the Assignment Event. The Ongoing Governmental Lender Fee is payable annually in advance by the Borrower to the Governmental Lender, commencing on the Closing Date and, thereafter, on or before each anniversary of the Closing Date, so long as any portion of the Funding Loan is outstanding.

"Other Borrower Monies" shall mean monies of Borrower other than Borrower Loan Proceeds and includes, but is not limited to, the Subordinate Debt, Net Operating Income, the Borrower's Equity Contributions and any other funds contributed by or loaned to the Borrower for application to the Costs of the Improvements or other costs associated with the 4% Project.

"Other Charges" shall mean all maintenance charges, impositions other than Taxes, and any other charges, including vault charges and license fees for the use of vaults, chutes and similar areas adjoining the 4% Project, now or hereafter levied or assessed or imposed against the 4% Project or any part thereof.

"Operating Agreement" shall mean that certain Operating Agreement of the Borrower, dated as

of           , 2022, as the same may be amended, restated or modified in accordance with its terms.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act (USA PATRIOT ACT) of 2001, as the same may be amended from time to time, and corresponding provisions of future laws.

"Patriot Act Offense" shall have the meaning set forth in Section 4.1.4N hereof

"Payment Obligations" shall mean all obligations of Borrower for the payment of money to the Governmental Lender or to

any other person under the Borrower Note, this Borrower Loan Agreement or under any other Borrower Loan Document

- 12 -

"Permitted Encumbrances" shall have the meaning given to that term in the Security Instrument. [confirm cross reference once permanent mortgage is drafted]

"Permitted Lease" shall mean a lease and occupancy agreement pursuant to the form approved by". Funding Lender, to a residential tenant in compliance with the Legal Requirements, providing for an initial term of not less than six (6) months nor more than two (2) years.

"Person" shall mean a natural person, a partnership, a joint venture, an unincorporated association, a limited liability company, a corporation, a trust, any other legal entity, or any Governmental Authority.

"Plan" shall mean (i) an employee benefit or other plan established or maintained by the Borrower or any ERISA Affiliate or to which the Borrower or any ERISA Affiliate makes or is obligated to make contributions and (ii) which is covered by Title IV of ERISA or Section 302 of ERISA or Section 412 of the Code.

"Plans and Specifications" shall mean the plans and specifications for the construction and/or rehabilitation, as the case may be, of the 4% Project approved by Funding Lender.

"Potential Default" shall mean the occurrence of an event which, under this Borrower Loan Agreement or any other Borrower Loan Document, would, but for the giving of notice and/or passage of time, be an Event of Default.

"Prepayment Premium" shall mean any premium payable by the Borrower pursuant to the Borrower Loan Documents in connection with a prepayment of a Borrower Note (including any prepayment premium as set forth in such Borrower Note).

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"4% Project" shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

"4% Project Agreements and Licenses" shall mean any and all Construction Contracts, Engineer's Contracts and Management Agreements, and all other rights, licenses, permits, franchises, authorizations, approvals and agreements relating to use, occupancy, operation or leasing of the 4% Project or the Mortgaged Property.

"Provided Information" shall have the meaning set forth in Section 9.1.1 (a) hereof

"Qualified 4% Project Costs" shall mean costs paid with respect to the 4% Project that meet each of the following requirements: (i) the costs are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with Section 1.103-8(a)(1) of the Regulations, provided, however, that only such portion of the interest accrued during rehabilitation or construction of the 4% Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified 4% Project Cost as bears the same ratio to all such interest as the Qualified 4% Project Costs bear to all costs of the acquisition and construction or rehabilitation of the 4% Project; and provided further that interest accruing after the date of completion of the 4% Project shall not be a Qualified 4% Project Cost; and provided still further that if any portion of the 4% Project is being constructed or rehabilitated by an Affiliate (whether as general contractor or a subcontractor). Qualified 4% Project Costs shall include only (A) the actual Borrower out of pocket costs incurred by such Affiliate in constructing or rehabilitating the 4% Project (or any portion thereof). (IV) any reasonable fees for supervisory services actually rendered by such Affiliate, and (C) any overhead expenses incurred by such Affiliate which are directly attributable to the work performed on the 4% Project, and shall not include, for example, intercompany profits resulting from members of an "affiliated group" (within the meaning of

- 13 -

Section 1 504 of the Code) participating in the rehabilitation or construction of the 4% Project or payments received by such affiliate due to early completion of the 4% Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental 4% Project or 4Mi Projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to December 16, 2020 being the date on which the Governmental Lender first declared its "official intent" to reimburse costs paid with respect to the 4% Project (within the meaning of Section 1.150-2 of the Regulations) or the date of issue of the funding Loan, and (iv) if the costs of the acquisition and construction or rehabilitation of the 4% Project were previously paid and are to be reimbursed with proceeds of the funding Loan such costs were (A) "preliminary expenditures" (within the meaning of Section 1.150-2(0)(2) of the Regulations) with respect to the 4% Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the 4% Project that do not exceed twenty percent (20%) of the issue price of the Governmental Lender Note (as defined in Section 1.148-1 of the Regulations), or (B) were capital expenditures with respect to the 4% Project that are reimbursed no later than 18 months after the later of the date the expenditure was paid or the date the 4% Project is placed in service (but no later than three years after the expenditures is paid); provided, however, that (w) Costs of funding shall not be deemed to be Qualified 4% Project Costs; (x) fees, charges or profits (including, without limitation, developer fees) payable to the Borrower or a "related person" (within the meaning of Section 144(a)(3) of the Code) shall not be deemed to be Qualified 4% Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between Qualified 4% Project Costs and other costs and expenses to be paid from the proceeds of the funding Loan; and (z) letter of credit fees and municipal bond insurance premiums which do not represent a transfer of credit risk (including, without limitation, letter of credit fees payable to a "related person" to the Borrower) shall not constitute Qualified 4% Project Costs.

"Rebate Amount" shall mean, for any given period, the amount determined by the Rebate Analyst as required to be rebated or paid as a yield reduction payment to the United States of America with respect to the funding Loan.

"Rebate Analyst" shall mean the rebate analyst selected by the Borrower prior to the Closing Date and acceptable to the Governmental Lender and the funding Lender. The initial Rebate Analyst shall be

"Rebate Analyst's Fee" shall mean the fee of the Rebate Analyst. The Rebate Analyst's fee is payable by the Borrower to the Rebate Analyst.

"Rebate Fund" shall mean the Rebate fund created pursuant to Section 5.35 hereof.

"Regulations" shall mean with respect to the Code, the relevant U.S. Treasury regulations and proposed regulations thereunder or any relevant successor provision to such regulations and proposed regulations.

"Regulatory Agreement" means the Land Use Regulatory Agreement dated as of \_\_\_\_\_, 2022 between the City and the Borrower, as supplemented and amended

"Related Documents" shall mean, collectively, any agreement or other document (other than the Borrower Loan Documents) granting a security interest (including each agreement that is the subject of any Borrower Loan Document), the Operating Agreement, and any other agreement, instrument or other document (not constituting a Borrower Loan Document) relating to or executed in connection with the transactions contemplated by this Borrower Loan Agreement.

- 14 -

"Retainage" shall mean, for each Construction Contract, the lesser of (a) ten percent (10%) of all amounts required to be paid to a Contractor under the Construction Contract and (b) the actual retainage required under such Construction Contract, which shall be released upon satisfaction of the conditions set forth in [Section 3.13] of the Construction Funding Agreement.

"Secondary Market Disclosure Document" shall have the meaning set forth in Section 9.1.2

hereof.

"Secondary Market Transaction" shall have the meaning set forth in Section 9.1.1 hereof. "Securities" shall have the meaning set forth in Section 9.1.1 hereof. "Securities Act" shall mean the Securities Act of 1933, as amended.

"Security" shall have the meaning set forth in Article IV of the Funding Loan Agreement.

"Security Documents" shall mean the Security Instrument, the Guaranty, the Collateral Assignments, this Borrower Loan Agreement, the Environmental Agreement, and such other security instruments that Funding Lender may reasonably request from time to time.

"Security Instrument" shall have the meaning set forth in the recitals to this Borrower Loan Agreement.

"Servicer" shall mean the Servicer, if any, contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be CIBC Bank USA.

"Servicing Agreement" shall mean any servicing agreement or master servicing agreement, among the Servicer and the Funding Lender relating to the servicing of the Borrower Loan and any amendments thereto or any replacement thereof.

"Standard & Poor's" or "S&P" shall mean Standard & Poor's Ratings Services, a Standard & Poor's Financial Services LIX business division, or its successors.

"State" shall mean the State in which the 4% Project is located.

"Subordinate Debt" shall mean the subordinate loans to Borrower (i) in the amount of \$7,900,000 being made by the City of Chicago, from its Multi-Family Program Funds, as a Subordinate Lender as of the Closing Date pursuant to the Subordinate Loan Documents, and (ii) in the amount of \$2,970,638 and \$2,162,500, respectively, being made by The Chicago Lighthouse for people who are Blind and Visually Impaired, an Illinois not-for-profit corporation, and/or its affiliate, as a Subordinate Lender as of the Closing Date pursuant to the Subordinate Loan Documents for each such loan.

"Subordinate Lender" shall mean the City of Chicago and The Chicago Lighthouse for the Blind and Visually Impaired.

"Subordinate Loan Documents" shall mean, collectively, all instruments, agreements and other documents evidencing, securing or otherwise relating to the Subordinate Debt or executed and delivered by Borrower and/or Subordinate Lender in connection with the Subordinate Debt.

"Tax Counsel" shall have the meaning set forth in the funding loan Agreement

"Taxes" shall mean all real estate and personal property taxes, assessments, water rates or sewer rents, now or hereafter levied or assessed or imposed against all or part of the 4% Project.

"Term" shall mean the term of this Borrower Loan Agreement pursuant to Section 10.14.

"Term Loan Agreement" shall mean that certain [Term Loan Agreement] to be dated as of the Assignment Event by and between the Borrower and Chase.

"Title Company"<sup>7</sup> means

"Title Insurance Policy" shall mean the mortgagee title insurance policy, in form acceptable to the Funding Lender, issued with respect to the Mortgaged Property and insuring the lien of the Security Instrument.

"Transfer" shall have the meaning given to that term in the Security Instrument or the Loan Agreement, [conform cross-reference once the term loan agreement is drafted]

"UCC" shall mean the Uniform Commercial Code as in effect in the State.

"Unit" shall mean a residential apartment unit within the Improvements.

"Written Consent" and "Written Notice" shall mean a written consent or notice signed by an Authorized Borrower Representative or an authorized representative of the Governmental Lender or the Funding Lender, as appropriate.

## ARTICLE II GENERAL

Section 2.1. Origination of Borrower Loan. In order to provide funds for the purposes provided herein, the Governmental Lender agrees that it will, in accordance with the Ordinance, enter into the Funding Loan Agreement and accept the Funding Loan from the Funding Lender. The proceeds of the Funding Loan shall be advanced by the Funding Lender to the Borrower in accordance with the terms of the Construction Funding Agreement and this Borrower Loan Agreement.

The Governmental Lender hereby appoints the Funding Lender as its agent with full authority and power to act on its behalf to disburse the Borrower Loan for the account of the Governmental Lender, to take certain actions and exercise certain remedies with respect to the Borrower Loan, and for the other purposes set forth in this Borrower Loan Agreement and to do all other acts necessary or incidental to the performance and execution thereof. This appointment is coupled with an interest and is irrevocable except as expressly set forth herein. Accordingly, references to the rights of the Funding Lender to take actions under this Borrower Loan Agreement shall refer to Funding Lender in its role as agent of the Governmental Lender. The Funding Lender may designate Servicer to fulfill the rights and responsibilities granted by Governmental Lender to Funding Lender pursuant to this Section 2.1: provided, however, that such designation shall not release or absolve Funding Lender from ultimate responsibility for fulfillment of such rights or responsibilities.

### Section 2.2. Security for the Funding Loan.

(a) As security for the funding loan, the Governmental Lender has pledged and assigned the Security to the Funding Lender under and pursuant to the Funding Loan Agreement. All revenues and assets pledged and assigned thereby shall immediately be subject to the lien of such pledge without any

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physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be endorsed by the Governmental Lender and delivered to the funding lender. The Borrower hereby acknowledges and consents to such assignment to the funding lender.

b) With respect to the Unassigned Rights, subject to the limitations set forth in this Section 2.2, the Governmental Lender may:

i) Tax Covenants. Seek specific performance of, and enforce, the tax covenants of the funding Loan Agreement, and the funding Loan Documents, injunctive relief against acts which may be in violation of any of the tax covenants, and enforce the Borrower's obligation to pay amounts for credit to the Rebate fund;

ii) Reserved Rights, take whatever action at law or in equity which appears necessary or desirable to enforce the other Unassigned Rights, provided, however, that the Governmental Lender or any person under its control may only

enforce any right it may have for monetary damages against Excess Revenues, if any, of the Borrower, unless funding Lender otherwise specifically consents in writing to the enforcement against other funds of the Borrower.

c) In no event shall the Governmental Lender, except at the express written direction of the funding Lender:

i) prosecute its action to a lien on the 4% Project; or

ii) take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Borrower Loan or of causing the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future; or

iii) interfere with the exercise by funding Lender or Servicer of any of their rights under the Borrower Loan Documents upon the occurrence of an event of default by the Borrower under the Borrower Loan Documents or the funding Loan Documents; or

iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Borrower Loan or the funding Loan.

d) The Governmental Lender shall provide written notice to the funding Lender and the Servicer immediately upon taking any action at law or in equity to exercise any remedy or direct any proceeding under the Borrower Loan Documents or the funding Loan Documents.

#### Section 2.3. Loan; Borrower Note; Conditions to Closing.

(a) The funding Loan shall be funded by the funding Lender directly to the Borrower or through the escrow established by the Construction Escrow Agreement, subject to the conditions set forth in the Construction funding Agreement, in one or more installments not to exceed the Borrower Loan Amount in accordance with the disbursement procedures set forth in the Construction funding Agreement. Upon funding of each installment of the funding Loan, the Governmental Lender shall be deemed to have made the Borrower Loan to the Borrower in a like principal amount. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note. The proceeds of the Borrower Loan shall be used by the Borrower to pay costs of the acquisition, construction.

-17-

rehabilitation, development, equipping and/or operation of the 4% Project. The Borrower hereby accepts the Borrower Loan and acknowledges that the Governmental Lender shall cause the funding Lender to fund the Borrower Loan in the manner set forth herein and in the Construction funding Agreement and the funding Loan Agreement. The Governmental Lender acknowledges that the Borrower Loan shall be funded by the funding Lender for the account of the Governmental Lender.

b) The Borrower hereby accepts the Borrower Loan. As evidence of its obligation to repay the Borrower Loan, simultaneously with the delivery of this Borrower Loan Agreement to the Governmental Lender, the Borrower hereby agrees to execute and deliver the Borrower Note. The Borrower Loan shall mature and be payable at the times and in the amounts required under the terms hereof and of the Borrower Note.

c) Closing of the Borrower Loan on the Closing Date shall be conditioned upon satisfaction or waiver by the Governmental Lender and the funding Lender, in their sole discretion of each of the conditions precedent to closing set forth in the funding Loan Agreement and this Borrower Loan Agreement, including but not limited to the following:

i) evidence of proper recordation of the Security Instrument, an assignment of the Security Instrument from the Governmental Lender to the funding Lender, the Regulatory Agreement, and each of the other documents specified for

recording in instructions delivered to the Title Company by counsel to the funding Lender (or that such documents have been delivered to an authorized agent of the Title Company for recordation under binding recording instructions from funding Lender's counsel or such other counsel as may be acceptable to the funding Lender); and

ii) delivery into escrow with the Title Company (or separate escrow company, if applicable) of all amounts required to be paid in connection with the origination of the Borrower Loan and the Funding Loan and any underlying real estate transfers or transactions, including the Costs of funding Deposit and the Borrower Initial Equity, all as specified in written instructions delivered to the Title Company by counsel to the funding Lender (or such other counsel as may be acceptable to the funding Lender); and

iii) payment of all fees payable in connection with the closing of the Borrower Loan, including the Governmental Lender's Closing fee and the initial fees and expenses of the funding Lender.

#### **Section 2.4. Borrower Loan Payments.**

(a) The Borrower shall make Borrower Loan Payments in accordance with the Borrower Note. Each Borrower Loan Payment made by the Borrower shall be made in funds immediately available to the funding Lender or the Servicer by 2:00 p.m., Chicago time, on the Borrower Loan Payment Date. Each such payment shall be made to the funding Lender or the Servicer by deposit to such account as the funding Lender or Servicer, as applicable, may designate by Written Notice to the Borrower. Whenever any Borrower Loan Payment shall be slated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amount, and at the times necessary to make all payments due and payable on the funding loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set-offs or counterclaims.

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(IV) Unless there is no Servicer, payments of principal and interest on the Borrower Note shall be paid to the Servicer. If there is no Servicer, payments of principal and interest on the Borrower Note shall be paid directly to Funding Lender.

#### **Section 2.5. Additional Borrower Payments.**

a) The Borrower shall pay on demand the following amounts:

i) to the Servicer or the Funding Lender, the Rebate Amount then due, if any, to be deposited in the Rebate Fund as specified in Section 5.35 hereof and the Rebate Analyst's Fee and any other costs incurred to calculate such Rebate Amount (to the extent such costs are not included in the Borrower Loan Payment);

ii) to the Governmental Lender, the Ongoing Governmental Lender Fee and all fees, charges, costs, advances, indemnities and expenses, including agent and counsel fees, of the Governmental Lender incurred under the Borrower Loan Documents or the Funding Loan Documents, and any taxes and assessments with respect to the 4% Project, as and when the same become due;

iii) [Reserved];

iv) all Costs of Funding and fees, charges and expenses, including agent and counsel fees incurred in connection with the origination of the Borrower Loan and the Funding Loan, as and when the same become due;

v) to the Funding Lender, all charges, costs, advances, indemnities and expenses, including reasonable agent



and counsel fees, of the Funding Lender incurred by the Funding Lender at any time in connection with the Borrower Loan, the Funding Loan or the 4% Project, including, without limitation, reasonable counsel fees and expenses incurred in connection with the interpretation, performance, or amendment and all counsel fees and expenses relating to the enforcement of the Borrower Loan Documents or the Funding Loan Documents or any other documents relating to the 4% Project or the Borrower Loan or in connection with questions or other matters arising under such documents or in connection with any federal or state tax audit; and

vi) any Late Charge due and payable under the terms of the Borrower Note and Section 2.6 hereof; provided, however, that all payments made pursuant to this subsection (vi) shall be made to the Servicer, and if there is no Servicer, such payments shall be made to the Funding Lender.

b) The Borrower shall pay to the party entitled thereto as expressly set forth in this Borrower Loan Agreement or the other Borrower Loan Documents or Funding Loan Documents:

i) all expenses incurred in connection with the enforcement of any rights under this Borrower Loan Agreement or any other Borrower Loan Document, the Regulatory Agreement, or any Funding Loan Document by the Governmental Lender, Funding Lender or the Servicer:

ii) all other payments of whatever nature that the Borrower has agreed to pay or assume under the provisions of this Borrower Loan Agreement or any other Borrower Loan Document or Funding Loan Document: and

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(iii) all expenses, costs and fees relating to inspections of the 4% Project required by the Governmental Lender, the Funding Lender, the Servicer or the Construction Consultant, in accordance with the Borrower Loan Documents or the Funding Loan Documents or to reimburse such parties for such expenses, costs and fees.

Section 2.6. Overdue Payments; Payments in Default. If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Funding Lender, a Late Charge in the amount and to the extent set forth in the Borrower Note, if any.

Section 2.7. Calculation of Interest Payments and Deposits to Real Estate Related Reserve Funds. The Borrower acknowledges as follows: (a) calculation of all interest payments shall be made by the Funding Lender; and (b) deposits with respect to the Taxes and Other Charges shall be calculated by the Servicer or if there is no Servicer, the Funding Lender in accordance with the Security Instrument or the other Borrower Loan Documents.

Section 2.8. Grant of Security Interest; Application of Funds. To the extent not inconsistent with the Security Instrument and as security for payment of the Borrower Payment Obligations and the performance by the Borrower of all other terms, conditions and provisions of the Borrower Loan Documents, the Borrower hereby pledges and assigns to the Funding Lender, and grants to the Funding Lender, a security interest in, all the Borrower's right, title and interest in and to all payments to or moneys held in the funds and accounts created and held by the Funding Lender or the Servicer for the 4% Project. This Borrower Loan Agreement is, among other things, intended by the parties to be a security agreement for purposes of the UCC. Upon the occurrence and during the continuance of an Event of Default hereunder, the Funding Lender and the Servicer shall apply or cause to be applied any sums held by the Funding Lender and the Servicer with respect to the 4% Project in any manner and in any order determined by Funding Lender, in Funding Lender's sole and absolute discretion.

Section 2.9. Marshalling; Payments Set Aside. The Governmental Lender and Funding Lender shall be under no obligation to marshal any assets in favor of Borrower or any other Person or against or in payment, of any or all of the proceeds. To the extent that Borrower makes a payment or payments or transfers any assets to the Governmental Lender or Funding Lender, or the Governmental Lender or Funding Lender enforces its liens, and such payment or payments or transfers, or the proceeds of such enforcement or any

part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party in connection with any insolvency proceeding, or otherwise, then: (i) any and all obligations owed to the Governmental Lender or Funding Lender and any and all remedies available to the Governmental Lender or Funding Lender under the terms of the Borrower Loan Documents and the Funding Loan Documents or in law or equity against Borrower, Managing Member or any Guarantor and/or any of their properties shall be automatically revived and reinstated to the extent (and only to the extent) of any recovery permitted under clause (ii) below; and (ii) the Governmental Lender and Funding Lender shall be entitled to recover (and shall be entitled to file a proof of claim to obtain such recovery in any applicable bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding) either: (x) the amount of payments or the value of the transfer or (y) if the transfer has been undone and the assets returned in whole or in part, the value of the consideration paid to or received by Borrower for the initial asset transfer, plus in each case any deferred interest from the date of the disgorgement to the date of distribution to the Governmental Lender or Funding Lender in any bankruptcy, insolvency, receivership or fraudulent conveyance or fraudulent transfer proceeding, and any costs and expenses due and owing, including, without limitation, any reasonable attorneys' fees incurred by the Governmental Lender or Funding Lender in connection with the exercise by the (Governmental Lender or Funding Lender) of its rights under this Section 2.10.

- 2d -

Section 2.10. Borrower Loan Disbursements. The Borrower Loan shall be disbursed by the Funding Lender, as agent for the Governmental Lender, pursuant to the Loan Agreement.

