



# Office of the City Clerk

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

## Legislation Text

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**File #:** O2013-6663, **Version:** 1

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CHICAGO October 16, 2013

**To the President and Members of the City Council:**

**Your Committee on Finance having had under consideration**

An ordinance authorizing the Commissioner of the Department of Housing and Economic Development to enter into and execute a Loan Agreement with Rosenwald Courts Apartments, LP.

02013-6663

Amount of Funding

Loan not to exceed: \$58,600,000

Amount of TIF Note

not to exceed: \$25,000,000

Having had the same under advisement, begs leave to report and recommend that your Honorable Body pass the proposed Ordinance Transmitted Herewith

**This recommendation was concurred in by  
of members of the committee with**

**(a (viva voce vote^)**

**dissenting voters):**

**(signed**

**Respectfully submitted  
Chairman**

OFFICE OF THE MAYOR

CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

September 11, 2013

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

Ladies and Gentlemen:

At the request of the Commissioner of Housing and Economic Development, I transmit herewith an ordinance authorizing the execution of a loan agreement and the provision of TIF Funds for Rosenwald Courts.

Your favorable consideration of this ordinance will be appreciated.

Mayor

Very truly yours,

S:\SHARED\Finance\Rosenwald <file:///S:/SHARED/Finance/Rosenwald> Courts\Ordinance\CHICAGO-\_183117-v10-City\_of\_Chicago\_-\_Rosenwald\_2013\_-\_Ordinance-c.DOC <file:///Courts/Ordinance/CHICAGO-\_183117-v10-City\_of\_Chicago\_-\_Rosenwald\_2013\_-\_Ordinance-c.DOC>

**ORDINANCE**

WHEREAS, by virtue of Section 6(a) of Article VII of the 1970 Constitution of the State of Illinois, the City of Chicago (the "City") is a home rule unit of local 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 an affordable multi-family housing facility for low- and moderate-income families located in the City ("Multi-Family Housing Financing"); and

WHEREAS, by this Ordinance, the City Council of the City (the "City Council") has determined that it is necessary and in the best interests of the City to provide Multi-Family Housing Financing and certain other funding, as provided herein, to Rosenwald Courts Apartments, LP, an Illinois limited partnership (the "Borrower"), the general partner of which is Rosenwald Courts GP, LLC, an Illinois limited liability company (the "General Partner"), the managing member of which is GB Rosenwald, LLC, an Illinois limited liability company (the "Managing Member"), to enable it to pay or reimburse a portion of the costs of the "residential project" (as described and defined in the following paragraph) within a building which is located at 4600 South Michigan Avenue (the "Facility") on certain real property (the "Facility Property"), and certain adjacent parcels (the "Adjacent Property," and together with the Facility Property, the "Property"), and to pay a portion of the costs of such financing; and

WHEREAS, the "residential project" consists of the acquisition, construction, rehabilitation, development, and equipping of certain portions of the Property, which will consist of approximately 239 rental units, including 225 affordable units (the "Affordable Units") and 14 unrestricted units (the "Unrestricted Units" and, together with the Affordable Units, the "Units"), community service facilities and related common areas within the Facility, along with 3 parking lot facilities to be constructed on a portion of the Adjacent Property to serve the residential portion of the Facility (collectively, the "Residential Project"); and

WHEREAS, by this Ordinance, the City Council has further determined that it is necessary and in the best interests of the City to provide certain funding, as provided herein, for a "retail project" consisting of the acquisition, construction, rehabilitation, development, and equipping of portions of the Property, which will consist of certain commercial and retail space and related common areas within the Facility, along with one parking lot facility to be constructed on a portion of the Adjacent Property to serve the retail portion of the Facility (the "Retail Project" and collectively with the Residential Project, the "Project"); and

WHEREAS, by this Ordinance, the City Council has determined that it is necessary and in the best interests of the City to enter into a funding loan agreement (the "Funding Loan Agreement") with Citibank, NA., a national banking association (the "Funding Lender") pursuant to which the Funding Lender will advance funds in an aggregate principal amount not to exceed Fifty-Eight Million Six Hundred Thousand Dollars (\$58,600,000) (the "Funding Loan") and the City will enter into a promissory note (the "Note"), to evidence the Funding Loan 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