## ARTICLE 111

| RESERVE I |

## ARTICLE IV REPRESENTATIONS AND WARRANTIES

Section 4.1. Borrower Representations. To induce the Governmental Lender to execute this Borrower Loan Agreement and to induce Funding Lender to make Disbursements, Borrower represents and warrants for the benefit of the Governmental Lender, Funding Lender and the Servicer, that the representations and warranties set forth in this Section 4.1 are complete and accurate as of the Closing Date and will be complete and accurate, and deemed made, as of the date of each Disbursement, and as of the Maturity Date in accordance with the terms and conditions of the Borrower Note. Subject to Section 4.2 hereof, the representations, warranties and agreements set forth in this Section 4.1 shall survive the making of the Borrower Loan, and shall remain in effect and true and correct in all material respects until the Borrower Loan and all other Borrower Payment Obligations have been repaid in full.

Section 4.1.1 Organization; Special Purpose. The Borrower is in good standing under the laws of the State (and under the laws of the state in which the Borrower was formed if the Borrower was not formed under the laws of the State), has full legal right, power and authority to enter into the Borrower Loan Documents to which it is a party, and to carry out and consummate all transactions contemplated by the Borrower Loan Documents to which it is a party, and by proper corporate limited partnership or limited liability company action, as appropriate has duly authorized the execution, delivery and performance of the Borrower Loan Documents to which it is a party. The Person(s) of the Borrower executing the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are fully authorized to execute the same. The Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party have been duly authorized, executed and delivered by the Borrower. The sole business of the Borrower is the ownership, management and operation of the 4% Project.

Section 4.1.2 Proceedings; Enforceability. Assuming due execution and delivery by the other parties thereto, the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party will constitute the legal, valid and binding agreements of the Borrower enforceable against the Borrower in accordance with their terms; except in each case as enforcement may be limited by bankruptcy, insolvency or other laws affecting the enforcement of creditors' rights generally, by the application of equitable principles regardless of whether enforcement is sought in a proceeding at law or in equity and by public policy.

Section 4.1.3 No Conflicts. The execution and delivery of the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party, the consummation of the transactions herein and therein contemplated and the fulfillment of or compliance with the terms and conditions hereof and thereof, will not conflict with or constitute a violation or breach of or default (with due notice or the passage of time or both) under the Operating Agreement of the Borrower, or to the best knowledge of the Borrower and with respect to the Borrower, any applicable law or administrative rule or regulation, or any applicable court or administrative decree or order, or any mortgage, deed of trust, loan agreement, lease, contract or other agreement or instrument to which the Borrower is a party or by which it or its properties are otherwise subject or bound, or result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever other than any lien created by the Borrower Loan Documents, including but not limited to the lien of the Security Instrument) upon any of the property or assets of the Borrower, without any violation.

- 21 -

breach, default, lien, charge or encumbrance might have consequences: (that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the funding Loan Documents, or the financial condition, assets, properties or operations of the Borrower)

Section 4.1.4 Litigation; Adverse facts. There is no Legal Action, nor is there a basis known to Borrower for any Legal Action, before or by any court or federal, state, municipal or other governmental authority, pending, or to the knowledge of the Borrower, after reasonable investigation, threatened, against or affecting the Borrower, the Managing Member or any Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower, Managing Member, or such Guarantor or their respective interests, would have a material adverse effect upon the consummation of the transactions contemplated by, or the validity of, the Borrower Loan Documents or the funding Loan Documents, upon the ability of each of Borrower, Managing Member and Guarantors to perform their respective obligations under the Borrower Loan Documents, the funding Loan Documents and the Related Documents to which it is a party, or upon the financial condition, assets (including the 4% Project), properties or operations of the Borrower, the Managing Member and Guarantors, none of the Borrower, Managing Member or any Guarantor is in default (and no event has occurred and is continuing which with the giving of notice or the passage of time or both could constitute a default) with respect to any order or decree of any court or any order, regulation or demand of any federal, state, municipal or other governmental authority, which default might have consequences that would materially and adversely affect the consummation of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the ability of each of Borrower, Managing Member and each Guarantor to perform their respective obligations under the Borrower Loan Documents, the funding Loan Documents and the Related Documents to which it is a party, or the financial condition, assets, properties or operations of the Borrower, Managing Member or any Guarantor. None of Borrower, Managing Member or any Guarantor are (a) in violation of any applicable law, which violation materially and adversely affects or may materially and adversely affect the business, operations, assets (including the 4% Project), condition (financial or otherwise) or prospects of Borrower, Managing Member or such Guarantor, as applicable; (b) subject to, or in default with respect to, any other Legal Requirement that would have a material adverse effect on the business, operations, assets (including the 4% Project), condition (financial or otherwise) or prospects of Borrower, Managing Member or any Guarantor, as applicable; or (c) in default with respect to any agreement to which Borrower, Managing Member or any Guarantor, as applicable, is a party or by which it is bound, which default would have a material adverse effect on the business, operations, assets (including the 4% Project), condition (financial or otherwise) or prospects of Borrower, Managing Member or Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower, Managing Member or any Guarantor questioning the validity or the enforceability of this Borrower Loan Agreement or any of the other Borrower Loan Documents or the funding Loan Documents or of any of the Related Documents. All tax returns (federal, state and local) required to be filed by or on behalf of the Borrower have been filed, and all taxes shown thereon to be due, including interest and penalties, except such, if any, as are being actively contested by the Borrower in good faith, have been paid or adequate reserves have been made for the payment thereof which reserves, if any, are reflected in the audited financial statements described therein. The Borrower enjoys the peaceful and undisturbed possession of all of the premises upon which it is operating its facilities.

Section 4.1.5 Agreements; Consents; Approvals. Except as contemplated by the Borrower Loan Documents and the funding Loan Documents, the Borrower is not a party to any agreement or instrument or subject to any restriction that would materially adversely affect the Borrower, the 4% Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Liabilities. The Borrower is not in default in any material respect in the performance, observance

or fulfillment of any of the obligations, covenants or conditions contained in any Permitted Encumbrance or any other agreement or instrument to which it is a part or by which it or the 4% Project is bound.

No consent or approval of any trustee or holder of any indebtedness of the Borrower, and to the best knowledge of the Borrower and only with respect to the Borrower, no consent, permission, authorization, order or license of, or filing or registration with, any governmental authority (except no representation is made with respect to any state securities or "blue sky" laws) is necessary in connection with the execution and delivery of the Borrower Loan Documents or the Funding Loan Documents, or the consummation of any transaction herein or therein contemplated, or the fulfillment of or compliance with the terms and conditions hereof or thereof, except as have been obtained or made and as are in full force and effect.

**Section 4.1.6 Title.** The Borrower shall have marketable title to the 4% Project, free and clear of all Liens except the Permitted Encumbrances. The Security Instrument, when properly recorded in the appropriate records, together with any UCC financing statements required to be filed in connection therewith, will create (i) a valid lien on the fee (or leasehold, if applicable) interest in the 4% Project and (ii) security interests in and to, and collateral assignments of, all personalty included in the 4% Project (including the Leases), all in accordance with the terms thereof, in each case subject only to any applicable Permitted Encumbrances. To the Borrower's knowledge, there are no delinquent real property taxes or assessments, including water and sewer charges, with respect to the 4% Project, nor are there any claims for payment for work, labor or materials affecting the 4% Project which are or may become a Lien prior to, or of equal priority with, the Liens created by the Borrower Loan Documents and the Funding Loan Documents.

**Section 4.1.7 Survey.** To the best knowledge of the Borrower, the survey for the 4% Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the 4% Project or the title thereto.

**Section 4.1.8 No Bankruptcy Filing.** The Borrower is not contemplating either the filing of a petition by it under any state or federal bankruptcy or insolvency law or the liquidation of all or a major portion of its property (a "Bankruptcy Proceeding"), and the Borrower has no knowledge of any Person contemplating the filing of any such petition against it. As of the Closing Date, the Borrower has the ability to pay its debts as they become due.

**Section 4.1.9 Full and Accurate Disclosure.** No statement of fact made by the Borrower in any Borrower Loan Document, or any Funding Loan Document contains any untrue statement of a material fact or omits to state any material fact necessary to make statements contained therein in light of the circumstances in which they were made, not misleading. There is no material fact or circumstance presently known to the Borrower that has not been disclosed to the Governmental Lender and the Funding Lender which materially and adversely affects the 4% Project or the business, operations or financial condition or business prospects of the Borrower or the Borrower's ability to meet its obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and Funding Loan Documents to which it is a party in a timely manner.

**Section 4.1.10 No Plan Assets.** The Borrower is not an "employee benefit plan." as defined in Section 3(3) of ERISA, subject to Title 1 of ERISA, and none of the assets of the Borrower constitutes or will constitute "plan assets" of one or more such plans within the meaning of 29 C.F.R. Section 2510.3-101.

**Section 4.1.11 Compliance.** The Borrower, the 4% Project and the use thereof will comply, to the extent required, in all material respects with all applicable Legal Requirements. The Borrower is not in default or violation of any order, writ, injunction, decree or demand of any governmental authority, the violation of which would materially adversely affect the financial condition or business prospects or the business of the Borrower. There has not been committed by the Borrower or any Affiliate of Borrower involved with the operation or use of the 4% Project any act of omission allording any Governmental

Authority the right of forfeiture as against the 4% Project or any part thereof or any moneys paid in performance of the Borrower's obligations under any Borrower Loan Document or any Funding Loan Documents.

Section 4.1.12 Contracts. All service, maintenance or repair contracts affecting the 4% Project have been entered into at arm's length (except for such contracts between the Borrower and its Affiliates or the affiliates of the Borrower Controlling Entity of the Borrower) in the ordinary course of the Borrower's business and provide for the payment of fees in amounts and upon terms comparable to existing market rates.

Section 4.1.13 Financial Information. All financial data, including any statements of cash flow and income and operating expense, that have been delivered to the Governmental Lender or the Funding Lender in respect of the 4% Project by or on behalf of the Borrower, to the best knowledge of the Borrower, (i) are accurate and complete in all material respects, (ii) accurately represent the financial condition of the 4% Project as of the date of such reports, and (iii) to the extent prepared by an independent certified public accounting firm, have been prepared in accordance with GAAP consistently applied throughout the periods covered, except as disclosed therein. Other than pursuant to or permitted by the Borrower Loan Documents or the Funding Loan Documents or the Borrower organizational documents, the Borrower has no contingent liabilities, unusual forward or long-term commitments or unrealized or anticipated losses from any unfavorable commitments. Since the date of such financial statements, there has been no materially adverse change in the financial condition, operations or business of the Borrower from that set forth in said financial statements.

Section 4.1.14 Condemnation. No Condemnation or other proceeding has been commenced or, to the Borrower's knowledge, is contemplated, threatened or pending with respect to all or part of the 4% Project or for the relocation of roadways providing access to the 4% Project.

Section 4.1.15 Federal Reserve Regulations. No part of the proceeds of the Borrower Loan will be used for the purpose of purchasing or acquiring any "margin stock" within the meaning of Regulation U of the Board of Governors of the Federal Reserve System or for any other purpose that would be inconsistent with such Regulation U or any other regulation of such Board of Governors, or for any purpose prohibited by Legal Requirements or any Borrower Loan Document or Funding Loan Document.

Section 4.1.16 Utilities and Public Access. To the best of the Borrower's knowledge, the 4% Project is or will be served by water, sewer, sanitary sewer and storm drain facilities adequate to service it for its intended uses. All public utilities necessary or convenient to the full use and enjoyment of the 4% Project is or will be located in the public right-of-way abutting the 4% Project, and all such utilities are or will be connected so as to serve the 4% Project without passing over other property absent a valid easement. All roads necessary for the use of the 4% Project for its current purpose have been or will be completed and dedicated to public use and accepted by all Governmental Authorities. Except for Permitted Encumbrances, the 4% Project does not share ingress and egress through an easement or private road or share on-site or off-site recreational facilities and amenities that are not located on the 4% Project and under the exclusive control of the Borrower, or where there is shared ingress and egress or amenities, there exists an easement or joint use and maintenance agreement under which (i) access to and use and enjoyment of the easement or private road and/or recreational facilities and amenities is perpetual, (ii) the number of parties sharing such easement and/or recreational facilities and amenities must be specified, (iii) the Borrower's responsibilities and share of expenses are specified, and (iv) the failure to pay any maintenance fee with respect to an easement will not result in a loss of usage of the easement.

Section 4.1.17 Not a Foreign Person. The Borrower is not a "foreign person" within the meaning of § 1445(f)(3) of the Code.

## ■ 24 -

Section 4.1.18 Separate Lots. Each parcel comprising the Land is (or will be) a separate tax lot and is not (or will not be) a portion of any other tax lot that is not a part of the Land.

Section 4.1.19 Assessments. There are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the 4% Project, or any contemplated improvements to the 4% Project that may result in such special or other assessments.

Section 4.1.20 Enforceability. The Borrower Loan Documents and the funding loan Documents are not subject to, and the

Borrower has not asserted, any right of rescission, set-off, counterclaim or defense, including the defense of usury .

Section 4.1.21 Insurance. The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the other Borrower Loan Documents and has delivered to the Servicer or funding Lender copies of insurance policies or certificates of insurance reflecting the insurance coverages, amounts and other requirements set forth in this Borrower Loan Agreement, if applicable, and the Security Instrument.

Section 4.1.22 Use of Property; Licenses. The 4% Project will be used as a multifamily residential rental 4% Project and other appurtenant and related uses, which use is consistent with the zoning classification for the 4% Project. All certifications, permits, licenses and approvals, including certificates of completion and occupancy permits required for the legal use or legal, nonconforming use, as applicable, occupancy and operation of the 4% Project (collectively, the "Licenses") required at this time for the construction or rehabilitation, as appropriate, and equipping of the 4% Project have been obtained. To the Borrower's knowledge, all Licenses obtained by the Borrower have been validly issued and are in full force and effect. The Borrower has no reason to believe that any of the Licenses required for the future use and occupancy of the 4% Project and not heretofore obtained by the Borrower will not be obtained by the Borrower in the ordinary course following the Completion Date. No Licenses will terminate, or become void or voidable or terminable, upon any sale, transfer or other disposition of the 4% Project, including any transfer pursuant to foreclosure sale under the Security Instrument or deed in lieu of foreclosure thereunder. The 4% Project does not violate any density or building setback requirements of the applicable zoning law except to the extent, if any, shown on the survey. No proceedings are, to the best of the Borrower's knowledge, pending or threatened that would result in a change of the zoning of the 4% Project.

Section 4.1.23 Flood Zone. Either all Improvements will be constructed above the Hood grade or the Borrower will obtain appropriate flood insurance as directed by the funding Lender.

Section 4.1.24 Physical Condition. The 4% Project, including all Improvements, parking facilities, systems, fixtures, equipment and landscaping, are or, after completion of the construction, rehabilitation and/or repairs, as appropriate, will be in good and habitable condition in all material respects and in good order and repair in all material respects (reasonable wear and tear excepted). The Borrower has not received notice from any insurance company or bonding company of any defect or inadequacy in the 4% Project, or any part thereof, which would adversely affect its insurability or cause the imposition of extraordinary premiums or charges thereon or any termination of any policy of insurance or bond. The physical configuration of the 4% Project is not in material violation of the ADA, if required under applicable law.

Section 4.1.25 Encroachments. All of the Improvements included in determining the appraised value of the 4% Project will lie wholly within the boundaries and building restriction lines of the 4% Project, and no improvement on an adjoining property encroaches upon the 4% Project, and no easement or other encumbrance upon the 4% Project encroaches upon any of the Improvements, in a way as to affect the value or

">8

marketability of the 4% Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the 4% Project as approved by the Funding Lender.

Section 4.1.26 State Law Requirements. The Borrower hereby represents, covenants and agrees to comply with the provisions of all applicable State laws relating to the Borrower Loan, the Funding Loan and the 4% Project.

Section 4.1.27 Filing and Recording Taxes. All transfer taxes, deed stamps, intangible taxes or other amounts in the nature of transfer taxes required to be paid by any Person under applicable Legal Requirements in connection with the transfer of the 4% Project to the Borrower have been paid or will be paid when due if not yet due. All mortgage, mortgage recording, stamp, intangible or other similar taxes required to be paid by any Person under applicable Legal Requirements in connection with the execution, delivery, recordation, filing, registration, perfection or enforcement of any of the Borrower Loan Documents and the Funding Loan Documents have been or will be paid.

Section 4.1.28 Investment Company Act. The Borrower is not (i) an "investment company" or a company "controlled" by an "investment company," within the meaning of the Investment Company Act of 1940, as amended; or (ii) a "holding company" or a "subsidiary company" of a "holding company" or an "affiliate" of either a "holding company" or a "subsidiary company" within the meaning of the Public Utility Holding Company Act of 1935, as amended.

Section 4.1.29 Fraudulent Transfer. The Borrower has not accepted the Borrower Loan or entered into any Borrower Loan Document or Funding Loan Document with the actual intent to hinder, delay or defraud any creditor, and the Borrower has received reasonably equivalent value in exchange for its obligations under the Borrower Loan Documents and the Funding Loan Documents. Giving effect to the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents, the fair saleable value of the Borrower's assets exceeds and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, exceed the Borrower's total liabilities, including subordinated, unliquidated, disputed or contingent liabilities. The fair saleable value of the Borrower's assets is and will, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents, be greater than the Borrower's probable liabilities, including the maximum amount of its contingent liabilities or its debts as such debts become absolute and matured. The Borrower's assets do not and, immediately following the execution and delivery of the Borrower Loan Documents and the Funding Loan Documents will not, constitute unreasonably small capital to carry out its business as conducted or as proposed to be conducted. The Borrower does not intend to, and does not believe that it will, incur debts and liabilities (including contingent liabilities and other commitments) beyond its ability to pay such debts as they mature (taking into account the timing and amounts to be payable on or in respect of obligations of the Borrower).

Section 4.1.30 Ownership of the Borrower. Except as set forth in the Operating Agreement of the Borrower, the Borrower has no obligation to any Person to purchase, repurchase or issue any ownership interest in it.

Section 4.1.31 Environmental Matters. To the best of Borrower's knowledge and except as disclosed in environmental reports previously delivered to the Funding Lender and the Governmental Lender (the "Prior Environmental Disclosures"), the 4% Project is not in violation of any Legal Requirement pertaining to or imposing liability or standards of conduct concerning environmental regulation, contamination or clean-up, and will comply with covenants and requirements relating to environmental hazards as set forth in the Security Instrument or the other Borrower Loan Documents. The Borrower will execute and deliver the Agreement of Environmental Indemnification.

- 26 -

Section 4.1.32 Name; Principal Place of Business. Unless prior Written Notice is given to the Funding Lender, the Borrower does not use and will not use any trade name, and has not done and will not do business under any name other than its actual name set forth herein. The principal place of business of the Borrower is its primary address for notices as set forth in Section 10.1 hereof, and the Borrower has no other place of business, other than the 4% Project and such principal place of business.

Section 4.1.33 Subordinated Debt. There is no secured or unsecured indebtedness with respect to the 4% Project or any residual interest therein, other than Permitted Encumbrances and the permitted secured indebtedness described in Section 6.7 hereof, except an unsecured deferred developer fee not to exceed the amount permitted by Funding Lender as determined on the Closing Date.

Section 4.1.34 Filing of Taxes. The Borrower has filed (or has obtained effective extensions for filing) all federal, state and local tax returns required to be filed and has paid or made adequate provision for the payment of all federal, state and local taxes, charges and assessments, if any, payable by the Borrower.

Section 4.1.35 General Tax. All representations, warranties and certifications of the Borrower set forth in the Regulatory Agreement and the Tax Compliance Agreement are incorporated by reference herein and the Borrower will comply with such as if set forth herein.

**Section 4.1.36 Approval of the Borrower Loan Documents and Funding Loan Documents.**

By its execution and delivery of this Borrower Loan Agreement, the Borrower approves the form and substance of the Borrower Loan Documents and the Funding Loan Documents, and agrees to carry out the responsibilities and duties specified in the Borrower Loan Documents and the Funding Loan Documents to be carried out by the Borrower. The Borrower acknowledges that (a) it understands the nature and structure of the transactions relating to the financing of the 4% Project, (b) it is familiar with the provisions of all of the Borrower Loan Documents and the Funding Loan Documents and other documents and instruments relating to the financing, (c) it understands the risks inherent in such transactions, including without limitation the risk of loss of the 4% Project, and (d) it has not relied on the Governmental Lender, the Funding Lender or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Borrower Loan Documents and the Funding Loan Documents or otherwise relied on the Governmental Lender, the Funding Lender or the Servicer in any manner.

Section 4.1.37 Funding Loan Agreement. The Borrower has read and accepts and agrees that it is bound by the Funding Loan Agreement and the Funding Loan Documents.

Section 4.1.38 Americans with Disabilities Act. The 4% Project, as designed, will conform in all material respects with all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the 4% Project, including, but not limited to, the Americans with Disabilities Act of 1990 ("ADA"), to the extent required (as evidenced by an architect's certificate to such effect).

Section 4.1.39 Requirements of Code and Regulations. The 4% Project satisfies all requirements of the Code and the Regulations applicable to the 4% Project.

Section 4.1.40 Regulatory Agreement. The 4% Project, as of the date of origination of the Funding Loan, is in compliance with all requirements of the Regulatory Agreement to the extent such requirements are applicable; and the Borrower intends to cause the residential units in the 4% Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement.

including all applicable requirements of the Code and the Regulations, and pursuant to leases which comply with all applicable laws.

Section 4.1.41 Intention to Hold 4% Project. The Borrower intends to hold the 4% Project for its own account and has no current plans, and has not entered into any agreements, to sell the 4% Project or any part of the 4% Project (except for rights granted in the Operating Agreement); and the Borrower intends to occupy the 4% Project or cause the 4% Project to be occupied and to operate it or cause it to be operated at all times during the term of this Borrower Loan Agreement in compliance with the terms of this Borrower Loan Agreement and the Regulatory Agreement and does not know of any reason why the 4% Project will not be so used by it in the absence of circumstances not now anticipated by it or totally beyond its control.

**Section 4.1.42 Concerning Managing Member.**

a) The Managing Member of Borrower is a limited liability company, duly organized and validly existing under the laws of the State. The Managing Member has all requisite power and authority, rights and franchises to enter into and perform its obligations under the Borrower Loan Documents and the Funding Loan Documents to be executed by such Managing Member for its own account and on behalf of Borrower, as Managing Member of Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

b) Managing Member has made all filings (including, without limitation, all required filings related to the use of fictitious business names) and is in good standing in the State and in each other jurisdiction in which the character of the property it owns or the nature of the business it transacts makes such filings necessary or where the failure to make such filings could have a material adverse effect on the business, operations, assets, condition (financial or otherwise) or prospects of Managing Member.

c) Managing Member is duly authorized to do business in the State.



d) The execution, delivery and performance by Borrower of the Borrower Loan Documents and the Funding Loan Documents have been duly authorized by all necessary action of Managing Member on behalf of Borrower, and by all necessary action on behalf of Managing Member.

e) The execution, delivery and performance by Managing Member, on behalf of Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) Managing Member's organizational documents; (ii) any other Legal Requirement affecting Managing Member or any of its properties; or (iii) any agreement to which Managing Member is bound or to which it is a party; and will not result in or require the creation (except as provided in or contemplated by this Borrower Loan Agreement) of any Lien upon any of such properties, any of the Collateral or any of the property or funds pledged or delivered to Funding Lender pursuant to the Security Documents.

Section 4.1.43 Government and Private Approvals. All governmental or regulatory orders, consents, permits, authorizations and approvals required for the construction, rehabilitation, use, occupancy and operation of the Improvements, that may be granted or denied in the discretion of any (i) Governmental Authority, have been obtained and are in full force and effect (or, in the case of any of the foregoing that Borrower is not required to have as of the Closing Date, will be obtained), and will be maintained in full force and effect at all times during the construction or rehabilitation of the Improvements. All Michigan orders, consents, permits, authorizations and approvals that may not be denied in the discretion of any Governmental Authority shall be obtained prior to the commencement of any work for which such orders, consents, permits, authorizations or approvals are required, and, once obtained, such orders, consents, permits, authorizations and approvals will be maintained in full force and effect at all times during the

- 2S -

construction or rehabilitation of the Improvements. Except as set forth in the preceding two sentences, no additional governmental or regulatory actions, filings or registrations with respect to the Improvements, and no approvals, authorizations or consents of any trustee or holder of any indebtedness or obligation of Borrower, are required for the due execution, delivery and performance by Borrower or Managing Member of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by Borrower or Managing Member, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the 4% Project is not conditional upon the happening of any further event.

Section 4.1.44 Concerning Guarantors. The Borrower Loan Documents and the Funding Loan Documents to which the Guarantors are a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by the Guarantors and are legally valid and binding obligations of the Guarantors, enforceable against the Guarantors in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditors' rights generally and by general principles of equity.

Section 4.1.45 No Material Defaults. Except as previously disclosed to Funding Lender in writing, there exists no material violation of or material default by Borrower under, and, to the best knowledge of Borrower, no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default with respect to: (i) the terms of any instrument evidencing, securing or guaranteeing any indebtedness secured by the 4% Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the 4% Project or to which Borrower is a party; (iii) any license, permit, statute, ordinance, law, judgment, order, writ, injunction, decree, rule or regulation of any Governmental Authority, or any determination or award of any arbitrator to which Borrower or the 4% Project may be bound; or (iv) any mortgage, instrument, agreement or document by which Borrower or any of its respective properties is bound; in the case of any of the foregoing: (1) which involves any Borrower Loan Document or Funding Loan Document; (2) which involves the 4% Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of Borrower, Managing Member or any Guarantor to perform any of its respective obligations under any of the Borrower Loan Documents or the Funding Loan Documents or any other material instrument, agreement or document to which it is a party; or (4) which might adversely affect the priority of the Liens created by this Borrower Loan Agreement or any of the Borrower Loan Documents or the Funding Loan Documents.

Section 4.1.46 Payment of Taxes. Except as previously disclosed to Funding Lender in writing: (i) all tax returns and reports of Borrower, Managing Member and Guarantors required to be filed have been timely filed, and all taxes, assessments, fees and other

governmental charges upon Borrower, Managing Member or Guarantors, and upon their respective properties, assets, income and franchises, which are due and payable have been paid when due and payable; and (ii ) Borrower knows of no proposed tax assessment against it or against the Managing Member or any Guarantor that would be material to the condition (financial or otherwise) of Borrower, Managing Member or Guarantor, and neither Borrower nor Managing Member have contracted with any Governmental Authority in connection with such taxes.

Section 4.1.47 Rights to 4% Project Agreements and Licenses. Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing 4% Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future 4% Project Agreements and Licenses. Borrower's interest in the Plans and Specifications and all 4% Project Agreements and Licenses is not subject to any present claim (other than under the Borrower Loan Documents and the Funding Loan Documents or as otherwise approved by funding Lender in its sole discretion), set-off or deduction other than in the ordinary course of business

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Section 4.1.48 Patriot Act Compliance. Borrower is not now, nor has ever been (i) listed on any Government Lists (as defined below), (ii) a person who has been determined by a Governmental Authority to be subject to the prohibitions contained in Presidential Executive Order No. 13224 (Sept. 23, 2001) or any other similar prohibitions contained in the rules and regulations of OFAC or in any enabling legislation or other Presidential Executive Orders in respect thereof, (iii) indicted for or convicted of any felony involving a crime or crimes of moral turpitude or for any Patriot Act Offense, or (iv) under investigation by any Governmental Authority for alleged criminal activity. For purposes hereof, the term "Patriot Act Offense" shall mean any violation of the criminal laws of the United States of America or of any of the several states, or that would be a criminal violation if committed within the jurisdiction of the United States of America or any of the several states, relating to terrorism or the laundering of monetary instruments, including any offense under (A) the criminal laws against terrorism; (B) the criminal laws against money laundering, (C) Bank Representative Secrecy Act, as amended, (D) the Money Laundering Control Act of 1986, as amended, or (E) the Patriot Act. "Patriot Act Offense" also includes the crimes of conspiracy to commit, or aiding and abetting another to commit, a Patriot Act Offense. For purposes hereof, the term "Government Lists" shall mean (1) the Specially Designated Nationals and Blocked Persons Lists maintained by the Office of Foreign Assets Control ("OFAC"), (2) any other list of terrorists, terrorist organizations or narcotics traffickers maintained pursuant to any of the Rules and Regulations of OFAC that Funding Lender notified Borrower in writing is now included in "Government Lists", or (3) any similar lists maintained by the United States Department of State, the United States Department of Commerce or any other Governmental Authority or pursuant to any Executive Order of the President of the United States of America that Funding Lender notified Borrower in writing is now included in "Government Lists".

Section 4.1.49 Rent Schedule. Borrower has prepared, or has had prepared on its behalf, a prospective Unit absorption and rent collection schedule with respect to the 4% Project substantially in the form attached as an exhibit to the Construction Funding Agreement [confirm upon receipt ], which schedule takes into account, among other relevant factors (i) a schedule of minimum monthly rentals for the Units, and (ii) any and all concessions including free rent periods, and on the basis of such schedule. Borrower believes it will collect rents with respect to the 4% Project in amounts greater than or equal to debt service on the Borrower Loan.

Section 4.1.50 Other Documents. Each of the representations and warranties of Borrower or Managing Member contained in any of the other Borrower Loan Documents or the Funding Loan Documents or Related Documents is true and correct in all material respects (or, in the case of representations or warranties contained in any of the other Borrower Loan Documents or Funding Loan Documents or Related Documents that speak as of a particular date, were true and correct in all material respects as of such date). All of such representations and warranties are incorporated herein for the benefit of Funding Lender.

Section 4.1.51 Subordinate Loan Documents. The Subordinate Loan Documents are in full force and effect and the Borrower has paid all commitment fees and other amounts due and payable to the Subordinate Lender(s) thereunder. There exists no material violation of or material default by the Borrower under, and no event has occurred which, upon the giving of notice or the passage of time, or both, would constitute a material default under the Subordinate Loan Documents.

**Section 4.1.52 Omitted.**

Section 4.2. Survival of Representations and Covenants. All of the representations and warranties in Section 4.1 hereof and elsewhere in the Borrower Loan Documents (i) shall survive for so long as any portion of the Borrower Payment Obligations remains due and owing and (n) shall be deemed to have been relied upon by the Governmental Lender and the Servicer notwithstanding any investigation heretofore or hereafter made by the Governmental Lender or the Servicer or on its or their behalf, provided.

- 30 -

however, that the representations, warranties and covenants set forth in Section 4.1.31 hereof shall survive in perpetuity and shall not be subject to the exculpation provisions of Section 1.1 hereof.

ARTICLE V AK FIR MAT IV E COVENANTS

During the term of this Borrower Loan Agreement, the Borrower hereby covenants and agrees with the Governmental Lender, the funding Lender and the Servicer that:

Section 5.1. Existence. The Borrower shall (i) do or cause to be done all things necessary to preserve, renew and keep in full force and effect its existence and its material rights, and franchises, (ii) continue to engage in the business presently conducted by it, (iii) obtain and maintain all material Licenses, and (iv) qualify to do business and remain in good standing under the laws of the State.

Section 5.2. Taxes and Other Charges. The Borrower shall pay all Taxes and Other Charges as the same become due and payable and prior to their becoming delinquent in accordance with the Security Instrument and the other Borrower Loan Documents, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument and the other Borrower Loan Documents.

The Borrower covenants to pay all taxes and Other Charges of any type or character charged to the funding Lender affecting the amount available to the funding Lender from payments to be received hereunder or in any way arising due to the transactions contemplated hereby (including taxes and Other Charges assessed or levied by any public agency or governmental authority of whatsoever character having power to levy taxes or assessments) but excluding franchise taxes based upon the capital and/or income of the funding Lender and taxes based upon or measured by the net income of the Funding Lender; provided, however, that the Borrower shall have the right to protest any such taxes or Other Charges and to require the funding Lender, at the Borrower's expense, to protest and contest any such taxes or Other Charges levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or Other Charges pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the funding Lender. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 5.3. Repairs; Maintenance and Compliance; Physical Condition. The Borrower shall cause the 4% Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the 4% Project's tenants or their invited guests) condition and repair (reasonable wear and tear excepted) as set forth in the Security Instrument and shall not remove, demolish or materially alter the Improvements or equipment (except for removal of aging or obsolete equipment or furnishings in the normal course of business), except as provided in the Security Instrument.

Section 5.4. Litigation. The Borrower shall give prompt Written Notice to the Governmental Lender, the funding Lender and the Servicer of any litigation, governmental proceedings or claims or investigations regarding an alleged actual violation of a Legal Requirement pending or, to the Borrower's knowledge, threatened against the Borrower which might materially adversely affect the Borrower's condition (financial or otherwise) or business or the 4% Project.

Section 5.5. Performance of Other Agreements. The Borrower shall observe and perform in all material respects each and every term to be observed or performed by it pursuant to the terms of the 4% Project Agreements, the CCIR's, the Subordinate Loan Documents and any other agreement or instrument materially affecting or pertaining to the 4% Project.

- 31 -

Section 5.6. ■ Notices. The Borrower shall promptly advise the Governmental Lender, the Funding Lender and the Servicer of (i) any Material Adverse Change in the Borrower's financial condition, assets, properties or operations other than general changes in the real estate market, (ii) any fact or circumstance affecting the Borrower or the 4% Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Documents to which it is a party in a timely manner, or (iii) the occurrence of any Potential Default or Event of Default of which the Borrower has knowledge. If the Borrower becomes subject to federal or state securities law filing requirements, the Borrower shall cause to be delivered to the Governmental Lender, the Funding Lender and the Servicer any Securities and Exchange Commission or other public filings, if any, of the Borrower within two (2) Business Days of such filing.

Section 5.7. Cooperate in Legal Proceedings. The Borrower shall cooperate fully with the Governmental Lender, the Funding Lender and the Servicer with respect to, and permit the Governmental Lender, the Funding Lender and the Servicer at their option, to participate in, any proceedings before any Governmental Authority that may in any way affect the rights of the Governmental Lender, the Funding Lender and/or the Servicer under any Borrower Loan Document or Funding Loan Document.

Section 5.8. Further Assurances. The Borrower shall, at the Borrower's sole cost and expense (except as provided in Section 9.1 hereof), (i) furnish to the Servicer and the Funding Lender all instruments, documents, boundary surveys, footing or foundation surveys (to the extent that Borrower's construction or renovation of the 4% Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements relating to the 4% Project, reasonably requested by the Servicer or the Funding Lender for the better and more efficient carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents; (ii) execute and deliver to the Servicer and the Funding Lender such documents, instruments, certificates, assignments and other writings, and do such other acts necessary or desirable, to evidence, preserve and/or protect the collateral at any time securing or intended to secure the Borrower Loan, as the Servicer and the Funding Lender may reasonably require from time to time; (iii) do and execute all and such further lawful and reasonable acts, conveyances and assurances for the better and more effective carrying out of the intents and purposes of the Borrower Loan Documents and the Funding Loan Documents, as the Servicer or the Funding Lender shall reasonably require from time to time; provided, however, with respect to clauses (i)-(iii) above, the Borrower shall not be required to do anything that has the effect of (A) changing the essential economic terms of the Borrower Loan or (B) imposing upon the Borrower greater personal liability under the Borrower Loan Documents and the Funding Loan Documents; and (iv) upon the Servicer's or the Funding Lender's request therefor given from time to time after the occurrence of any Potential Default or Event of Default for so long as such Potential Default or Event of Default, as applicable, is continuing pay for (a) reports of UCC, federal tax lien, state tax lien, judgment and pending litigation searches with respect to the Borrower and (b) searches of title to the 4% Project, each such search to be conducted by search firms reasonably designated by the Servicer or the Funding Lender in each of the locations reasonably designated by the Servicer or the Funding Lender.

Section 5.9. Delivery of Financial Information. After notice to the Borrower of the need for a Secondary Market Disclosure Document in connection with a Secondary Market Transaction, the Borrower shall deliver to the Funding Lender or the Servicer copies of the Provided Information and all other financial information required under Article IX.

Section 5.10. Environmental Matters. So long as the Borrower owns or is in possession of the 4% Project, the Borrower shall (a) keep the 4% Project in compliance with all Environmental Laws (as defined in the Agreement of Environmental Indemnification), (b) promptly notify the funding lender and the Servicer if the Borrower shall become aware that any Hazardous Materials (as defined in the Agreement of Environmental Indemnification) are on or near the 4% Project in violation of any Environmental Laws, and

(c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the 4% Project required under any Environmental Laws, in each case as set forth in the Agreement of Environmental Indemnification.

Section 5.11. Governmental Lender's and Funding Lender's Fees. The Borrower covenants to pay the reasonable fees and expenses of the Governmental Lender (including the Ongoing Governmental Lender Fee) and the Funding Lender or any agents, attorneys, accountants, consultants selected by the Governmental Lender or the Funding Lender to act on its behalf in connection with this Borrower Loan Agreement and the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents, including, without limitation, any and all reasonable expenses incurred in connection with the making of the Borrower Loan or in connection with any litigation which may at any time be instituted involving the Borrower Loan, this Borrower Loan Agreement, the other Borrower Loan Documents, the Regulatory Agreement and the Funding Loan Documents or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing. This obligation shall remain valid and in effect notwithstanding repayment of the Borrower Loan hereunder or termination of this Borrower Loan Agreement.

Section 5.12. Estoppel Statement. The Borrower shall furnish to the Funding Lender or the Servicer for the benefit of the Funding Lender or the Servicer within ten (10) days after written request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth, as applicable, with respect to each Borrower Note, (i) the unpaid principal of such Borrower Note, (ii) the applicable Interest Rate, (iii) the date installments of interest and/or principal were last paid, (iv) any offsets or defenses to the payment of the Borrower Payment Obligations, and (v) that the Borrower Loan Documents and the Funding Loan Documents to which the Borrower is a party are valid, legal and binding obligations of the Borrower and have not been modified or, if modified, giving particulars of such modification, and no Event of Default exists thereunder or specify any Event of Default that does exist thereunder. The Borrower shall use commercially reasonable efforts to furnish to the Funding Lender or the Servicer, within 30 days of a request by the Funding Lender or Servicer, tenant estoppel certificates from each commercial tenant at the 4% Project, if any, in form and substance reasonably satisfactory to the Funding Lender and the Servicer; provided that the Funding Lender and the Servicer shall not make such requests more frequently than twice in any year.

Sections. 13. Defense of Actions. The Borrower shall appear in and defend any action or proceeding purporting to affect the security for this Borrower Loan Agreement hereunder or under the Borrower Loan Documents and the Funding Loan Documents, and shall pay, in the manner required by Section 2.4 hereof, all costs and expenses, including the cost of evidence of title and attorneys' fees, in any such action or proceeding in which Funding Lender may appear. If the Borrower fails to perform any of the covenants or agreements contained in this Borrower Loan Agreement or any other Borrower Loan Document, or if any action or proceeding is commenced that is not diligently defended by the Borrower which affects the Funding Lender's interest in the 4% Project or any part thereof, including eminent domain, code enforcement or proceedings of any nature whatsoever under any Federal or state law, whether now existing or hereafter enacted or amended, then the Funding Lender may make such appearances, disburse such sums and take such action as the Funding Lender deems necessary or appropriate to protect its interests. Such actions include disbursement of attorneys' fees, entry upon the 4% Project to make repairs or take other action to protect the security of the 4% Project, and payment, purchase, contest or compromise of any encumbrance, charge or lien which in the judgment of funding Lender appears to be prior or superior to the Borrower Loan Documents or the funding Loan Documents. The Funding Lender shall have no obligation to do any of the above. The Funding Lender may take any such action without notice or demand upon the Borrower. No such action shall release the Borrower from any obligation under this Borrower Loan Agreement or any of the other Borrower Loan Documents or under the Loan Documents.

the event (i) that the Security Instrument is foreclosed in whole or in part or that any Borrower Loan Document is put into the hands of an attorney for collection, suit, action or foreclosure, or (ii) of the foreclosure of any mortgage, deed of trust or deed to secure debt prior to or subsequent to the Security Instrument or any Borrower Loan Document in which proceeding the funding Lender is made a party or (iii) of the bankruptcy of the Borrower or an assignment by the Borrower for the benefit of its creditors, the Borrower shall be chargeable with and agrees to pay all costs of collection and defense, including actual attorneys' fees in connection therewith and in connection with any appellate proceeding or post-judgment action involved therein, which shall be due and payable together with all required service or use taxes.

Section 5.14. Expenses. The Borrower shall pay all reasonable expenses incurred by the Governmental Lender, the funding Lender and the Servicer (except as provided in Section 9.1 hereof) in connection with the Borrower Loan and the funding Loan, including reasonable fees and expenses of the Governmental Lender's, the funding Lender's and the Servicer's attorneys, environmental, engineering and other consultants, and fees, charges or taxes for the recording or filing of Borrower Loan Documents.

and the funding Loan Documents. The Borrower shall pay or cause to be paid all reasonable expenses of the Governmental Lender, the funding Lender and the Servicer (except as provided in Section 9.1 hereof) in connection with the issuance or administration of the Borrower Loan and the funding Loan, including audit costs, inspection fees, settlement of condemnation and casualty awards, and premiums for title insurance and endorsements thereto. The Borrower shall, upon request, promptly reimburse the Governmental Lender, the funding Lender and the Servicer for all reasonable amounts expended, advanced or incurred by the Governmental Lender, the funding Lender and the Servicer to collect the Borrower Note, or to enforce the rights of the Governmental Lender, the funding Lender and the Servicer under this Borrower Loan Agreement or any other Borrower Loan Document, or to defend or assert the rights and claims of the Governmental Lender, the funding Lender and the Servicer under the Borrower Loan Documents and the funding Loan Documents arising out of an Event of Default or with respect to the 4% Project (by litigation or other proceedings) arising out of an Event of Default, which amounts will include all court costs, attorneys' fees and expenses, fees of auditors and accountants, and investigation expenses as may be reasonably incurred by the Governmental Lender, the funding Lender and the Servicer in connection with any such matters (whether or not litigation is instituted), together with interest at the Default Rate on each such amount from the Date of Disbursement until the date of reimbursement to the Governmental Lender, the funding Lender and the Servicer, all of which shall constitute part of the Borrower Loan and the funding Loan and shall be secured by the Borrower Loan Documents and the funding Loan Documents. The obligations and liabilities of the Borrower under this Section 5.14 shall survive the Term of this Borrower Loan Agreement and the exercise by the Governmental Lender, the funding Lender or the Servicer, as the case may be, of any of its rights or remedies under the Borrower Loan Documents and the funding Loan Documents, including the acquisition of the 4% Project by foreclosure or a conveyance in lieu of foreclosure. Notwithstanding the foregoing, the Borrower shall not be obligated to pay amounts incurred as a result of the gross negligence or willful misconduct of any other party, and any obligations of the Borrower to pay for environmental inspections or audits will be governed by the Agreement of Environmental Indemnification.

Section 5.15. Indemnity In addition to its other obligations hereunder, and in addition to any and all rights of reimbursement, indemnification, subrogation and other rights of Governmental Lender or funding Lender pursuant hereto and under law or equity, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the funding Lender, the Servicer, the Beneficiary Parties, and each of their respective officers, directors, employees, attorneys and agents (each an Indemnified Party"), against any and all losses, damages, claims, actions, liabilities, reasonable costs and expenses of any nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement (to the extent that the Borrower has consented to such settlement) and amounts paid to discharge judgments) (hereinafter, the "Liabilities") to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws.

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or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to:

a) The Borrower Loan Documents and the Funding Loan Documents or the execution or amendment thereof or in connection with transactions contemplated thereby, including the sale, transfer or resale of the Borrower Loan or the Funding Loan, except with respect to any Secondary Market Disclosure Document (other than any Borrower's obligations under Article IX);

b) Any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Borrower Loan, the Funding Loan or the 4% Project, the operation of the 4% Project, or the condition, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, construction, installation or rehabilitation of, the 4% Project or any part thereof;

c) Any lien (other than a Permitted Lien) or charge upon payments by the Borrower to the Governmental Lender or the Funding Lender hereunder, or any taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and Other Charges imposed on the Governmental Lender or the Funding Lender in respect of any portion of the 4% Project;

d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the 4% Project or any part thereof, provided, however, the Borrower's liability under this provision shall not extend to cover the period of any violation that first arose, commenced or occurred as a result of actions of the Indemnified Party, after the satisfaction, discharge, release, assignment, termination or cancellation of the Security Instrument following the payment in full of the Borrower

Note and all other sums payable under the Borrower Loan Documents or after the actual dispossession from the entire Mortgaged Property of Borrower and all entities which control, are controlled by, or are under the common control with Borrower following foreclosure of the Security Instrument or acquisition of the Mortgaged Property by a deed in lieu of foreclosure;

e) The enforcement of, or any action taken by the Governmental Lender or the Funding Lender related to remedies under, this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents;

(I) [Reserved];

g) Any untrue statement or misleading statement or alleged untrue statement or alleged misleading statement of a material fact by the Borrower made in the course of Borrower applying for the Borrower Loan or the Funding Loan or contained in any of the Borrower Loan Documents or Funding Loan Documents to which the Borrower is a party:

h) Any Determination of Taxability:

(i) Any breach by Borrower of any representation, warranty or covenant made in or pursuant to this Borrower Loan Agreement or in connection with any written or oral representation, presentation, report, appraisal or other information given or delivered by Borrower, the Managing Member, any Guarantor or their affiliates to Governmental Lender, the Funding Lender, Servicer or any other Person in connection with Borrower's application for the Borrower Loan and the Funding Loan (including, without limitation, any breach or alleged breach by Borrower of any agreement with respect to the provision of any substitute credit enhancement):

(j) any failure by Borrower or Governmental Lender to comply with applicable federal and state laws and regulations pertaining to the making of the Borrower Loan and the Funding Loan:

(k) the 4% Project, or the condition, occupancy, use, possession, conduct or management of, or work done in or about, or from the planning, design, acquisition, installation, construction or rehabilitation of, the 4% Project or any part thereof; or

(l) the use of the proceeds of the Borrower Loan and the Funding Loan,

except in the case of the foregoing indemnification of the Governmental Lender, the Funding Lender or the Servicer or any related Indemnified Party, to the extent such damages are caused by the gross negligence or willful misconduct of such Indemnified Party.

Without limiting the foregoing, to the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, and each of its officers, officials, directors, employees, attorneys and agents ("City Indemnified Parties") against any Liability to which the City Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise, to the extent arising out of or based upon or in any way relating to any declaration of taxability of interest on the Funding Loan or allegations (or regulatory inquiry) that interest on the Funding Loan is taxable for federal income tax purposes, except to the extent such damages are caused by the gross negligence or willful misconduct of a City Indemnified Party.

Notwithstanding anything herein to the contrary, the Borrower's indemnification obligations to the parties specified in Section 9.1.4 hereof with respect to any securitization or Secondary Market Transaction described in Article IX hereof shall be limited to the indemnity set forth in Section 9.1.4 hereof. In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the Indemnified Party (which notice shall be timely given so as not to materially impair the Borrower's right to defend), shall assume the investigation and defense thereof, including the employment of counsel reasonably approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Indemnified

Party shall have the right to review and approve or disapprove any such compromise or settlement, which approval shall not be unreasonably withheld. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof; provided, however, the Governmental Lender shall have the absolute right to employ separate counsel at the reasonable expense of the Borrower. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may only employ separate counsel at the expense of the Borrower if and only if in such Indemnified Party's good faith judgment (based on the advice of counsel ) a conflict of interest exists or could arise by reason of common representation, except that the Borrower shall always pay the reasonable fees and expenses of the Governmental Lender's separate counsel.

Notwithstanding any transfer of the 4% Project to another owner in accordance with the provisions of this Borrower Loan Agreement or the Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 5.15 if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless the Governmental Lender and the Funding Lender have consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

The rights of any persons to indemnity and the right to payment of fees and reimbursement of expenses hereunder shall survive the final payment or discharge of the Borrower Loan and the ruling

- 36 -

Loan and in the case of the Servicer, any resignation or removal. The provisions of this Section 5.15 shall survive the termination of this Borrower Loan Agreement.

Nothing in this Section 5.15 shall in any way limit the Borrower's indemnification and other payment obligations set forth in the Regulatory Agreement.

Section 5.16. No Warranty of Condition or Suitability by the Governmental Funding Lender. Neither the Governmental Lender nor the Funding Lender makes any warranty, either express or implied, as to the condition of the 4% Project or that it will be suitable for the Borrower's purposes or needs.

Section 5.17. Right of Access to the 4% Project. The Borrower agrees that the Governmental Lender, the Funding Lender, the Servicer and the Construction Consultant, and their duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right, but no obligation at all reasonable times during business hours and upon reasonable notice, to enter onto the Land (a) to examine, test and inspect the 4% Project without material interference or prejudice to the Borrower's operations and (b) to perform such work in and about the 4% Project made necessary by reason of the Borrower's default under any of the provisions of this Borrower Loan Agreement. The Governmental Lender, the Funding Lender, the Servicer, and their duly authorized agents, attorneys, accountants and representatives shall also be permitted, without any obligation to do so, at all reasonable times and upon reasonable notice during business hours, to examine the books and records of the Borrower with respect to the 4% Project.

Section 5.18. Notice of Default. The Borrower will advise the Governmental Lender, the Funding Lender, and the Servicer promptly in writing of the occurrence of any Potential Default or Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.19. Covenant with Governmental Lender and Funding Lender. The Borrower agrees that this Borrower Loan Agreement is executed and delivered in part to induce the purchase by others of the Governmental Lender Notes and, accordingly, all covenants and agreements of the Borrower contained in this Borrower Loan Agreement are hereby declared to be for the benefit of the Governmental Lender, the Funding Lender and any lawful owner, holder or pledgee of the Borrower Note or the Governmental Lender Notes from time to time.

Section 5.20. Obligation of the Borrower to Construct or Rehabilitate the 4% Project. The



Borrower shall proceed with reasonable dispatch to construct or rehabilitate, as appropriate, and equip the 4% Project. If the proceeds of the Borrower Loan, together with the Other Borrower Moneys, available to be disbursed to the Borrower are not sufficient to pay the costs of such construction or rehabilitation, as appropriate, and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Funding Lender or the Servicer in respect of any such costs or to any diminution or abatement in the repayment of the Borrower Loan. The Governmental Lender and the funding Lender shall not be liable to the Borrower or any other person if for any reason the 4% Project are not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the 4% Project. The Governmental Lender and the funding Lender do not make any representation or warranty, either express or implied, that moneys, if any, which will be made available to the Borrower will be sufficient to complete the 4% Project, and the Governmental Lender and the funding Lender shall not be liable to the Borrower or any other person if for any reason the 4% Project is not completed.

Section 5.21. Maintenance of Insurance. Borrower will maintain the insurance required by the Loan Agreement.

Section 5.22. Information; Statements and Reports. Borrower shall furnish or cause to be furnished to Governmental Lender and Funding Lender:

a) Notice of Default. As soon as possible, and in any event not later than five (5) Business Days after the occurrence of any Event of Default or Potential Default, a statement of an Authorized Representative of Borrower describing the details of such Event of Default or Potential Default and any curative action Borrower proposes to take;

b) Financial Statements; Rent Rolls. In the manner and to the extent required under the Loan Agreement, such financial statements, expenses statements, rent rolls, reports and other financial documents and information as required by the Security Instrument and the other Borrower Loan Documents and Funding Loan Documents, in the Form and within the time periods required therein;

c) Managing Member. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of Managing Member, copies of the financial statements of Managing Member as of such date, prepared in substantially the form previously delivered to the Governmental Lender and Funding Lender and in a manner consistent therewith, or in such form (which may include a form prepared in accordance with GAAP) as Funding Lender may reasonably request;

d) Leasing Reports. On a monthly basis (and in any event within twenty (20) days after the end of each Calendar Month), a report of all efforts made by Borrower, if any, to lease all or any portion of the 4% Project during such Calendar Month and on a cumulative basis since 4% Project inception, which report shall be prepared and delivered by Borrower, shall be in form and substance satisfactory to Funding Lender, and shall, if requested by Funding Lender, be supported by copies of letters of intent, leases or occupancy agreements, as applicable;

(e) Audit Reports. Within sixty (60) days of the receipt thereof, copies of all reports, if any, submitted to Borrower by independent public accountants in connection with each annual, interim or special audit of the financial statements of Borrower made by such accountants, including the comment letter submitted by such accountants to management in connection with their annual audit;

(f) Notices; Certificates or Communications. Immediately upon giving or receipt thereof, copies of any notices, certificates or other communications delivered at the 4% Project or to Borrower or Managing Member naming Governmental Lender or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the 4% Project or the ability of Borrower to perform its obligations under the Borrower Loan Documents and the Funding Loan Documents;

g) Certification of Non-Foreign Status. Promptly upon request of Funding Lender from time to time, a Certification of Non-Foreign Status, executed on or after the date of such request by Funding Lender;

h) Compliance Certificates. Together with each of the documents required pursuant to Section 5.22(b) hereof

submitted by or on behalf of Borrower, a statement, in form and substance satisfactory to Funding Lender and certified by an Authorized Borrower Representative, to the effect that Borrower is in compliance with all covenants, terms and conditions applicable to Borrower, under or pursuant to the Borrower Loan Documents and the Funding Loan Documents and under or pursuant to any other Debt owing by Borrower to any Person, and disclosing any noncompliance therewith, and any Event of Default or Potential Default, and describing the status of Borrower's actions to correct such noncompliance. Event of Default or Potential Default, as applicable; and

- IX -

(i) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, prospects and results of operations of Borrower, Managing Member, Guarantors or the 4% Project, as funding lender or Governmental Lender reasonably requests from time to time.

Section 5.23. Additional Notices. Borrower will, promptly after becoming aware thereof, give notice to funding Lender and the Governmental Lender of:

a) any Lien affecting the 4% Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

b) any Legal Action which is instituted by or against Borrower, Managing Member or any Guarantor, or any Legal Action which is threatened against Borrower, Managing Member or any Guarantor, which, in any case, if adversely determined, could have a material adverse effect upon the business, operations, properties, prospects, assets, management, ownership or condition (financial or otherwise) of Borrower, Managing Member, Guarantor or the 4% Project;

c) any Legal Action which constitutes an Event of Default or a Potential Default or a default under any other Contractual Obligation to which Borrower, Managing Member or any Guarantor is a party or by or to which Borrower, Managing Member or any Guarantor, or any of their respective properties or assets, may be bound or subject, which default would have a material adverse effect on the business, operations, assets (including the 4% Project), condition (financial or otherwise) or prospects of Borrower, Managing Member or such Guarantor, as applicable;

d) any default, alleged default or potential default on the part of Borrower under any of the CC&R's (together with a copy of each notice of default, alleged default or potential default received from any other party thereto);

e) any notice of default, alleged default or potential default on the part of Borrower received from any tenant or occupant of the 4% Project under or relating to its lease or occupancy agreement (together with a copy of any such notice), if, in the aggregate, notices from at least fifteen percent (15%) of the tenants at the 4% Project have been received by Borrower with respect to, or alleging, the same default, alleged default or potential default;

f) any change or contemplated change in (i) the location of Borrower's or Managing Member's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or Managing Member; or (iii) the nature of the trade or business of Borrower; and

g) any default, alleged default or potential default on the part of any general or limited partner (including, without limitation, Managing Member and the Equity Investor) under the Operating Agreement.

#### Section 5.24. Compliance with Other Agreements; Legal Requirements

a) Borrower shall timely perform and comply with, and shall cause Managing Member to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Operating Agreement, and Borrower shall not do or permit to be done anything to impair any such party's rights or interests under any of the foregoing.

b) Borrower will comply and, to the extent it is able, will require others to comply with, all Legal Requirements of all Governmental Authorities having jurisdiction over the 4% Project or construction and or rehabilitation of the Improvements, and will furnish funding Lender with reports of any official

- y) -

searches for or notices of violation of any requirements established by such Governmental Authorities. Borrower will comply and, to the extent it is able, will require others to comply, with applicable CC&R's and all restrictive covenants and all obligations created by private contracts and leases which affect ownership, construction, rehabilitation, equipping, licensing, use or operation of the 4% Project, and all other agreements requiring a certain percentage of the Units to be rented to persons of low or moderate income. The Improvements, when completed, shall comply with all applicable building, zoning and other Legal Requirements, and will not violate any restrictions of record against the 4% Project or the terms of any other lease of all or any portion of the 4% Project. Funding Lender shall at all times have the right to audit, at Borrower's expense. Borrower's compliance with any agreement requiring a certain percentage of the Units to be rented to persons of low or moderate income, and Borrower shall supply all such information with respect thereto as Funding Lender may request and otherwise cooperate with Funding Lender in any such audit. Without limiting the generality of the foregoing, Borrower shall properly obtain, comply with and keep in effect (and promptly deliver copies to Funding Lender of) all permits, licenses and approvals which are required to be obtained from Governmental Authorities in order to construct, occupy, operate, market and lease the 4% Project.

Section 5.25. Completion and Maintenance of 4% Project. Borrower shall cause the construction or rehabilitation, as the case may be, of the Improvements, to be prosecuted with diligence and continuity and completed substantially in accordance with the Plans and Specifications, and in accordance with the Construction Funding Agreement, free and clear of any liens or claims for liens (but without prejudice to Borrower's rights of contest under Section 10.16 hereof) ("Completion") on or before the Completion Date. Borrower shall thereafter maintain the 4% Project and the related and appurtenant uses as a residential apartment complex in good order and condition, ordinary wear and tear excepted. A maintenance program shall be in place at all times to assure the continuation of First-class maintenance, which shall mean and be no less than the highest quality of maintenance provided by the Manager for similarly situated properties managed by the Manager.

Section 5.26. Fixtures. Borrower shall deliver to Funding Lender, on demand, any contracts, bills of sale, statements, receipted vouchers or agreements under which Borrower or any other Person claims title to any materials, fixtures or articles incorporated into the Improvements.

Section 5.27. Income from 4% Project. Borrower shall first apply all Gross Income to Expenses of the 4% Project, including all amounts then required to be paid under the Borrower Loan Documents and the Funding Loan Documents and the funding of all sums necessary to meet any required reserves, including any required reserves for Taxes and insurance before using or applying such Gross Income for any other purpose. With the exception of asset management fees, tax credit adjustment amounts and payments of deferred developer fees payable pursuant to the Operating Agreement, Borrower shall not make or permit any distributions or other payments of Net Operating Income to its partners, shareholders or members, as applicable, in each case, without the prior Written Consent of Funding Lender.

Section 5.28. Leases and Occupancy Agreements.

(a) Lease Approval.

(i) Borrower has submitted to Funding Lender, and Funding Lender has approved. Borrower's standard form of tenant lease (the "Tenant Lease Form") for use in the 4% Project. Borrower shall not materially modify the Tenant Lease Form without Funding Lender's prior Written Consent in each instance, which consent shall not be unreasonably withheld or delayed. Borrower may enter into leases of space within the Improvements (and amendments to such leases) in the ordinary course of business with bona fide third party tenants without Funding Lender's prior Written Consent if

- 40 -

A) The 'Tenant Lease Form is a Permitted Lease, and is executed in the form attached as an exhibit to the Construction Funding Agreement [confirm upon receipt] without material modification;

B) Borrower, acting in good faith following the exercise of due diligence, has determined that the tenant meets requirements imposed under any applicable CC&R and is financially capable of performing all of its obligations under the Tenant Lease form; and

C) The Tenant Lease form conforms to the Rent Schedule attached as an exhibit to the Construction funding Agreement and reflects an arm's-length transaction, subject to the requirement that the Borrower comply with any applicable CC&R's.

ii) If any Event of Default has occurred and is continuing, Funding Lender may make written demand on Borrower to submit all future leases for Funding Lender's approval prior to execution. Borrower shall comply with any such demand by Funding Lender.

iii) No approval of any lease by Funding Lender shall be for any purpose other than to protect funding Lender's security for the Borrower Loan and to preserve funding Lender's rights under the Borrower Loan Documents and the funding Loan Documents. No approval by funding Lender shall result in a waiver of any default of Borrower. In no event shall any approval by funding Lender of a lease be a representation of any kind with regard to the lease or its enforceability, or the financial capacity of any tenant.

b) Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the 4% Project or any space within the Improvements.

c) Leasing and Marketing Agreements. Except as may be contemplated in the Management Agreement with Borrower's Manager, Borrower shall not without the approval of Funding Lender enter into any leasing or marketing agreement and Funding Lender reserves the right to approve the qualifications of any marketing or leasing agent.

Section 5.29. 4% Project Agreements and Licenses. To the extent not heretofore delivered to Funding Lender, Borrower will furnish to funding Lender, as soon as available, true and correct copies of all 4% Project Agreements and Licenses and the Plans and Specifications, together with assignments thereof to funding Lender and consents to such assignments where required by funding Lender, all in form and substance acceptable to funding Lender. Neither Borrower nor Managing Member has assigned or granted, or will assign or grant, a security interest in any of the 4% Project Agreements and Licenses, other than to funding Lender.

Section 5.30. Payment of Debt Payments. In addition to its obligations under the Borrower Note, Borrower will (i) duly and punctually pay or cause to be paid all principal of and interest on any Debt of Borrower as and when the same become due on or before the due date; (ii) comply with and perform all conditions, terms and obligations of other instruments or agreements evidencing or securing such Debt; (iii) promptly inform Funding Lender of any default, or anticipated default, under any such note, agreement, instrument; and (iv) forward to Funding Lender a copy of any notice of default or notice of any event that might result in default under any such note, agreement, instrument, including Liens encumbering the 4% Project, or any portion thereof, which have been subordinated to the Security Instrument (regardless of whether or not permitted under this Borrower Loan Agreement).

Section 5.31. ERISA. Borrower will comply, and will cause each of its ERISA Affiliates to comply, in all respects with the provisions of ERISA.

- 11 -

Section 5.32. Patriot Act Compliance. Borrower shall use its good faith and commercially reasonable efforts to comply with

the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the 4% Project, including those relating to money laundering and terrorism. Funding Lender shall have the right to audit Borrower's compliance with the Patriot Act and all applicable requirements of Governmental Authorities having jurisdiction over Borrower and/or the 4% Project, including those relating to money laundering and terrorism. In the event that Borrower fails to comply with the Patriot Act or any such requirements of Governmental Authorities, then Funding Lender may, at its option, cause Borrower to comply therewith and any and all costs and expenses incurred by Funding Lender in connection therewith shall be secured by the Security Instrument and shall be immediately due and payable.

Borrower covenants that it shall comply with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect. Without limiting the foregoing, Borrower shall not take any action, or permit any action to be taken, that would cause Borrower's representations and warranties in Article IV become untrue or inaccurate at any time during the term of the Funding Loan. Upon any Beneficiary Party's request from time to time during the term of the Funding Loan, Borrower shall certify in writing to such Beneficiary Party that Borrower's representations, warranties and obligations under Article IV remain true and correct and have not been breached, and in addition, upon request of any Beneficiary Party, Borrower covenants to provide all information required to satisfy obligations under all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect, during the term of the Funding Loan. Borrower shall immediately notify the Funding Lender in writing of (a) Borrower's actual knowledge that any of such representations, warranties or covenants are no longer true and have been breached, (b) Borrower has a reasonable basis to believe that they may no longer be true and have been breached or (c) Borrower becomes the subject of an investigation by Governmental Authorities related to money laundering, anti-terrorism, trade embargos and economic sanctions. Borrower shall also reimburse Funding Lender for any expense incurred by Funding Lender in evaluating the effect of an investigation by Governmental Authorities on the Funding Loan and Funding Lender's interest in the collateral for the Funding Loan, in obtaining necessary license from Governmental Authorities as may be necessary for Funding Lender to enforce its rights under the Funding Loan Documents, and in complying with all Legal Requirements and internal requirements of Funding Lender relating to money laundering, anti-terrorism, trade embargos and economic sanctions, now or hereafter in effect applicable to Funding Lender as a result of the existence of such an event and for any penalties or fines imposed upon Funding Lender as a result thereof.

Section 5.33. Funds from Equity Investor. Borrower shall cause the Equity Investor to fund all installments of the Equity Contributions in the amounts and at the times subject and according to the terms, conditions and adjustments of the Operating Agreement, the Construction Funding Agreement and the Forward Loan Assignment Agreement.

#### **Section 5.34. Tax Covenants.**

(a) The Borrower further represents, warrants and covenants that the Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Governmental Lender Note from gross income (as defined in Section 61 of the Code) for federal income tax purposes and results in a Determination of Taxability and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this Borrower Loan Agreement, the Security Instrument and the Regulatory Agreement, as may be necessary, in the opinion of Tax Counsel, to comply fully with all applicable rules, rulings, policies, procedures, regulations or other official statements promulgated or proposed by the Department of the

- 42 -

Treasury or the Internal Revenue Service applicable to the Governmental Lender Notes, the Funding Loan or affecting the 4% Project. Capitalized terms used in this Section 5.34 shall have the respective meanings assigned to them in the Regulatory Agreement or, if not defined therein, in the funding Loan Agreement. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that, prior to the final maturity of the Governmental Lender Note, unless it has received and filed with the Governmental Lender and the funding Lender a Tax Counsel No Adverse Effect Opinion (other than with respect to interest on any portion of the Governmental Lender Note for a period during which such portion of the Governmental Lender Note is held by a "substantial user" of any facility financed with the proceeds of the Governmental Lender Note or a "related person," as such terms are

used in Section 147(a) of the Code), the Borrower will comply with this Section 5.34.

(b) Use of Proceeds. The use of the net proceeds of the funding Loan at all times will satisfy the following requirements:

i) Limitation on Net Proceeds. At least 95% of the net proceeds of the funding Loan (within the meaning of the Code) actually expended shall be used to pay Qualified 4% Project Costs that are costs of a "qualified residential rental 4% Project" (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and properly that is "functionally related and subordinate" thereto (within the meaning of Sections 1.103-8(a)(3) and 1.103-8(b)(4)(iii) of the Regulations).

ii) Limit on Costs of funding. The proceeds of the funding Loan will be expended for the purposes set forth in this Borrower Loan Agreement and in the funding Loan Agreement and no portion thereof in excess of two percent of the proceeds of the Funding Loan, within the meaning of Section 147(g) of the Code, will be expended to pay Costs of funding of the funding Loan.

iii) Prohibited facilities. The Borrower shall not use or permit the use of any proceeds of the funding Loan or any income from the investment thereof 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.

iv) Limitation on Land. Less than 25 percent of the net proceeds of the funding Loan actually expended will be used, directly or indirectly, for the acquisition of land or an interest therein, nor will any portion of the net proceeds of the funding Loan be used, directly or indirectly, for the acquisition of land or an interest therein to be used for farming purposes.

v) Limitation on Existing facilities. No portion of the net proceeds of the funding Loan will be used for the acquisition of any existing property or an interest therein unless (A) the first use of such property is pursuant to such acquisition or (B) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the cost of acquiring such building financed with the proceeds of the funding Loan (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent), for purposes of the preceding sentence, the term "rehabilitation expenditures" shall have the meaning set forth in Section 147(d)(3) of the Code.

vi) Accuracy of Information. The information furnished by the Borrower and used in the Governmental Lender in preparing its certifications with respect to Section 14X of the Code and the Borrower's information statement pursuant to Section 149(e) of the Code is accurate and complete as of the date of original issue of the funding Loan.

- 43 -

vii) Limitation of 4% Project Expenditures. The acquisition, construction and equipping of the 4% Project was not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the ordinance of the Governmental Lender with respect to the 4% Project on December 16, 2020, and no obligation for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the 4% Project was paid or incurred prior to 60 days prior to such date, except for permissible "preliminary expenditures", which include architectural, engineering surveying, soil testing, reimbursement bond issuance and similar costs incurred prior to the commencement of construction, rehabilitation or acquisition of the 4% Project, and which do not exceed 20% of the aggregate issue price of the Governmental Lender Notes.

viii) Qualified Costs. The Borrower hereby represents, covenants and warrants that the proceeds of the Funding Loan shall be used or deemed used exclusively to pay costs which are (A) capital expenditures (as defined in Section 1.150-1 (b) 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 and that for the greatest number of buildings the proceeds of the Governmental Lender Notes shall be deemed allocated on a pro rata basis to each building in the 4% Project and the land on which it is located, so that each building in the 4% Project and the land on which it is located will have been financed fifty percent (50%) or more by the

proceeds of the Governmental Lender Notes for the purpose of complying with Section 42(h)(4)(B) of the Code; provided however, the foregoing representation, covenant and warranty is made for the benefit of the Borrower and its partners and neither the Funding Lender nor the Governmental Lender shall have any obligation to enforce this statement nor shall they incur any liability to any person, including without limitation, the Borrower, the partners of the Borrower, any other Affiliate of the Borrower or the holders or payees of the Governmental Lender Notes and the Borrower Note 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 Borrower Loan Agreement or the Funding Loan Agreement.

c) Limitation on Maturity. The average maturity of the Governmental Lender Notes does not exceed 120 percent of the average reasonably expected economic life of the 4% Project to be financed by the Funding Loan, weighted in proportion to the respective cost of each item comprising the property the cost of which has been or will be financed, directly or indirectly, with the Net Proceeds of the Funding Loan. For purposes of the preceding sentence, the reasonably expected economic life of property shall be determined as of the later of (A) the Closing Date for the Funding Loan or (B) the date on which such property is placed in service (or expected to be placed in service). In addition, land shall not be taken into account in determining the reasonably expected economic life of property.

d) No Arbitrage. The Borrower shall not take any action or omit to take any action with respect to the Gross Proceeds of the Governmental Lender Notes or of any amounts expected to be used to pay the principal thereof or the interest thereon which, if taken or omitted, respectively, would cause the Governmental Lender Notes to be classified as an "arbitrage bond" within the meaning of Section 14X of the Code. Except as provided in the Funding Loan Agreement and this Borrower Loan Agreement, the Borrower shall not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under this Agreement or the Borrower Note relating to the Governmental Lender Notes, shall not establish any segregated reserve or similar fund for such purpose and shall not prepay any such amounts in advance of the redemption date of an equal principal amount of the Governmental Lender Notes, unless the Borrower has obtained in each case a Tax Counsel No Adverse Effect Opinion with respect to such action, a copy of which shall be provided to the Governmental Lender and the Funding Lender. The Borrower shall not, at any time prior to the final maturity of the Governmental Lender Notes, invest or cause any Gross Proceeds to be invested

#### 44 -

in any investment (or to use Gross Proceeds to replace money so invested), if, as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Governmental Lender Notes to the Maturity Date, except as permitted by Section 148 of the Code and Regulations thereunder or as provided in the Regulatory Agreement. The Borrower further covenants and agrees that it will comply with all applicable requirements of said Section 148 and the rules and Regulations thereunder relating to the Governmental Lender Notes and the interest thereon, including the employment of a Rebate Analyst acceptable to the Governmental Lender and Funding Lender at all times from and after the Closing Date for the calculation of rebatable amounts to the United States Treasury Department. The Borrower agrees that it will cause the Rebate Analyst to calculate the rebatable amounts prior to the Computation Date, annually not later than forty-five days after the anniversary of the Closing Date and subsequent to the Computation Date, not later than forty-five days after the fifth anniversary of the Closing Date and each five years thereafter and agrees that the Borrower will pay all costs associated therewith. The Borrower agrees to provide evidence of the employment of the Rebate Analyst satisfactory to the Governmental Lender and Funding Lender.

(c) No Federal Guarantee. Except to the extent permitted by Section 149(b) of the Code and the Regulations and rulings thereunder, the Borrower shall not take or omit to take any action which would cause the Governmental Lender Notes to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

(t) Representations. The Borrower has supplied or caused to be supplied to Tax Counsel all documents, instruments and written information requested by Tax Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Tax Counsel, which have been reasonably relied upon by Tax Counsel in rendering its opinion with respect to the exclusion from gross income of the interest on the Governmental Lender Notes for federal income tax purposes, are true

and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein in order to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information which Tax Counsel has not requested.

g) Qualified Residential Rental 4% Project. The Borrower hereby covenants and agrees that the 4% Project will be operated as a "qualified residential rental 4% Project" within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified 4% Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Notes remains outstanding, to the end that the interest on the Governmental Lender Notes shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified 4% Project Period, to comply with all the provisions of the Regulatory Agreement.

h) Information Reporting Requirements. The Borrower will comply with the information reporting requirements of Section 149(e)(2) of the Code requiring certain information regarding the Governmental Lender Notes to be filed with the Internal Revenue Service within prescribed time limits

(i) Governmental Lender Notes Not Fledge Bonds. The Borrower covenants and agrees that not more than 50% of the proceeds of the Governmental Lender Notes will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within the meaning of Section 119(f)(1)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Governmental Lender Notes will be used to carry out the governmental purposes of the Governmental Lender Notes within the three-year period beginning on the Closing Date.

(j) Termination of Restrictions. Although the parties hereto recognize that, subject to the provisions of the Regulatory Agreement, the provisions of this Borrower Loan Agreement shall terminate

- 45 -

in accordance with Section 10.1 of the Regulatory Agreement, the parties hereto recognize that pursuant to the Regulatory Agreement, certain requirements, including the requirements incorporated by reference in this Section, may continue in effect beyond the term hereof.

(k) Public Approval. The Borrower covenants and agrees that the proceeds of the Governmental Lender Notes will not be used in a manner that deviates in any substantial degree from the 4% Project described in the written notice of a public hearing regarding the Governmental Lender Notes.

(l) 40/60 Test Election. The Borrower and the Governmental Lender hereby elect to apply the requirements of Section 142(d)(1)(B) to the 4% Project. The Borrower hereby represents, covenants and agrees, continuously during the Qualified 4% Project Period, to comply with all the provisions of the Regulatory Agreement.

(m) Modification of Tax Covenants. Subsequent to the origination of the Funding Loan and prior to its payment in full (or provision for the payment thereof having been made in accordance with the provisions of the Funding Loan Agreement), this Section 5.34 hereof may not be amended, changed, modified, altered or terminated except as permitted herein and by the Funding Loan Agreement and with the Written Consent of the Governmental Lender and the Funding Lender. Anything contained in this Agreement or the Funding Loan Agreement to the contrary notwithstanding, the Governmental Lender, the Funding Lender and the Borrower hereby agree to amend this Borrower Loan Agreement and, if appropriate, the Funding Loan Agreement and the Regulatory Agreement, to the extent required, in the opinion of Tax Counsel, in order for interest on the Governmental Lender Notes to remain excludable from gross income for federal income tax purposes. The party requesting such amendment, which may include the



Funding Lender, shall notify the other parties to this Borrower Loan Agreement of the proposed amendment and send a copy of such requested amendment to Tax Counsel. After review of such proposed amendment, Tax Counsel shall render to the Funding Lender and the Governmental Lender an opinion as to the effect of such proposed amendment upon the includability of interest on the Governmental Lender Notes in the gross income of the recipient thereof for federal income tax purposes. The Borrower shall pay all necessary fees and expenses incurred with respect to such amendment. The Borrower, the Governmental Lender and, where applicable, the Funding Lender per written instructions from the Governmental Lender shall execute, deliver and, if applicable, the Borrower shall file of record, any and all documents and instruments, including without limitation, an amendment to the Regulatory Agreement, with a file-stamped copy to the Funding Lender, necessary to effectuate the intent of this Section 5.34, and the Borrower and the Governmental Lender hereby appoint the Funding Lender as their true and lawful attorney-in-fact to execute, deliver and, if applicable, file of record on behalf of the Borrower or the Governmental Lender, as is applicable, any such document or instrument (in such form as may be approved by and upon instruction of Tax Counsel) if either the Borrower or the Governmental Lender defaults in the performance of its obligation under this Section 5.34; provided, however, that the Funding Lender shall take no action under this Section 5.34 without first notifying the Borrower or the Governmental Lender, as is applicable, of its intention to take such action and providing the Borrower or the Governmental Lender, as is applicable, a reasonable opportunity to comply with the requirements of this Section 5.34.

(n) The Borrower irrevocably authorizes and directs the Funding Lender and any other agent designated by the Governmental Lender to make payment of such amounts from funds of the Borrower, if any, held by the Funding Lender, or any agent of the Governmental Lender or the Funding Lender. The Borrower further covenants and agrees that, pursuant to the requirements of Treasury Regulation Section 1.148-1(b), it (or any related person contemplated by such regulations) will not purchase interests in the Governmental Lender Notes in an amount related to the amount of the Borrower Loan.

#### Section 5.35. Payment of Rebate

### 46 -

(a) Arbitrage Rebate. The Borrower agrees to take all steps necessary to compute and pay any rebatable arbitrage relating to the Funding Loan or the Governmental Lender Notes in accordance with Section 148(f) of the Code including:

i) Delivery of Documents and Money on Computation Dates. The Borrower will deliver to the Servicer, within 55 days after each Computation Date:

A) a statement, signed by the Borrower, stating the Rebate Amount as of such Computation Date;

B) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90% of the Rebate Amount as of such Installment Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(0)(1) of the Regulations), or (2) if such Computation Date is the final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount as of such final Computation Date, less any "previous rebate payments" made to the United States (as that term is used in Section 1.148-3(0)(2) of the Regulations); and

C) an Internal Revenue Service Form 8038-T properly signed and completed as of such Computation Date.

ii) Correction of Underpayments. If the Borrower shall discover or be notified as of any date that any payment paid to the United States Treasury pursuant to this Section 5.35 of an amount described in Section 5.35(a)(i)(A) or (B) above shall have failed to satisfy any requirement of Section 1.148-3 of the Regulations (whether or not such failure shall be due to any default by the Borrower, the Governmental Lender or the Funding Lender), the Borrower shall (1) pay to the Servicer (for deposit to the Rebate Fund) and cause the Servicer to pay to the United States Treasury from the Rebate Fund the underpayment of the Rebate Amount, together with any penalty and/or interest due, as specified in Section 1.148-3(h) of the

Regulations, within 175 days after any discovery or notice and (2) deliver to the Servicer an Internal Revenue Service Form 8038-T completed as of such date. If such underpayment of the Rebate Amount, together with any penalty and/or interest due, is not paid to the United States Treasury in the amount and manner and by the time specified in the Regulations, the Borrower shall take such steps as are necessary to prevent the Governmental Lender Notes from becoming an arbitrage bond within the meaning of Section 148 of the Code.

iii) Records. The Borrower shall retain all of its accounting records relating to the funds established under this Borrower Loan Agreement and all calculations made in preparing the statements described in this Section 5.35 for at least six years after the later of the final maturity of the Governmental Lender Notes or the date the Funding Loan is retired in full.

0v) Costs. The Borrower agrees to pay all of the fees and expenses of a nationally recognized Tax Counsel, the Rebate Analyst, a certified public accountant and any other necessary consultant employed by the Borrower or the Funding Lender in connection with computing the Rebate Amount

(v) No Diversion of Rebateable Arbitrage The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect

- 17 -

to the Gross Proceeds of the Funding Loan which is not purchased at Fair Market Value or includes terms that the Borrower would not have included if the Funding Loan were not subject to Section 148(f) of the Code.

(vi) Modification of Requirements. If at any time during the term of this Agreement, the Governmental Lender, the funding Lender or the Borrower desires to take any action which would otherwise be prohibited by the terms of this Section 5.35, such Person shall be permitted to take such action if it shall first obtain and provide to the other Persons named herein a Tax Counsel No Adverse Effect Opinion with respect to such action.

b) Rebate fund. The Servicer shall establish and hold a separate fund designated as the "Rebate fund." The Servicer shall deposit or transfer to the credit of the Rebate fund each amount delivered to the Servicer by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto.

c) Within 15 days after each receipt or transfer of funds to the Rebate Fund, the Servicer shall withdraw from the Rebate fund and pay to the United States of America the entire balance of the Rebate fund.

d) All payments to the United States of America pursuant to this Section 5.35 shall be made by the Servicer for the account and in the name of the Governmental Lender and shall be paid through the United States Mail (return receipt requested or overnight delivery), addressed to the appropriate Internal Revenue Service Center and accompanied by the appropriate Internal Revenue Service forms (such forms to be provided to the Servicer by the Borrower or the Rebate Analyst as set forth in this Section 5.35).

e) The Borrower shall preserve all statements, forms and explanations received delivered pursuant to this Section 5.35 and all records of transactions in the Rebate fund until six years after the retirement of the funding Loan.

f) Moneys and securities held in the Rebate Fund shall not be deemed funds of the Funding Lender or of the Governmental Lender and are not pledged or otherwise subject to any security interest in favor of the funding Lender to secure the funding Loan or any other obligations.

g) Notwithstanding anything to the contrary in this Borrower Loan Agreement, no payment shall be made to the United States if the Borrower shall furnish to the Governmental Lender and the Funding Lender an opinion of Tax Counsel to the effect that such payment is not required under Section 148(d) and (i) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Notes, in such event, the Borrower shall be entitled to

withdraw funds from the Rebate Fund to the extent the Borrower shall provide a "Fax Counsel No Adverse Effect Opinion to the Governmental Lender and the funding Lender with respect to such withdrawal.

(It) Notwithstanding the foregoing, the computations and payments of rebate amounts referred to in this Section 5.35 need not be made to the extent that neither the Governmental Lender nor the Borrower will thereby fail to comply with any requirements of Section 148(f) of the Code based on a fax Counsel No Adverse Effect Opinion, a copy of which shall be provided to the Funding Lender.

Section 5.36. Covenants under Funding Loan Agreement. The Borrower will fully and faithfully perform all the duties and obligations which the Governmental Lender has covenanted and agreed in the funding Loan Agreement to cause the Borrower to perform and any duties and obligations which the Borrower is required in the funding Loan Agreement to perform. The foregoing will not apply to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned

- 4X -

Section 5.37. Notice of Default. The Borrower will advise the Governmental Lender, the Funding Lender, and the Servicer promptly in writing of the occurrence of any Potential Default or Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

Section 5.38. Continuing Disclosure Agreement. The Borrower and the Funding Lender shall enter into the Continuing Disclosure Agreement to provide for the continuing disclosure of information about the Governmental Lender Notes, the Borrower and other matters as specifically provided for in such agreement.

Section 5.39. Omitted.

Section 5.40. Compliance with Forward Loan Assignment Agreement. Borrower will do, or cause to be done, all things necessary to preserve and keep unimpaired the rights of Borrower under the Forward Loan Assignment Agreement, and to prevent any default or failure of condition under the Forward Bond Purchase Agreement or any termination or cancellation thereof. Borrower will keep, observe and perform, or cause to be kept, observed and performed, all of the terms, covenants, provisions and agreements contained in the Forward Loan Assignment Agreement on the part of Borrower thereunder to be kept, observed and performed. Without the Funding Lender's prior written consent, the Borrower will not terminate, cancel (or permit any cancellation or termination), modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Forward Loan Assignment Agreement and any attempt on the part of Borrower to do so without such prior written consent of Funding Lender shall be null and void and of no effect.

## ARTICLE VI NEGATIVE COVENANTS

Borrower hereby covenants and agrees as follows, which covenants shall remain in effect so long as any Payment Obligation or other obligation of Borrower under any of the other Borrower Loan Documents or the Funding Loan Documents remains outstanding or unperformed. Borrower covenants and agrees that it will not, directly or indirectly:

Section 6.1. Management Agreement. Without first obtaining the Funding Lender's prior Written Consent (which is acknowledged as given on the Closing Date), enter into the Management Agreement, and thereafter the Borrower shall not, without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) and subject to the Regulatory Agreement: (i) surrender, terminate or cancel the Management Agreement or otherwise replace the Manager or enter into any other management agreement; (ii) reduce or consent to the reduction of the term of the Management Agreement; (iii) increase or consent to the increase of the amount of any charges under the Management Agreement; (iv) otherwise modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect any of its rights and remedies under, the Management Agreement; or (v) suffer or permit the occurrence and continuance of a default beyond any applicable cure period under the Management Agreement (or any successor management agreement) if such default permits the Manager to terminate the Management Agreement (or such successor management agreement).

Section 6.2. Dissolution Dissolve or liquidate, in whole or in pari, merge with or consolidate into another Person

Section 6.3. Change in Business or Operation of Property. Enter into any line of business other than the ownership and operation of the 4% Project, or make any material change in the scope or nature of its business objectives, purposes or operations, or undertake or participate in activities other than

- -19 -

the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the 4% Project as a multi-family property or terminate such business for any reason whatsoever (other than temporary cessation in connection with construction or rehabilitation, as appropriate, of the 4% Project).

Section 6.4. Debt Cancellation. Cancel or otherwise forgive or release any claim or debt owed to the Borrower by a Person, except for adequate consideration or in the ordinary course of the Borrower's business in its reasonable judgment.

Section 6.5. Assets. Purchase or own any real property or personal property incidental thereto other than the 4% Project.

Section 6.6. Transfers. Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Loan Agreement, nor transfer any material License required for the operation of the 4% Project.

Section 6.7. Debt. Other than as expressly approved in writing by the Funding Lender, create, incur or assume any indebtedness for borrowed money (including subordinate debt) whether unsecured or secured by all or any portion of the 4% Project or interest therein or in the Borrower or any partner thereof (including subordinate debt) other than (i) the Borrower Payment Obligations, (ii) the Subordinate Debt, (iii) secured indebtedness incurred pursuant to or permitted by the Borrower Loan Documents and the Funding Loan Documents, (iv) unsecured deferred developer fees as permitted pursuant to the terms of the Development Services Agreement (as defined in the Operating Agreement), and (v) trade payables incurred in the ordinary course of business.

Section 6.8. Assignment of Rights. Without the Funding Lender's prior Written Consent, attempt to assign the Borrower's rights or interest under any Borrower Loan Document or Funding Loan Document in contravention of any Borrower Loan Document or Funding Loan Document.

Section 6.9. Principal Place of Business. Change its principal place of business without providing 30 days' prior Written Notice of the change to the Funding Lender and the Servicer.

Section 6.10. Operating Agreement. Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld, conditioned or delayed) surrender, terminate, cancel, modify, change, supplement, alter or amend in any material respect, or waive or release in any material respect, any of its rights or remedies under the Operating Agreement, except as permitted by and in accordance with the Security Instrument or Loan Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Operating Agreement (i) permitted by Section 6.6 of the Construction funding Agreement, (ii) resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Construction Funding Agreement prior to the occurrence of the Assignment event. (iii) permitted by the Term Loan Agreement after the occurrence of the Assignment event. or (iv) correcting scrivener's errors.

Section 6.11. FRISA. Maintain, sponsor, contribute to or become obligated to contribute to. or suffer or permit any FRISA Affiliate of the Borrower to, maintain, sponsor, contribute to or become obligated to contribute to. any Plan, or permit the assets of the Borrower to become "plan assets." whether by operation of law or under regulations promulgated under FRISA.

Section 6.12. No Hedging Arrangements. Without the prior Written Consent of the Funding lender or unless otherwise required by this Borrower Loan Agreement, the Borrower will not enter into or guarantee, provide security for or otherwise undertake any form of contractual obligation with respect to

- 50 -

any interest rate swap, interest rate cap or other arrangement that has the effect of an interest rate swap or interest rate cap or that otherwise (directly or indirectly, derivatively or synthetically) hedges interest rate risk associated with being a debtor of variable rate debt or any agreement or other arrangement to enter into any of the above on a future date or after the occurrence of one or more events in the future.

**Section 6.13. Loans and Investments; Distributions; Related Party Payments.**

a) Without the prior Written Consent of Funding Lender in each instance. Borrower shall not (i) lend money, make investments, or extend credit, other than in the ordinary course of its business as presently conducted; or (ii) repurchase, redeem or otherwise acquire any interest in Borrower, any Affiliate or any other Person owning an interest, directly or indirectly, in Borrower, or make any distribution, in cash or in kind, in respect of interests in Borrower, any Affiliate or any other Person owning an interest, directly or indirectly, in Borrower (except to the extent permitted by the Security Instrument and subject to the limitations set forth in Section 5.27 hereof).

b) Disbursements for fees and expenses of any Affiliate of Borrower and developer fees (however characterized) will only be paid to the extent that such fee or expense bears a proportionate relationship to the percentage of completion of the construction or rehabilitation, as the case may be, of the Improvements, as determined by the Construction Consultant, and only after deducting the applicable Retainage. Except as otherwise permitted hereunder or by the Funding Lender, no Disbursements for the Developer Fee or any "deferred developer fees" shall be made prior to the payment in full of the Borrower Payment Obligations other than in accordance with the Approved Developer Fee Payment Schedule.

Section 6.14. Amendment of Related Documents or CC&R's. Without the prior Written Consent of Funding Lender in each instance, except as provided herein, Borrower shall not enter into or consent to any amendment, termination, modification, or other alteration of any of the Related Documents or any of the CC&R's (including, without limitation, those contained in the Borrower Loan Agreement, any Architect's Agreement or Engineer's Contract, any Construction Contract, and any Management Agreement, but excluding the Operating Agreement, which is covered by Section 6.10), or any assignment, transfer, pledge or hypothecation of any of its rights thereunder, if any.

Section 6.15. Personal Property. Borrower shall not install materials, personal property, equipment or fixtures subject to any security agreement or other agreement or contract wherein the right is reserved to any Person other than Borrower to remove or repossess any such materials, equipment or fixtures, or whereby title to any of the same is not completely vested in Borrower at the time of installation, without Funding Lender's prior Written Consent; provided, however, that this Section 6.15 shall not apply to laundry equipment or other equipment that is owned by a third-party vendor and commercial tenants.

Section 6.16. Fiscal Year. Without Funding Lender's Written Consent, which shall not be unreasonably withheld, neither Borrower nor Managing Member shall change the times of commencement or termination of its fiscal year or other accounting periods, or change its methods of accounting, other than to conform to GAAP.

Section 6.17. Publicity. Neither Borrower nor Managing Member shall issue any publicity release or other communication to any print, broadcast or on-line media, post any sign or in any other way identify Funding Lender or any of its affiliates as the source of the financing provided for herein, without the prior written approval of Funding Lender in each instance (provided that nothing herein shall prevent Borrower or Managing Member from identifying Funding Lender or its affiliates as the source of such financing to the extent that Borrower or Managing Member are required to do so by disclosure requirements applicable to public held companies). Borrower and Managing Member agree that no sign shall be posted on the I/M Project in connection with the construction or rehabilitation of the Improvements unless such

-51-

sign identities the Funding Lender and its affiliates as the source of the financing provided for herein or Funding Lender consents to not being identified on any such sign.

Section 6.18. Subordinate Loan Documents. Without Funding Lender's prior written consent, Borrower will not surrender, terminate, cancel, modify, change, supplement, alter, amend, waive, release, assign, transfer, pledge or hypothecate any of its rights or remedies under the Subordinate Loan Documents.

Section 6.19. Omitted.

## ARTICLE VII RESERVED

## ARTICLE VIII, DEFAULTS

Section 8.1. Events of Default. Each of the following events shall constitute an "Event of Default" under the Borrower Loan Agreement:

a) failure by the Borrower to pay any Borrower Loan Payment in the manner and on the date such payment is due in accordance with the terms and provisions of the Borrower Note, or the failure by the Borrower to pay any Additional Borrower Payment on the date such payment is due in accordance with the terms and provisions of the Borrower Note, the Security Instrument, this Borrower Loan Agreement or any other Borrower Loan Document;

b) failure by or on behalf of the Borrower to pay when due any amount (other than as provided in subsection (a) above or elsewhere in this Section 8.1) required to be paid by the Borrower under this Borrower Loan Agreement, the Borrower Note, the Security Instrument or any of the other Borrower Loan Documents or Funding Loan Documents, including a failure to repay any amounts that have been previously paid but are recovered, attached or enjoined pursuant to any insolvency, receivership, liquidation or similar proceedings, which default remains uncured for a period of five (5) days after Written Notice thereof shall have been given to the Borrower;

c) an Event of Default, as defined by a Borrower Note, the Security Instrument, the Construction Funding Agreement, the Loan Agreement or any other Borrower Loan Document, occurs (or to the extent an "Event of Default" is not defined in any other Borrower Loan Document, any default or breach by the Borrower, Managing Member or any Guarantor of any of its obligations, covenants, representations or warranties under such Borrower Loan Document occurs and any applicable notice and/or cure period has expired);

d) any representation or warranty made by any of the Borrower, the Managing Member or any Guarantor in any Borrower Loan Document or Funding Loan Document to which it is a party, or in any report, certificate, financial statement or other instrument, agreement or document furnished by the Borrower, the Managing Member or any Guarantor in connection with any Borrower Loan Document or Funding Loan Document, shall be false or misleading in any material respect as of the Closing Date:

(e) the Borrower shall make a general assignment for the benefit of creditors, or shall generally not be paying its debts as they become due:

f) the Borrower Controlling Entity shall make a general assignment for the benefit of creditors, shall generally not be paying its debts as they become due, or an Act of Bankruptcy with respect to the Borrower Controlling Entity shall occur, unless, if permitted by the Borrower Loan Documents or otherwise agreed to by the funding Lender the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 6.6 of the Construction funding Agreement; which, in the case of a non-profit Borrower Controlling Entity, may be replaced within sixty (60) days of such event with

another non-profit Borrower Controlling Entity acceptable to the funding Lender, in which case no Event of Default shall be deemed to have occurred;

g) any portion of Borrower Deferred Equity to be made by the Equity Investor and required for (i) completion of the construction or rehabilitation, as the case may be, of the Improvements, or (ii) the operation of the Improvements, is not received in accordance with the terms of the Operating Agreement after the expiration of all applicable notice and cure periods;

h) the failure by Borrower or any ERISA Affiliate of Borrower to comply in all respects with ERISA, or the occurrence of any other event (with respect to the failure of Borrower or any ERISA Affiliate to pay any amount required to be paid under ERISA or with respect to the termination of, or withdrawal of Borrower or any ERISA Affiliate from, any employee benefit or welfare plan subject to ERISA) the effect of which is to impose upon Borrower (after giving effect to the tax consequences thereof) for the payment of any amount in excess of Fifty Thousand Dollars (\$50,000);

(i) a Bankruptcy Event shall occur with respect to Borrower, Managing Member or any Guarantor, or there shall be a change in the assets, liabilities or financial position of any such Person which has a material adverse effect upon the ability of such Person to perform such Person's obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document; provided that any such Bankruptcy Event with respect to a Guarantor shall not constitute an Event of Default if, under the Borrower Loan Documents, the Borrower is permitted to replace such Guarantor with a person or entity satisfying the funding Lender's mortgage credit standards for principals and acceptable to the funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the funding Lender and such replacement guarantor executes and delivers to funding Lender a guaranty in the form of the Guaranty or in such other form as is acceptable to funding Lender;

(j) all or any part of the property of Borrower is attached, levied upon or otherwise seized by legal process, and such attachment, levy or seizure is not quashed, stayed or released: (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days of the date thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within sixty (60) days of the date thereof;

(k) subject to Section 10.16 hereof, Borrower fails to pay when due any monetary obligation (other than pursuant to this Borrower Loan Agreement) to any Person in excess of \$100,000, and such failure continues beyond the expiration of any applicable cure or grace periods;

(l) any material litigation or proceeding is commenced before any Governmental Authority against or affecting Borrower, Managing Member, any Guarantor or property of Borrower, Managing Member or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, Managing Member or such Guarantor, as applicable;

(m) a final judgment or decree for monetary damages in excess of \$50,000 or a monetary line or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, Managing Member or any Guarantor in any Governmental Authority and such judgment, decree, line or penalty is not paid and discharged or satisfied (i) prior to completion of the construction or rehabilitation, as

the case may be, of the Improvements, within sixty (60) days after entry thereof or (ii) after completion of the construction or

rehabilitation, as the case may be, of the Improvements, within sixty (60) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment, fine or penalty):

(n) a final, unappealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of \$50,000 or more shall be rendered against Borrower, Managing Member or any Guarantor, or against any of their respective assets, that is not paid, superseded or stayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, within ten (10) days after entry thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) days after entry thereof (or such longer period as may be permitted for payment by the terms of such judgment); or any levy of execution, writ or warrant of attachment, or similar process, is entered or filed against Borrower, Managing Member or any Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of Borrower, Managing Member or such Guarantor to perform their respective obligations under this Borrower Loan Agreement, any other Borrower Loan Document or any Related Document), and such judgment, writ, warrant or process shall remain unsatisfied, unsettled, unvacated, unhanded and unstayed (i) prior to completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of ten (10) days or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, for a period of thirty (30) days, or in any event later than five (5) Business Days prior to the date of any proposed sale thereunder; provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default if the Borrower replaces such Guarantor with a person or entity satisfying the funding Lender's mortgage credit standards for principals and acceptable to the funding Lender in its sole and absolute discretion within thirty (30) days after notice thereof from the funding Lender and such replacement guarantor executes and delivers to funding Lender a guaranty in the form of the Guaranty or in such other form as is acceptable to Funding Lender;

(o) the inability of Borrower to satisfy any condition for the receipt of a Disbursement hereunder (other than an Event of Default specifically addressed in this Section 8.1) and failure to resolve the situation to the satisfaction of funding Lender for a period in excess of thirty (30) days after Written Notice from funding Lender, provided that such thirty (30) day period may be extended to sixty (60) days if the Borrower commences measures to satisfy such condition within such thirty (30) day period and thereafter diligently pursues such measures, unless (i) such inability shall have been caused by conditions beyond the control of Borrower, including, without limitation, acts of God or the elements, fire, strikes and disruption of shipping; (ii) Borrower shall have made adequate provision, acceptable to funding Lender, for the protection of materials stored on-site or off-site and for the protection of the Improvements to the extent then constructed against deterioration and against other loss or damage or theft; (iii) Borrower shall furnish to funding Lender satisfactory evidence that such cessation of construction or rehabilitation will not adversely affect or interfere with the rights of Borrower under labor and materials contracts or subcontracts relating to the construction or operation of the Improvements; and (iv) Borrower shall furnish to funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date and that there will be no material adverse effect on the value of the low income housing tax credits or the amount or timing for the payment of the Equity Investor's capital contributions to the Borrower;

(p) the construction or rehabilitation of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days:

(q) Borrower shall fail to keep in force and effect any material permit, license, consent or approval required under this Borrower Loan Agreement, or any Governmental Authority with jurisdiction over the Mortgaged Property or the -1% Project orders or requires that construction or rehabilitation of the

\_ 54 .

Improvements be stopped, in whole or in part, or that any required approval, license or permit be withdrawn or suspended, and the order, requirement, withdrawal or suspension remains in effect for a period of thirty (30) days:

(r) failure by Borrower to complete the construction or rehabilitation, as the case may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date:

(s) the occurrence of a default or failure of condition under the Forward Loan Assignment Agreement or the expiration,



termination or cancellation of the Forward Loan Assignment Agreement;

(t) failure by any Subordinate Lender to disburse the proceeds of its Subordinate Loan in approximately such amounts and at approximately such times as set forth in the Cost Breakdown and in the Subordinate Loan Documents;

(u) [an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents, or CC&Rs, after the expiration of all applicable notice and cure periods]; or

(v) any failure by the Borrower to perform or comply with any of its obligations under this Borrower Loan Agreement (other than those specified in this Section 8.1), as and when required, which continues for a period of thirty (30) days after written notice of such failure by Funding Lender or the Servicer on its behalf to the Borrower; provided, however, if such failure is susceptible of cure but cannot reasonably be cured within such thirty (30) day period, and the Borrower shall have commenced to cure such failure within such thirty (30) day period and thereafter diligently and expeditiously proceeds to cure the same, such thirty (30) day period shall be extended for an additional period of time as is reasonably necessary for the Borrower in the exercise of due diligence to cure such failure, such additional period not to exceed sixty (60) days. However, no such notice or grace period shall apply to the extent such failure could, in the Funding Lender's judgment, absent immediate exercise by the Funding Lender of a right or remedy under this Borrower Loan Agreement, result in harm to the Funding Lender, impairment of the Borrower Note or this Borrower Loan Agreement or any security given under any other Borrower Loan Document.

(vv) In the event that any cure period provided herein with respect to a particular default is inconsistent with the cure period (if any) relating to a similar default set forth in the Loan Agreement, the terms of the Loan Agreement shall control.

## Section 8.2. Remedies.

Section 8.2.1 Acceleration. Upon the occurrence of an Event of Default (other than an Event of Default described in paragraph (e), (f) or (i) of Section 8.1) and at any time and from time to time thereafter, as long as such Event of Default continues to exist, in addition to any other rights or remedies available to the Governmental Lender pursuant to the Borrower Loan Documents or at law or in equity, the Funding Lender may, take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the 4% Project, including declaring the Borrower Payment Obligations to be immediately due and payable (including, without limitation, the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Borrower Note to be immediately due and payable), without notice or demand, and apply such payment of the Borrower Payment Obligations in any manner and in an order determined by Funding Lender, in Funding Lender's sole and absolute discretion; and upon any Event of Default described in paragraph (e), (f) or (i) of Section 8.1, the Borrower Payment Obligations shall become immediately due and payable, without notice or demand, and the Borrower hereby expressly waives any such notice or demand, anything contained in any

Borrower Loan Document to the contrary notwithstanding. Notwithstanding anything herein to the contrary, enforcement of remedies hereunder and under the Funding Loan Agreement shall be controlled by the Funding Lender.

Section 8.2.2 Remedies Cumulative. Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available to the Funding Lender against the Borrower under the Borrower Loan Documents or at law or in equity may be exercised by the Funding Lender, at any time and from time to time, whether or not all or any of the Borrower Payment Obligations shall be declared due and payable, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Borrower Loan Documents. Any such actions taken by the Funding Lender shall be cumulative and concurrent and may be pursued independently, singly, successively, together or otherwise, at such time and in such order as the Funding Lender may determine in its sole discretion, to the fullest extent permitted by law, without impairing or otherwise affecting the other rights and remedies of the Funding Lender permitted by law, equity or contract or as set forth in the Borrower Loan Documents. Without limiting the generality of the foregoing, the Borrower agrees that if an Event of Default is continuing, all Liens and other rights, remedies or privileges provided to the Funding Lender shall remain in full force and effect until they have exhausted all of its remedies, the Security Instrument has been foreclosed, the 4% Project has been sold and/or otherwise realized upon satisfaction of the Borrower Payment Obligations or the Borrower Payment Obligations has been

paid in full. To the extent permitted by applicable law, nothing contained in any Borrower Loan Document shall be construed as requiring the Funding Lender to resort to any portion of the 4% Project for the satisfaction of any of the Borrower Payment Obligations in preference or priority to any other portion, and the Funding Lender may seek satisfaction out of the 4% Project or any part thereof, in its absolute discretion.

Notwithstanding any provision herein to the contrary, the Governmental Lender and the Funding Lender agrees that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

Section 8.2.3 Delay. No delay or omission to exercise any remedy, right, power accruing upon an Event of Default, or the granting of any indulgence or compromise by the Funding Lender shall impair any such remedy, right or power hereunder or be construed as a waiver thereof, but any such remedy, right or power may be exercised from time to time and as often as may be deemed expedient. A waiver of one Potential Default or Event of Default shall not be construed to be a waiver of any subsequent Potential Default or Event of Default or to impair any remedy, right or power consequent thereon. Notwithstanding any other provision of this Borrower Loan Agreement, the Funding Lender reserves the right to seek a deficiency judgment or preserve a deficiency claim, in connection with the foreclosure of the Security Instrument to the extent necessary to foreclose on the 4% Project, the Rents, the funds or any other collateral.

Section 8.2.4 Set Off; Waiver of Set Off. Upon the occurrence of an Event of Default, Funding Lender may, at any time and from time to time, without notice to Borrower or any other Person (any such notice being expressly waived), set off and appropriate and apply (against and on account of any obligations and liabilities of Borrower to Funding Lender arising under or connected with this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents, irrespective of whether or not Funding Lender shall have made any demand therefor, and although such obligations and liabilities may be contingent or unmatured), and Borrower hereby grants to Funding Lender, as security for the Borrower Payment Obligations, a security interest in any and all deposits (general or special, including but not limited to Debt evidenced by certificates of deposit, whether matured or unmatured, but not

- 56 -

including trust accounts) and any other Debt at any time held or owing by Funding Lender to or for the credit or the account of Borrower.

Section 8.2.5 Assumption of Obligations. In the event that the Funding Lender or its assignee or designee shall become the legal or beneficial owner of the 4% Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Borrower Loan Agreement, the Borrower Note, the Regulatory Agreement, and any other Borrower Loan Documents and Funding Loan Documents to which the Borrower is a party. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts (or inaction) of the Borrower.

Section 8.2.6 Accounts Receivable. Upon the occurrence of an Event of Default, Funding Lender shall have the right, to the extent permitted by law, to impound and take possession of books, records, notes and other documents evidencing Borrower's accounts, accounts receivable and other claims for payment of money, arising in connection with the 4% Project, and to make direct collections on such accounts, accounts receivable and claims for the benefit of Funding Lender.

Section 8.2.7 Defaults under Other Documents. Funding Lender shall have the right to cure any default under any of the Related Documents and the Subordinate Loan Documents, but shall have no obligation to do so.

Section 8.2.8 Abatement of Disbursements. Notwithstanding any provision to the contrary herein or any of the other Borrower Loan Documents or the Funding Loan Documents, Funding Lender's obligation to make further Disbursements shall abate (i) during the continuance of any Potential Default, (ii) after any disclosure to Funding Lender of any fact or circumstance that, absent such disclosure, would cause any representation or warranty of Borrower to fail to be true and correct in all material respects, unless

and until Funding Lender elects to permit further Disbursements notwithstanding such event or circumstance; and (iii) upon the occurrence of any Event of Default.

Section 8.2.9 Completion of Improvements. Upon the occurrence of any Event of Default, Funding Lender shall have the right to cause an independent contractor selected by Funding Lender to enter into possession of the 4% Project and to perform any and all work and labor necessary for the completion of the 4% Project substantially in accordance with the Plans and Specifications, if any, and to perform Borrower's obligations under this Borrower Loan Agreement. All sums expended by Funding Lender for such purposes shall be deemed to have been disbursed to and borrowed by Borrower and shall be secured by the Security Documents.

Section 8.2.10 Right to Directly Enforce. Notwithstanding any other provision hereof to the contrary, the Funding Lender shall have the right to directly enforce all rights and remedies hereunder with or without involvement of the Governmental Lender, provided that only the Governmental Lender may enforce the Unassigned Rights that exclusively benefit Governmental Lender and Funding Lender shall not impair Governmental Lender's enforcement of such Unassigned Rights. Notwithstanding the foregoing, the Governmental Lender and the Funding Lender shall have the right to enforce all rights and remedies under Sections 5.14, 5.15 and 5.17, with or without involvement of the other party. In the event that any of the provisions set forth in this Section 8.2.10 are inconsistent with the covenants, terms and conditions of the Security Instrument or the Loan Agreement, the covenants, terms and conditions of the Security Instrument or the Loan Agreement shall prevail.

Section 8.2.11 Power of Attorney. Effective upon the occurrence of an Event of Default, and continuing until and unless such Event of Default is cured or waived, Borrower herein constitutes and appoints funding Lender, or an independent contractor selected by Funding Lender, as its true and lawful

attorney-in-fact with full power of substitution, for the purposes of completion of the 4% Project and performance of Borrower's obligations under this Borrower Loan Agreement in the name of Borrower, and hereby empowers said attorney-in-fact to do any or all of the following upon the occurrence and continuation of an Event of Default (it being understood and agreed that said power of attorney shall be deemed to be a power coupled with an interest which cannot be revoked until full payment and performance of all obligations under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents):

a) to use any of the funds of Borrower or Managing Member, including any balance of the Borrower Loan, as applicable, and any funds which may be held by Funding Lender for Borrower (including all funds in all deposit accounts in which Borrower has granted to Funding Lender a security interest), for the purpose of effecting completion of the construction or rehabilitation, as the case may be, of the Improvements, in the manner called for by the Plans and Specifications;

b) to make such additions, changes and corrections in the Plans and Specifications as shall be necessary or desirable to complete the 4% Project in substantially the manner contemplated by the Plans and Specifications;

c) to employ any contractors, subcontractors, agents, architects and inspectors required for said purposes;

d) to employ attorneys to defend against attempts to interfere with the exercise of power granted hereby;

e) to pay, settle or compromise all existing bills and claims which are or may be liens against the 4% Project, the Improvements or the 4% Project, or may be necessary or desirable for the completion of the construction or rehabilitation, as the case may be, of the Improvements, or clearance of objections to or encumbrances on title;

f) to execute all applications and certificates in the name of Borrower, which may be required by any other construction contract;

g) to prosecute and defend all actions or proceedings in connection with the 4% Project and to take such action, require such performance and do any and every other act as is deemed necessary with respect to the completion of the construction or rehabilitation, as the case may be, of the Improvements, which Borrower might do on its own behalf;

h) to let new or additional contracts to the extent not prohibited by their existing contracts;

(i) to employ watchmen and erect security fences to protect the 4% Project from injury; and

(j) to take such action and require such performance as it deems necessary under any of the bonds or insurance policies to be furnished hereunder, to make settlements and compromises with the sureties or insurers thereunder, and in connection therewith to execute instruments of release and satisfaction.

It is the intention of the parties hereto that upon the occurrence and continuance of an Event of Default, rights and remedies may be pursued pursuant to the terms of the Borrower Loan Documents and the funding Loan Documents. The parties hereto acknowledge that, among the possible outcomes to the pursuit of such remedies, is the situation where the lending Lender assignees or designees become the

- 5S -

owner of the 4% Project and assume the obligations identified above, and the Borrower Note, the Borrower Loan and the other Borrower Loan Documents and funding Loan Documents remain outstanding.

## ARTICLE IX SPECIAL PROVISIONS

### Section 9.1. Sale of Notes and Secondary Market Transaction.

Section 9.1.1 Cooperation. Subject to the restrictions of Section 2.4(b) of the funding Loan Agreement, at the funding Lender's or the Servicer's request (to the extent not already required to be provided by the Borrower under this Borrower Loan Agreement), the Borrower shall use reasonable efforts to satisfy the market standards to which the funding Lender or the Servicer customarily adheres or which may be reasonably required in the marketplace or by the funding Lender or the Servicer in connection with one or more sales or assignments of all or a portion of the Governmental Lender Notes and the funding Loan or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Governmental Lender Notes and the funding Loan (each such sale, assignment and/or securitization, a "Secondary Market Transaction"); provided that neither the Borrower nor the Governmental Lender shall incur any third party or other out-of-pocket costs and expenses in connection with a Secondary Market Transaction, including the costs associated with the delivery of any Provided Information or any opinion required in connection therewith, and all such costs shall be paid by the funding Lender or the Servicer, and shall not materially modify Borrower's rights or obligations. Without limiting the generality of the foregoing, the Borrower shall, so long as the Borrower Loan is still outstanding:

a) (i) provide such financial and other information with respect to the Borrower Loan, and with respect to the 4% Project, the Borrower, the Manager, the contractor of the 4% Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the 4% Project with customary disclaimers for any forward looking statements or lack of audit, and (iii), at the expense of the funding Lender or the Servicer, perform or permit or cause to be performed or permitted such site inspection, appraisals, surveys, market studies, environmental reviews and reports (Phase I's and, if appropriate, Phase II's), engineering reports and other due diligence investigations of the 4% Project, as may be reasonably requested from time to time by the funding Lender or the Servicer or the Rating Agencies or as may be necessary or appropriate in connection with a Secondary Market Transaction or Exchange Act requirements (the items provided to the funding Lender or the Servicer pursuant to this paragraph (a) being called the "Provided Information"), together, if customary, with appropriate verification of and/or consents to the Provided Information through letters of auditors or opinions of counsel of independent attorneys acceptable to the funding Lender or the Servicer and the Rating Agencies;

b) make such representations and warranties as of the closing date of any Secondary Market Transaction with respect to the 4% Project, the Borrower, the Borrower Loan Documents and the funding Loan Documents reasonably acceptable to the Funding Lender or the Servicer, consistent with the facts covered by such representations and warranties as they exist on the date thereof; and

c) execute such amendments to the Borrower Loan Documents and the funding Loan Documents to accommodate

such Secondary Market Transaction so long as such amendment does not affect the material economic terms of the Borrower Loan Documents and the funding Loan Documents and is not otherwise adverse to the Borrower in its reasonable discretion.

The funding Lender agrees to deal fairly with the Borrower and Governmental Lender regarding any Secondary Market Transaction.

- 5 -

**Section 9.1.2 Use of Information.** The Borrower understands that certain of the Provided Information and the required records may be included in disclosure documents in connection with a Secondary Market Transaction, including a prospectus or private placement memorandum (each, a "Secondary Market Disclosure Document"), or provided or made available to investors or prospective investors in the Securities, the Rating Agencies and service providers or other parties relating to the Secondary Market Transaction. In the event that the Secondary Market Disclosure Document is required to be revised, the Borrower shall cooperate, subject to Section 9.1.1 (c) hereof, with the funding Lender and the Servicer in updating the Provided Information or required records for inclusion or summary in the Secondary Market Disclosure Document or for other use reasonably required in connection with a Secondary Market Transaction by providing all reasonably requested current information pertaining to the Borrower and the 4% Project necessary to keep the Secondary Market Disclosure Document accurate and complete in all material respects with respect to such matters. The Borrower hereby consents to any and all such disclosures of such information.

**Section 9.1.3 Borrower Obligations Regarding Secondary Market Disclosure Documents.**

In connection with a Secondary Market Disclosure Document, the Borrower shall provide, or in the case of a Borrower-engaged third party such as the Manager, cause it to provide, information reasonably requested by the Funding Lender pertaining to the Borrower, the 4% Project or such third party (and portions of any other sections reasonably requested by the funding Lender pertaining to the Borrower, the 4% Project or the third party). The Borrower shall, if requested by the funding Lender and the Servicer, certify in writing that the Borrower has carefully examined those portions of such Secondary Market Disclosure Document, pertaining to the Borrower, the 4% Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the 4% Project or the Manager) do not contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they were made, not misleading; provided that the Borrower shall not be required to make any representations or warranties regarding any Provided Information obtained from a third party except with respect to information it provided to such parties, furthermore, the Borrower hereby indemnifies the funding Lender, the Governmental Lender and the Servicer for any Liabilities to which any such parties may become subject to the extent such Liabilities arise out of or are based upon the use of the Provided Information (in the form, manner and length as provided by the Borrower) in a Secondary Market Disclosure Document; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**Section 9.1.4 Borrower Indemnity Regarding Filings.** In connection with filings under the Exchange Act or the Securities Act, the Borrower shall (i) indemnify funding Lender, the Governmental Lender and the underwriter group for any securities (the "Underwriter Group") and all officials, employees and agents of any of them for any Liabilities to which Funding Lender, the Servicer or the Underwriter Group may become subject insofar as the Liabilities arise out of or are based upon the omission or alleged omission to state in the Provided Information of a material fact required to be stated in the Provided Information in order to make the statements in the Provided Information (in the form, manner and length as provided by the Borrower), in the light of the circumstances under which they were made not misleading and (ii) reimburse the funding Lender, the Servicer, the Underwriter Group and other indemnified parties listed above for any legal or other expenses reasonably incurred by the funding Lender, the Servicer or the Underwriter Group in connection with defending or investigating such Liabilities; provided that the Borrower shall not provide any indemnification regarding any Provided Information obtained from unrelated third parties except with respect to information it provided to such parties.

**Section 9.1.5 Indemnification Procedure** Promptly after receipt by an indemnified party under Sections 9.1.3 and 9.1.4 hereof of notice of the commencement of any action for which a claim for indemnification is to be made against the Borrower, such indemnified party shall notify the Borrower in

writing of such commencement, but the omission to so notify the Borrower will not relieve the Borrower from any liability that it may have to any indemnified party hereunder except to the extent that failure to notify causes prejudice to the Borrower. In the event that any action is brought against any indemnified party, and it notifies the Borrower of the commencement thereof, the Borrower will be entitled, jointly with any other indemnifying party, to participate therein and, to the extent that it (or they) may elect by Written Notice delivered to the indemnified party promptly after receiving the aforesaid notice of commencement, to assume the defense thereof with counsel selected by the Borrower and reasonably satisfactory to such indemnified party in its sole discretion. After notice from the Borrower to such indemnified party under this Section 9.1.5, the Borrower shall not be responsible for any legal or other expenses subsequently incurred by such indemnified party in connection with the defense thereof other than reasonable costs of investigation. No indemnified party shall settle or compromise any claim for which the Borrower may be liable hereunder without the prior Written Consent of the Borrower.

Section 9.1.6 Contribution. In order to provide for just and equitable contribution in circumstances in which the indemnity agreement provided for in Section 9.1.4 hereof is for any reason held to be unenforceable by an indemnified party in respect of any Liabilities (or action in respect thereof) referred to therein which would otherwise be indemnifiable under Section 9.1.4 hereof, the Borrower shall contribute to the amount paid or payable by the indemnified party as a result of such Liabilities (or action in respect thereof); provided, however, that no Person guilty of fraudulent misrepresentation (within the meaning of Section 10(1) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered; (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

## ARTICLE X MISCELLANEOUS

Section 10.1. Notices. All notices, consents, approvals and requests required or permitted hereunder or under any other Borrower Loan Document or funding Loan Document (a "notice") shall be deemed to be given and made when delivered by hand, by recognized overnight delivery service, confirmed facsimile transmission (provided any telecopy or other electronic transmission received by any party after 4:00 p.m., local time, as evidenced by the time shown on such transmission, shall be deemed to have been received the following Business Day) further provided that any transmission by facsimile shall also be sent by U.S. Postal Service first class mail, or five (5) calendar days after deposited in the United States mail, registered or certified, postage prepaid, with return receipt requested, addressed as follows:

If to the Borrower (before April 1, 2022):	Chicago Lighthouse Residences 4, LLC c/o Brinshore Development, LLC 666 Dundee Road, Suite 102 Northbrook, Illinois 60062
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If to the Borrower (after April 1, 2022)	Chicago Lighthouse Residences 4, LLC c/o Brinshore Development, LLC 1603 Orrington Suite 450 Evanston, Illinois 60201
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Department of Housing  
121 North LaSalle Street, 10<sup>th</sup> Floor  
Chicago, Illinois 60602  
Attention: Commissioner, Department of Housing Telephone: (312)744-4190 Facsimile:  
(312) 742-2271

and with a copy to:

City of Chicago  
Office of Corporation Counsel  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division  
Telephone: (312) 744-0200  
Facsimile: (312) 744-0277  
(refer to "Finance & Econ. Development  
Division" on cover sheet)

and with a copy to:

City of Chicago  
Office of the City Comptroller's Office 121 North LaSalle Street, Suite 700  
Chicago, Illinois 60602 Attention: City Comptroller Telephone: (312) 744-  
7106 Facsimile: (312) 742-6544

If to the Funding Lender prior to the  
Assignment Event:

CIBC Bank USA  
120 South LaSalle Street  
Chicago, Illinois 60603  
Attention: \_\_\_\_\_, Managing Director

If to the Equity Investor:

And to:

NEF Assignment Corporation c/o National Equity Fund, Inc. 10 South  
Riverside Plaza, Suite 1700 Chicago, Illinois 60606  
Attention: Asset Management-Chicago Lighthouse

And with a copy to:

Holland & Knight LLP  
150 North Riverside Plaza, Suite 2700  
Chicago, Illinois 60606  
Attention: Sameer Palel

- 62 -

and

Charity & Associates, P.C. 20 North Clark Street, Suite 3300 Chicago,  
Illinois 60602 Attention: Elvin E. Charity  
If to the Funding Lender after the Assignment Event:

JPMorgan Chase Bank, N.A. Community Development Real Estate Group Chase  
Tower/Mail Code ILI-0953 10 South Dearborn Street Chicago, Illinois 60603 Attention:  
Dell McCoy

And

JPMorgan Chase Bank, N.A. 4 New York Plaza, 19<sup>th</sup> Floor Mail Code:  
NY 1-E092 Attention: CDRE Counsel New York, New York 10004

And

Kutak Rock LLP  
8601 N. Scottsdale Road, Suite 300 Scottsdale, Arizona 85252 Attn: I leather  
Aeschleman

If to the Equity Investor:

And

NEF Assignment Corporation c/o National Equity Fund, Inc. 10 South  
Riverside Plaza, Suite I 700 Chicago, Illinois 60606

Attention: Asset Management-Chicago Lighthouse And with a copy to-

Holland & Knight LLP  
150 North Riverside Plaza. Suite 2700  
Chicago. Illinois 60606  
Attention: Sameer ('atel

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Any party may change such party's address for the notice or demands required under this Borrower Loan Agreement by providing written notice of such change of address to the other parties by written notice as provided herein.

Section 10.2. Brokers and Financial Advisors. The Borrower hereby represents that it has dealt with no financial advisors, brokers, underwriters, placement agents, agents or finders in connection with the Borrower Loan, other than those disclosed to the Funding Lender and whose Fees shall be paid by the Borrower pursuant to separate agreements. The Borrower and the Funding Lender shall indemnify and hold the other harmless from and against any and all claims, liabilities, costs and expenses of any kind in any way relating to or arising from a claim by any Person that such Person acted on behalf of the indemnifying party in connection with the transactions contemplated herein. The provisions of this Section 10.2 shall survive the expiration and termination of this Borrower Loan Agreement and the repayment of the Borrower Payment Obligations.

Section 10.3. Survival. This Borrower Loan Agreement and all covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the making by the Governmental Lender of the Borrower Loan and the execution and delivery to the Governmental Lender of the Borrower Note and the assignment of the Borrower Note to the



Funding Lender, and shall continue in full force and effect so long as all or any of the Borrower Payment Obligations is unpaid. All the Borrower's covenants and agreements in this Borrower Loan Agreement shall inure to the benefit of the respective legal representatives, successors and assigns of the Governmental Lender, the Funding Lender and the Servicer.

Section 10.4. Preferences. The Governmental Lender shall have the continuing and exclusive right to apply or reverse and reapply any and all payments by the Borrower to any portion of the Borrower Payment Obligations. To the extent the Borrower makes a payment to the Governmental Lender or the Servicer, or the Governmental Lender or the Servicer receives proceeds of any collateral, which is in whole or part subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable cause, then, to the extent of such payment or proceeds received, the Borrower Payment Obligations or part thereof intended to be satisfied shall be revived and continue in full force and effect, as if such payment or proceeds had not been received by the Governmental Lender or the Servicer.

Section 10.5. "Waiver of Notice. The Borrower shall not be entitled to any notices of any nature whatsoever from the Funding Lender or the Servicer except with respect to matters for which this Borrower Loan Agreement or any other Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender or the Servicer, as the case may be, to the Borrower and except with respect to matters for which the Borrower is not, pursuant to applicable Legal Requirements, permitted to waive the giving of notice. The Borrower hereby expressly waives the right to receive any notice from the Funding Lender or the Servicer, as the case may be, with respect to any matter for which no Borrower Loan Document specifically and expressly provides for the giving of notice by the Funding Lender or the Servicer to the Borrower.

Section 10.6. Offsets, Counterclaims and Defenses. The Borrower hereby waives the right to assert a counterclaim, other than a compulsory counterclaim, in any action or proceeding brought against it by the Funding Lender or the Servicer with respect to a Borrower Loan Payment. Any assignee of Funding Lender's interest in and to the Borrower Loan Documents or the Funding Loan Documents shall take the same free and clear of all offsets, counterclaims or defenses that are unrelated to the Borrower Loan Documents or the Funding Loan Documents which the Borrower may otherwise have against any assignor of such documents, and no such unrelated offset, counterclaim or defense shall be interposed or asserted by the Borrower in any action or proceeding brought by any such assignee upon such documents, and any such

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right to interpose or assert any such unrelated offset, counterclaim or defense in any such action or proceeding is hereby expressly waived by the Borrower

Section 10.7. Publicity. The funding Lender and the Servicer (and any affiliates of either party) shall have the right to issue press releases, advertisements and other promotional materials describing the funding lender's or the Servicer's participation in the making of the Borrower Loan or the Borrower Loan's inclusion in any Secondary Market Transaction effectuated by the funding Lender or the Servicer or one of its or their affiliates. All news releases, publicity or advertising by the Borrower or its Affiliates through any media intended to reach the general public, which refers to the Borrower Loan Documents or the funding Loan Documents, the Borrower Loan, the funding Lender or the Servicer in a Secondary Market Transaction, shall be subject to the prior Written Consent of the funding Lender or the Servicer, as applicable.

Section 10.8. Construction of Documents. The parties hereto acknowledge that they were represented by counsel in connection with the negotiation and drafting of the Borrower Loan Documents and the funding Loan Documents and that the Borrower Loan Documents and the funding Loan Documents shall not be subject to the principle of construing their meaning against the party that drafted them.

Section 10.9. No Third Party Beneficiaries. The Borrower Loan Documents and the funding Loan Documents are solely for the benefit of the Governmental Lender, the Funding Lender, the Servicer and the Borrower and, with respect to Sections 9.1.3 and 9.1.4 hereof, the Underwriter Group, and nothing contained in any Borrower Loan Document shall be deemed to confer upon anyone other than the Governmental Lender, the funding Lender, the Servicer, and the Borrower any right to insist upon or to enforce the performance or observance of any of the obligations contained therein.

Section 10.10. Assignment. The Borrower Loan, the Security Instrument, the Borrower Loan Documents and the funding Loan Documents and all funding Lender's rights, title, obligations and interests therein may be assigned by the funding Lender, at any time with the written notice to the Borrower prior thereto, whether by operation of law (pursuant to a merger or other successor in interest which shall not require the written consent of the Borrower) or otherwise. Upon such assignment, all references to funding Lender in this Borrower Loan Agreement and in any Borrower Loan Document shall be deemed to refer to such assignee or successor in interest and such assignee or successor in interest shall thereafter stand in the place of the funding Lender. Borrower shall accord full recognition to any such assignment, and all rights and remedies of Funding Lender in connection with the interest so assigned shall be as fully enforceable by such assignee as they were by Funding Lender before such assignment. In connection with any proposed assignment, Funding Lender "may disclose to the proposed assignee any information that Borrower has delivered, or caused to be delivered, to Funding Lender with reference to Borrower, Managing Member, any Guarantor or any Affiliate of Borrower, or the 4% Project, including information that Borrower is required to deliver to funding Lender pursuant to this Borrower Loan Agreement, provided that such proposed assignee agrees to treat such information as confidential. "The Borrower may not assign its rights, interests or obligations under this Borrower Loan Agreement or under any of the Borrower Loan Documents or funding Loan Documents, or Borrower's interest in any moneys to be disbursed or advanced hereunder, except only as may be expressly permitted hereby.

Section 10.11 <[http://Section10.11](#)>. [Intentionally Omitted].

Section 10.12. Governmental Lender, funding Lender and Servicer Not in Control; No Partnership. None of the covenants or other provisions contained in this Borrower Loan Agreement shall, or shall be deemed to, give the Governmental [ .ender. the funding L .ender or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender.

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the Funding Lender and the Servicer being limited to the rights to exercise the remedies referred to in the Borrower Loan Documents and the Funding Loan Documents. The relationship between the Borrower and the Governmental Lender, the Funding Lender and the Servicer is, and at all times shall remain, solely that of debtor and creditor. No covenant or provision of the Borrower Loan Documents or the Funding Loan Documents is intended, nor shall it be deemed or construed, to create a partnership, joint venture, agency or common interest in profits or income between the Borrower and the Governmental Lender, the Funding Lender or the Servicer or to create an equity in the 4% Project in the Governmental Lender, the Funding Lender or the Servicer. "Neither the Governmental Lender, the Funding Lender nor the Servicer undertakes or assumes any responsibility or duty to the Borrower or to any other person with respect to the 4% Project or the Borrower Loan, except as expressly provided in the Borrower Loan Documents or the Funding Loan Documents; and notwithstanding any other provision of the Borrower Loan Documents and the Funding Loan Documents: (1) the Governmental Lender, the Funding Lender and the Servicer are not, and shall not be construed as, a partner, joint venturer, alter ego, manager, controlling person or other business associate or participant of any kind of the Borrower or its stockholders, members, or partners and the Governmental Lender, the Funding Lender and the Servicer do not intend to ever assume such status; (2) the Governmental Lender, the Funding Lender and the Servicer shall in no event be liable for any the Borrower Payment Obligations, expenses or losses incurred or sustained by the Borrower; and (3) the Governmental Lender, the Funding Lender and the Servicer shall not be deemed responsible for or a participant in any acts, omissions or decisions of the Borrower, the Borrower Controlling Entities or its stockholders, members, or partners. The Governmental Lender, the Funding Lender and the Servicer and the Borrower disclaim any intention to create any partnership, joint venture, agency or common interest in profits or income between the Governmental Lender, the Funding Lender, the Servicer and the Borrower, or to create an equity in the 4% Project in the Funding Lender or the Servicer, or any sharing of liabilities, losses, costs or expenses.

Section 10.13. Release. The Borrower hereby acknowledges that it is executing this Borrower Loan Agreement and each of the Borrower Loan Documents and the Funding Loan Documents to which it is a party as its own voluntary act free from duress and undue influence.

Section 10.14. Term of Borrower Loan Agreement. This Borrower Loan Agreement shall be in full force and effect until all payment obligations of the Borrower hereunder have been paid in full and the Borrower Loan and the Funding Loan have been retired

or the payment thereof has been provided for; except that on and after payment in full of the Borrower Note, this Borrower Loan Agreement shall be terminated, without further action by the parties hereto; provided, however, that the obligations of the Borrower under Sections 5.1 (Governmental Lender's Fees), 5.14 (Expenses), 5.15 (Indemnity), 9.1.3, 9.1.4, 9.1.5, 9.1.6 and 10.15 (Reimbursement of Expenses) hereof, as well as under Section 5.7 of the Construction Funding Agreement, shall survive the termination of this Borrower Loan Agreement.

Section 10.15. Reimbursement of Expenses. If, upon or after the occurrence of any Event of Default or Potential Default, the Governmental Lender, the Funding Lender or the Servicer shall employ attorneys or incur other expenses for the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained herein, the Borrower will on demand therefor reimburse the Governmental Lender, the Funding Lender and the Servicer for fees of such attorneys and such other expenses so incurred.

The Borrower's obligation to pay the amounts required to be paid under this Section 10.15 shall be subordinate to its obligations to make payments under the Borrower Note.

Section 10.16. Permitted Contests. Notwithstanding anything to the contrary contained in this Borrower Loan Agreement, Borrower shall have the right to contest or object in good faith to any claim, demand, levy or assessment (other than in respect of Debt or Contractual Obligations of Borrower under any Borrower Loan Document or Related Document) by appropriate legal proceedings that are not

- 66 -

prejudicial to Funding Lender's rights, but this shall not be deemed or construed as in any way relieving, modifying or providing any extension of time with respect to Borrower's covenant to pay and comply with any such claim, demand, levy or assessment, unless Borrower shall have given prior Written Notice to the Governmental Lender and the Funding Lender of Borrower's intent to so contest or object thereto, and unless (i) Borrower has, in the Governmental Lender's and the Funding Lender's judgment, a reasonable basis for such contest, (ii) Borrower pays when due any portion of the claim, demand, levy or assessment to which Borrower does not object, (iii) Borrower demonstrates to Funding Lender's satisfaction that such legal proceedings shall conclusively operate to prevent enforcement prior to final determination of such proceedings, (iv) Borrower furnishes such bond, surety, undertaking or other security in connection therewith as required by law, or as requested by and satisfactory to Funding Lender, to stay such proceeding, which bond, surety, undertaking or other security shall be issued by a bonding company, insurer or surety company reasonably satisfactory to Funding Lender and shall be sufficient to cause the claim, demand, levy or assessment to be insured against by the Title Company or removed as a lien against the 4% Project, (v) Borrower at all times prosecutes the contest with due diligence, and (vi) Borrower pays, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, the amount so determined to be due and owing by Borrower. In the event that Borrower does not make, promptly following a determination of the amount of such claim, demand, levy or assessment due and owing by Borrower, any payment required to be made pursuant to clause (vi) of the preceding sentence, an Event of Default shall have occurred, and Funding Lender may draw or realize upon any bond or other security delivered to Funding Lender in connection with the contest by Borrower, in order to make such payment.

Section 10.17. Funding Lender Approval of Instruments and Parties. All proceedings taken in accordance with transactions provided for herein, and all surveys, appraisals and documents required or contemplated by this Borrower Loan Agreement and the persons responsible for the execution and preparation thereof, shall be satisfactory to and subject to approval by Funding Lender. Funding Lender's approval of any matter in connection with the 4% Project shall be for the sole purpose of protecting the security and rights of Funding Lender. No such approval shall result in a waiver of any default of Borrower. In no event shall Funding Lender's approval be a representation of any kind with regard to the matter being approved.

Section 10.18. Funding Lender Determination of Facts. Funding Lender shall at all times be free to establish independently, to its reasonable satisfaction, the existence or nonexistence of any fact or facts, the existence or nonexistence of which is a condition of this Borrower Loan Agreement.

Section 10.19. Calendar Months. With respect to any payment or obligation that is due or required to be performed within a specified number of Calendar Months after a specified date, such payment or obligation shall become due on the day in the last of

such specified number of Calendar Months that corresponds numerically to the date so specified: provided, however, that with respect to any obligation as to which such specified date is the 29th, 30th or 31st day of any Calendar Month: if the Calendar Month in which such payment or obligation would otherwise become due does not have a numerically corresponding date, such obligation shall become due on the first day of the next succeeding Calendar Month.

Section 10.20. Determinations by Lender. Except to the extent expressly set forth in this Borrower Loan Agreement to the contrary, in any instance where the consent or approval of the Governmental Lender and the Funding Lender may be given or is required, or where any determination, judgment or decision is to be rendered by the Governmental Lender and the Funding Lender under this Borrower Loan Agreement, the granting, withholding or denial of such consent or approval and the rendering of such determination, judgment or decision shall be made or exercised by the Governmental

- 67

Lender and the Funding Lender, as applicable (or its designated representative) at its sole and exclusive option and in its sole and absolute discretion.

Section 10.21. Governing Law. This Borrower Loan Agreement shall be governed by and enforced in accordance with the laws of the State, without giving effect to the choice of law principles of the State that would require the application of the laws of a jurisdiction other than the State.

Section 10.22. Consent to Jurisdiction and Venue. Borrower agrees that any controversy arising under or in relation to this Borrower Loan Agreement shall be litigated exclusively in the State. The state and federal courts and authorities with jurisdiction in the State shall have exclusive jurisdiction over all controversies which shall arise under or in relation to this Borrower Loan Agreement. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence or otherwise. However, nothing herein is intended to limit Beneficiary Parties' right to bring any suit, action or proceeding relating to matters arising under this Borrower Loan Agreement against Borrower or any of Borrower's assets in any court of any other jurisdiction.

Section 10.23. Successors and Assigns. This Borrower Loan Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate. The terms used to designate any of the parties herein shall be deemed to include the heirs, legal representatives, successors, successors-in-interest and assigns, as appropriate, of such parties. References to a "person" or "persons" shall be deemed to include individuals and entities.

Section 10.24. Severability. The invalidity, illegality or unenforceability of any provision of this Borrower Loan Agreement shall not affect the validity, legality or enforceability of any other provision, and all other provisions shall remain in full force and effect.

Section 10.25. Entire Agreement; Amendment and Waiver. This Borrower Loan Agreement contains the complete and entire understanding of the parties with respect to the matters covered. This Borrower Loan Agreement may not be amended, modified or changed, nor shall any waiver of any provision hereof be effective, except by a written instrument signed by the party against whom enforcement of the waiver, amendment, change, or modification is sought, and then only to the extent set forth in that instrument. No specific waiver of any of the terms of this Borrower Loan Agreement shall be considered as a general waiver. Without limiting the generality of the foregoing, no Disbursement shall constitute a waiver of any conditions to the Governmental Lender's or the funding Lender's obligation to make further Disbursements nor, in the event Borrower is unable to satisfy any such conditions, shall any such waiver have the effect of precluding the Governmental Lender or the funding Lender from thereafter declaring such inability to constitute a Potential Default or Event of Default under this Borrower Loan Agreement.

Section 10.26. Counterparts. This Borrower Loan Agreement may be executed in multiple counterparts, each of which shall constitute an original document and all of which together shall constitute one agreement.

Section 10.27. Captions. The captions of the sections of this Borrower Loan Agreement are for convenience only and shall lie disregarded in construing this Borrower Loan Agreement.

Section 10.28. Servicer. Borrower herein acknowledges and agrees that, pursuant to the terms of Section 9.27 of the Construction funding Agreement (a) from time to time, the Governmental Lender or the funding Lender may appoint a servicer to collect payments, escrows and deposits, to give and to receive notices under the Borrower Note, this Borrower Loan Agreement or the other Borrower Loan

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Documents, and to otherwise service the Borrower Loan and (b) unless Borrower receives Written Notice from the Governmental Lender or the Funding Lender to the contrary, any action or right which shall or may be taken or exercised by the Governmental Lender or the Funding Lender may be taken or exercised by such servicer with the same Force and effect.

Section 10.29. Beneficiary Parties as Third-Party Beneficiary. Each of the Beneficiary Parties shall be a third-party beneficiary of this Borrower Loan Agreement for all purposes.

Section 10.30. Waiver of Trial by Jury. TO THE MAXIMUM EXTENT PERMITTED UNDER APPLICABLE LAW, EACH OF BORROWER AND THE BENEFICIARY PARTIES (A) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS BORROWER LOAN AGREEMENT OR THE RELATIONSHIP BETWEEN THE PARTIES THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

Section 10.31. Time of the Essence. Time is of the essence with respect to this Borrower Loan Agreement.

Section 10.32. Modifications. Modifications (if any) to this Borrower Loan Agreement ("Modifications") are set forth on Exhibit A attached to this Borrower Loan Agreement. In the event of a Transfer under the terms of the Loan Agreement, some or all of the Modifications to this Borrower Loan Agreement may be modified or rendered void by the Governmental Lender or the Funding Lender at its option by notice to Borrower or such transferee. There are no Modifications to this Borrower Loan Agreement.

Section 10.33. Reference Date. This Borrower Loan Agreement is dated for reference purposes only as of the first day of \_\_\_\_\_, 2022, and will not be effective and binding on the parties hereto unless and until the Closing Date (as defined herein) occurs.

## ARTICLE XI LIMITATIONS ON LIABILITY

Section 11.1. Limitation on Liability. Notwithstanding anything to the contrary herein, the liability of the Borrower hereunder and under the other Borrower Loan Documents and the Funding Loan Documents shall be limited to the extent set forth in the Borrower Note.

Section 11.2. Limitation on Liability of Governmental Lender. The Funding Loan, and interest thereon, are special, limited obligations of the Governmental Lender, payable solely from the Security pledged under the Funding Loan Agreement. The Funding Loan is not a general indebtedness of the Governmental Lender or a charge against its general credit or the general credit taxing powers of the State, the Governmental Lender, or any other political subdivision thereof, and shall never give rise to any personal pecuniary liability of the Governmental Lender, and neither the Governmental Lender, the State nor any other political subdivision thereof shall be liable for the payments of principal and interest on the Funding Loan, and the Funding Loan is payable from no source other than the Security, and are special, limited obligations of the Governmental Lender, payable solely out of the Security pledged hereunder and receipts of the Governmental Lender derived pursuant to this Funding Loan Agreement (and not against any money due or to become due to the Governmental Lender pursuant to the exercise or enforcement of Unassigned Rights). No holder of the Funding Loan or any interest therein has the right to compel any

- (>9 -

exercise of the taxing power of the State, the Governmental Lender or any other political subdivision thereof to pay the funding Loan or the interest thereon.

No recourse shall be had for the payment of the principal of, premium, if any, or the interest on the funding Loan or for any claim based thereon or any obligation, covenant or agreement in this funding Loan Agreement against any official of the Governmental Lender, or any official, officer, agent, employee or independent contractor of the Governmental Lender or any person executing this Borrower Loan Agreement. No covenant, stipulation, promise, agreement or obligation contained in this Borrower Loan Agreement or any other document executed in connection herewith shall be deemed to be the covenant, stipulation, promise, agreement or obligation of any present or future official, officer, agent or employee of the Governmental Lender in his or her individual capacity and neither any official of the Governmental Lender nor any officers executing this Borrower Loan Agreement shall be liable personally or be subject to any personal liability or accountability by reason of this Borrower Loan Agreement.

Section 11.3. Waiver of Personal Liability. No member, officer, agent or employee of the Governmental Lender or any director, officer, agent or employee of the Governmental Lender shall be individually or personally liable for the payment of any principal (or prepayment price) of or interest on the Governmental Lender Notes or any other sum hereunder or be subject to any personal liability or accountability by reason of the execution and delivery of this Borrower Loan Agreement; but nothing herein contained shall relieve any such member, director, officer, agent or employee from the performance of any official duty provided by law or by this Borrower Loan Agreement.

#### **Section 11.4. Limitation on Liability of Funding Lender's Officers, Employees, Etc.**

a) Borrower assumes all risks of the acts or omissions of the Governmental Lender and the funding Lender (except to the extent that such acts or omissions constitute gross negligence or willful misconduct), provided, however, this assumption is not intended to, and shall not, preclude Borrower from pursuing such rights and remedies as it may have against the Governmental Lender and the funding Lender at law or under any other agreement. None of Governmental Lender and the funding Lender, nor the other Beneficiary Parties or their respective officers, directors, employees or agents shall be liable or responsible for (i) for any acts or omissions of the Governmental Lender and the funding Lender; or (ii) the validity, sufficiency or genuineness of any documents, or endorsements, even if such documents should in fact prove to be in any or all respects invalid, insufficient, fraudulent or forged. In furtherance and not in limitation of the foregoing, the Governmental Lender and the funding Lender may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary, unless acceptance in light of such notice or information constitutes gross negligence or willful misconduct on the part of the Governmental Lender and the funding Lender.

b) None of the Governmental Lender, the funding lender, the other Beneficiary Parties or any of their respective officers, directors, employees or agents shall be liable to any contractor, subcontractor, supplier, laborer, architect, engineer or any other party for services performed or materials supplied in connection with the 4% Project. The Governmental Lender and the funding Lender shall not be liable for any debts or claims accruing in favor of any such parties against Borrower or others or against the 4% Project. Borrower is not and shall not be an agent of the Governmental Lender and the funding Lender for any purpose. Neither the Governmental Lender nor the funding Lender is a joint venture partner with Borrower in any manner whatsoever. Prior to default by Borrower under this Borrower Loan Agreement and the exercise of remedies granted herein, the Governmental Lender and the funding Lender shall not be deemed to be in privity of contract with any contractor or provider of services to the 4% Project, nor shall any payment of funds directly to a contractor, subcontractor or provider of services be deemed to create any third-party beneficiary status or recognition of same by the Governmental Lender and the funding Lender. Approvals granted by the Governmental Lender and the funding Lender for any matters

- 70 -

covered under this Borrower Loan Agreement shall be narrowly construed to cover only the parties and facts identified in any written approval or, if not in writing, such approvals shall be solely for the benefit of Borrower.

(c) Any obligation or liability whatsoever of the Governmental Lender and the Funding Lender that may arise at any time under this Borrower Loan Agreement or any other Borrower Loan Document shall be satisfied, if at all, out of the Funding Lender's assets only. No such obligation or liability shall be personally binding upon, nor shall resort for the enforcement thereof be had to, the 4% Project or any of the Governmental Lender's or the Funding Lender's shareholders (if any), directors, officers, employees or agents, regardless of whether such obligation or liability is in the nature of contract, tort or otherwise.

Section 11.5. Delivery of Reports, Etc. The delivery of reports, information and documents to the Governmental Lender and the Funding Lender as provided herein is for informational purposes only and the Governmental Lender's and the Funding Lender's receipt of such shall not constitute constructive knowledge of any information contained therein or determinable from information contained therein. The Governmental Lender and the Funding Lender shall have no duties or responsibilities except those that are specifically set forth herein, and no other duties or obligations shall be implied in this Borrower Loan Agreement against the Governmental Lender and the Funding Lender.

[ Remainder of Page Intentionally Left Blank]

IN WITNESS WHEREOF, I the undersigned has duly executed and delivered this Borrower Loan Agreement or caused this Borrower Loan Agreement to be duly executed and delivered by its authorized representative as of the date first set forth above. The undersigned intends that this instrument shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

CHICAGO LIGHTHOUSE RESIDENCES 4, LLC, an Illinois limited liability company

**By :** The Chicago Residences 4 Manager, LLC,  
An Illinois limited liability company

**By:** Brinshore Development, LLC,  
An Illinois limited liability company

**By:** R.1S Real Estate Services, Inc.,  
a member

**By:**  
Richard J. Scortino, President

S-1

[SEAL] Attest:

By:  
Name: Andrea M. Valencia Title: City Clerk

**GOVERNMENT AL LENDER CITY OF CHICAGO**

By: ...  
Name: Jennie Huang Bennett Title: Chief Financial Officer

Agreed to and Acknowledged by: FUNDING LFNDEK: CIBC BANK USA

By:  
Name:  
Title:

EXHIBIT A - SECTION 10.32 MODIFICATIONS



NONE

**A-1**

**Ordinance Exhibit D Form of Land Use Restriction Agreement**

See Attached

D-1

Recording Requested By and When Recorded Send to:

Hard wick Law Firm. LLC  
77 West Washington Street - Suite 1704  
Chicago, Illinois 60602  
Attention: Scott A. Bremer

LAND USE RESTRICTION AGREEMENT between CITY OF CHICAGO and  
CHICAGO LIGHTHOUSE RESIDENCES 4, LLC  
an Illinois limited liability company

Dated as of 1, 2022  
TABLE OF CONTENTS

	Page
SECTION I. TERM OF RESTRICTIONS	1
SECTION 2. PROJECT RESTRICTIONS	3
SECTION 3. OCCUPANCY RESTRICTIONS	4
SECTION 4. RENTAL RESTRICTIONS	6
SECTION 5. TRANSFER RESTRICTIONS	6
SECTION 6. ENFORCEMENT	6
SECTION 7. COVENANTS TO RUN WITH THE LAND	7
SECTION 8. RECORDING	8
SECTION 9. AGENTS OF THE ISSUER	8
SECTION 10. NO CONFLICT WITH OTHER DOCUMENTS	8
SECTION 11. INTERPRETATION	8
SECTION 12. AMENDMENT	8
SECTION 13. SEVERABILITY	8
SECTION 14. NOTICES	9
SECTION 15. GOVERNING LAW	9
SECTION 16. LIMITED LIABILITY OF BORROWER	9

EXHIBIT A Property Legal Description EXHIBIT B Income Computation  
and Certification EXHIBIT C Certificate of Continuing Program Compliance

**LAND USE RESTRICTION AGREEMENT**

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement"), entered into as of \_\_\_\_\_, 2022 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 CHICAGO LIGHTHOUSE RESIDENCES 4, LLC, an Illinois limited liability company (the "Borrower").

**WITNESSETH:**

WHEREAS, pursuant to a Funding Loan Agreement, dated as of \_\_\_\_\_, 2022 (the "Funding Loan Agreement") between the Issuer and CBIC Bank USA (the "Funding Lender"), and an ordinance adopted by the Issuer on February \_\_\_\_\_, 2022 (the "Ordinance"), the Funding Lender will advance funds (the "Funding Loan") in an aggregate principal amount not exceeding [Fifteen Million Eight Hundred Sixty Two Thousand] and 00/100 Dollars (\$[15,862,000]) and the Issuer will issue, sell and deliver its \$[15,862,000] Multi-Family Housing Revenue Note (Chicago Lighthouse Residences 4 Project), Series 2022 (the "Note"), evidencing the obligation to repay the Funding Loan; and

WHEREAS, the proceeds derived from the issuance and sale of the Note have been lent by the Issuer to the Borrower pursuant to a loan agreement of even date herewith (the "Borrower Loan Agreement"), between the Issuer and the Borrower for the purpose of financing a portion of the costs of acquisition and construction of a certain affordable housing development project consisting of the acquisition of real property located at 1134 South Wood Street in the City (the "Property") and the construction thereon and equipping of a portion of the affordable housing development comprised of 45 residential units that include 6 studio units, 27 one-bedroom units and 12 two-bedroom units, together with common areas and approximately 34 parking spaces (the "4% Project"); and

WHEREAS, in order to assure the Issuer and the Funding Lender that interest on the Note 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 Borrower and the Issuer agree as follows:

**Section I. Term of Restrictions**

(a) Occupancy Restrictions. Subject to Revenue Procedure 2004-39, 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 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; or (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 (Heating, for such purpose.

the Project as being financed in part by the Note) (which period is hereinafter referred with respect to the Project as the "Qualified Project Period").

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 Note, 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) the Note is promptly repaid, 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 Note 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 Borrower 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 Borrower 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 Note to remain excluded from gross income for federal income tax purposes.

e) Certification. Upon termination of this Agreement, the Borrower and the Issuer shall execute and cause to be recorded (at the Borrower'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) Encumbrance of Fee. In furtherance of enforcing compliance with the provisions of Section 1-12(d) of the Code and Section 1.103-8(b) of the Regulations applicable to this Agreement, unless the provisions of paragraph (c) or (d) above apply to the Project resulting in a termination of the restrictions set forth herein, such restrictions shall continue to apply to the Project following the termination of the Borrower's or any other party's interest, whether or not the lien of the mortgage with respect to the Project is thereafter released by the Issuer.

## **Section 2. Project Restrictions**

The Borrower represents, warrants and covenants that:

a) The Borrower 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, constructed 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 occupied by the Borrower or an agent or employee of the Borrower.

d) None of the Units in the Project will at any time be used on a transient basis, and no portion of the Project will 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: further, no portion of the Project shall 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.

(I) 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 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 Borrower 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 each 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

## **4**

circumstances are reasonably deemed necessary by (the Borrower or the Issuer to substantiate the Income Certification.

c) Not less frequently than annually, the Borrower shall determine whether the current aggregate adjusted income of each tenant occupying any unit being treated by the Borrower as occupied by a Qualifying Tenant exceeds the applicable income limit. For such purpose the Borrower 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.

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.

(I) The lease to be utilized by the Borrower 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 Borrower 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 Borrower will submit to the Issuer a "Certificate of Continuing Program Compliance," in the form attached hereto as Exhibit C executed by the Borrower with respect to the Project.

(i) The Borrower 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 Borrower to the penalty provided in Section 6652(j) of the Code.

#### Section 4. Rental Restrictions

The Borrower 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 Borrower will comply with all Section 8 requirements.

#### Section 5. Transfer Restrictions

The Borrower 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 Borrower 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 Borrower 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 Borrower or a transfer by foreclosure or deed in lieu of



foreclosure.

## Section 6. Enforcement

(a) Upon reasonable notice and during regular business hours, the Borrower shall permit all duly authorized representatives of the Issuer to inspect any books and records of the Borrower 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.

(h) In addition to the information provided for in Section 3(i) hereof, the Borrower 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 Borrower each covenant that it will not take or permit to be taken any action within its control that it knows would adversely affect the excludability of interest on

## 6

the Note 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 Borrower 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 the Issuer, which shall be (i) the lesser of (A) 60 days after the effective date of any notice to or from the Borrower, or (B) 75 days from the date such violation would have been discovered by the Borrower 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 Note, 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 Borrower and the Issuer each acknowledges that the primary purposes for requiring compliance with the restrictions provided in this Agreement are to preserve the excludability of interest on the Note from gross income for purposes of federal income taxation, and that the Issuer, on behalf of the owners of the Note, 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 Borrower 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 Borrower's partners shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

#### Section 7. Covenants to Run with the Land

The Borrower hereby subjects the Project, the Site and the Units to the covenants, reservations and restrictions set forth in this Agreement. The Issuer and the Borrower 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 Borrower'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 Borrower), 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 Borrower 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 Borrower shall pay all fees and charges incurred in connection with any such recording.

#### 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 Borrower 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 Borrower 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 Funding Loan Agreement, the Borrower Loan Agreement or Section 142(d) of the Code and the regulations heretofore or hereafter promulgated thereunder or with a fax Counsel No Adverse Effect Opinion (as defined in the Funding Loan Agreement).

#### Section 12. Amendment

Subject to any restrictions set forth in the Funding Loan Agreement, 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

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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 Section 11.1 of the Funding Loan Agreement.

**Section 15. Governing Law**

This Agreement shall be construed in accordance with and governed by the laws of the State of Illinois, and where applicable, the laws of the United States of America.

**Section 16. Limited Liability of Borrower**

Notwithstanding any other provision or obligation stated in or implied by this Agreement to the contrary, any and all undertakings and agreements of the Borrower 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 Borrower, and no recourse (other than as expressly provided hereinafter in this paragraph) shall be had against the property of the Borrower or any past, present or future partner of the Borrower, 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 Borrower pursuant hereto or in connection herewith, or for any claim based thereon. It is expressly understood and agreed that the Issuer and the registered Borrower of the Note, 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 Borrower 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.

[Signatures .Appear on Following Page

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**

By: \_\_\_\_\_  
**Jennie Huang Bennett, Chief Financial  
Officer**

(SEAL) ATTEST:

Andrea M. Valencia, City Clerk

[Signature page to Land Use Restriction Agreement]

10

Acknowledged and agreed to:

CHICAGO LIGHTHOUSE RESIDENCES 4, LLC, an Illinois limited liability company

**By: The Chicago Residences 4 Manager, LLC,**  
An Illinois limited liability company

**By: Brinshore Development, LLC,**  
An Illinois limited liability company

**By : R.1S Real Estate Services, Inc.,**  
a member

**By:**  
Richard J. Scortino, President

( Acknowledgement and Agreement to Land Use Restriction Agreement)

STATE OF ILLINOIS COUNTY OF COOK

.)  
) ss: )

BEFORE ME, the undersigned authority, on this day personally appeared JENNIE HUANG BENNETT and ANDREA M. VALENCIA, 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      day of      , 2022.

[SEAL]

Notary Public in and for the State of Illinois

My commission expires on:

| Notarization of Land Use Restriction Agreement - City|

STATE (.)P ILLINOIS )

) ss

COUNTY OF- COOK )

I, the undersigned, a Notary Public in and for the county and State aforesaid, do hereby certify that \_\_\_\_\_, personally known to me to be the \_\_\_\_\_ of \_\_\_\_\_ a(n) \_\_\_\_\_, a \_\_\_\_\_ J \_\_\_\_\_ of CHICAGO LIGHTHOUSE RESIDENCES 4, LLC, an Illinois limited liability company (the "Company"), and 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 severally acknowledged that as such officer, he signed and delivered the said instrument, pursuant to authority given by the \_\_\_\_\_ to the \_\_\_\_\_, as the free and voluntary act of such person, and as the free and voluntary act and deed of the \_\_\_\_\_ and the Company, for the uses and purposes therein set forth.

GIVEN UNDER MY HAND and seal of office, this \_\_\_\_\_ day of \_\_\_\_\_, 2022.

(SEAL)

Notary Public

My commission expires on:

**EXHIBIT A PROPERTY LEGAL DESCRIPTION**

## **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 \_\_\_\_\_, 2022.  
between the City of Chicago and Chicago Lighthouse Residences 4, LLC, an Illinois limited liability company (the "Borrower").

Re:

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				
SPOUSE				

1. 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: 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 \_\_\_\_\_ 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

The form of Income Computation and Certification shall be conformed to any amendments made to 24 (I.R.C. Par 5. or any regulatory provisions promulgated in substitution thereof.

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 (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;
- 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 in 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;
- (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 2-1 (TR 5 60)(c) apply

7. Assets.

- (a) . Do the persons whose income or contributions are included in Item \_\_\_\_\_ above:

(i) have savings, stocks, bonds, equity in real property or other form of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles, equity in a housing cooperative unit or in a manufactured home in which such family resides, and interests in Indian trust land)?            Yes            No.

(ii) have they disposed of any assets (other than at a foreclosure or bankruptcy sale) during the last two years at less than fair market value?            Yes  
No.'

(b) If the answer to (i) or (ii) above is yes, does the combined total value of all such assets owned or disposed of by all such persons total more than \$5,000? Yes  
No.

(e) 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 the 12-

month period beginning on the date of initial occupancy of the unit that you propose

ii) to rent: \$ and

(iii) the amount of such income, if any, that was included in Item 6 above: \$

8. Full-time Students.

(a) Are all of the individuals who propose to reside in the unit full-time students?  
Yes No.

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.

(h) 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 myself nor any other occupant of the unit I have proposed 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. In 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.

[Signatures Appear on Following Page]

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: I. 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 (S ). subtract from that figure the amount entered in 7(c)(iii) and enter the remaining balance (\$ ); and enter at right the greater of the amount calculated under (1) or (2) above:

c. TOTAL 1.1.RUBLE INCOME (Line 1.a plus line 1.b(3)): \$ .

The amount entered in 1.e is:

Less than 60% of Median Gross Income for Area.

More than 60%, 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 60% of Median Gross Income for the Area.
5. Method used to verify applicant(s) income:  
Employer income verification.  
Copies of tax returns.  
Other( 1

Borrower 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 803 of the United States Housing Act of 1937, as amended, or if programs under Section 8(1) 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.*

## 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 Chicago Lighthouse Residential 4, LLC, an Illinois limited liability corporation, or its related entity, 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:

**INCOME  
VERIFICATION  
(for self-  
employed persons)**

(for

self-

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

**B-<)**

EXHIBIT C

CERTIFICATE 01 CONTINUING PROGRAM COMPLIANCE

The undersigned, on behalf of Chicago Lighthouse Residences 4, 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 1. 2022 (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.

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.

[Signature Appears on Following Page]

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 or unless otherwise described in Section 12(i)(3)(D) of the Code

C-1

**CHICAGO LIGHTHOUSE RESIDENCES 4, LLC.**  
an Illinois limited liability company

**By: The Chicago Residences 4 Manager, LLC,**  
An Illinois limited liability company

**By: Brinshore Development, LLC,**  
An Illinois limited liability company

**By: RJS Real Estate Services, Inc.,**  
a member



By:  
Richard J. Scortino, President

C-2