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and the Borrower, as evidenced by that certain Borrower promissory note (the "Borrower Note"), in order to finance a portion of the cost of the Residential 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, a mortgage on the Residential Project and certain other related collateral (the "Senior Mortgage"), and by pledges and/or assignments of certain funds, personal property, and contractual rights of the Borrower and its affiliates; 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 the 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 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 entered into thereunder, (ii) the Borrower Loan Agreement providing for the loan of the proceeds of the Funding Loan to the Borrower and the use of such proceeds, (iii) one or more Tax Regulatory Agreements and/or tax certificates (each, a "Tax Agreement" and 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 established the Community Development Commission (the "Commission") to, among other things, designate redevelopment areas and approve redevelopment plans, and recommend the sale of parcels located in redevelopment areas, subject to the approval of the City Council; and

WHEREAS, pursuant to an ordinance adopted by the City Council on March 27, 2002, and published at pages 81231 through 81457 in the Journal of Proceedings of the City Council (the "Journal") of such date, a certain redevelopment plan and project (the "Redevelopment Plan") for the 47<sup>th</sup> and King Drive Redevelopment Project Area (the "Redevelopment Area") was approved pursuant to the Illinois Tax Increment Allocation Redevelopment Act, as amended (65 ILCS 5/11-74.4-1 et seq.) (the "Act"); and

WHEREAS, pursuant to an ordinance adopted by the City Council on March 27, 2002, and published at pages 81458 through 81465 in the Journal of such date, the Redevelopment Area was designated as a redevelopment project area pursuant to the Act; and

WHEREAS, pursuant to an ordinance (the "TIF Ordinance") adopted by the City Council on March 27, 2002, and published at pages 81466 through 81472 in the Journal of such date, tax increment allocation financing was adopted pursuant to the Act as a means of financing certain redevelopment project costs (as defined in the Act) in the Redevelopment Area incurred pursuant to the Redevelopment Plan; and

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WHEREAS, the City is the owner of a portion of the Adjacent Property, consisting of five (5) vacant parcels of land, which are identified and legally described on Exhibit F hereto (the "City Property"); and

■ WHEREAS, the Borrower has offered to purchase the City Property for \$1.00 per parcel for the construction of parking facilities to serve the Residential Project; and

WHEREAS, by Resolution No. 12-CDC-24, adopted on July 10, 2012, the Commission authorized the City's Department of Housing and Economic Development ("HED") to advertise its intent to negotiate the sale and redevelopment of the City Property and to request alternative proposals, and recommended that the Borrower be designated as the developer of the Project and that HED be authorized to sell the City Property to the Borrower and negotiate, execute and deliver on the City's behalf a redevelopment agreement with the Borrower for the Project if no responsive alternative proposals were received at the conclusion of the advertising period, or if alternative proposals were received, if HED determined in its sole discretion that the Borrower's proposal was the best proposal; and

WHEREAS, public notices advertising HED's intent to enter into a negotiated sale of the City Property with the Borrower and requesting alternative proposals appeared in the Chicago Sun-Times on July 14, 21 and 28, 2012; and

WHEREAS, no other responsive proposals were received by the deadline indicated in the aforesaid notices; and

WHEREAS, by Resolution No. 12-049-21, adopted on July 19, 2012, the Chicago Plan Commission recommended the disposition of the City Property to the Borrower for parking; and

WHEREAS, the Project is necessary for the redevelopment of the Redevelopment Area;  
and

WHEREAS, the Borrower will undertake the Project in accordance with the Redevelopment Plan and pursuant to the terms and conditions of a proposed redevelopment agreement (the "Redevelopment Agreement") to be executed by the City, the Borrower, and Burton Rosenwald GP, LLC, an Illinois limited liability company (the "Sponsor," and together with the Borrower, the "Developer"), the sole member of which is The Burton Foundation, an Illinois not-for-profit corporation (the "Foundation"), with such Project to be financed in part by certain pledged incremental taxes deposited from time to time in the Special Tax Allocation Fund for the Redevelopment Area (as defined in the TIF Ordinance; herein defined as the "Fund") pursuant to Section 5/11-74.4-8(b) of the Act ("Incremental Taxes"); and

WHEREAS, pursuant to an ordinance enacted by the City Council on October 31, 2012 and published in the Journal for such dates at pages 36553 through 36555, on January 28, 2013 (the "NSP Closing Date"), the City and the Borrower entered into a certain redevelopment agreement dated as of the Closing Date and recorded in the office of the Cook County Recorder of Deeds (the "Recorder's Office") on January 29, 2013 (the "NSP Recording Date") as Document No. 1302931068 (the "NSP Redevelopment Agreement"), pursuant to which the City made a loan of federal Neighborhood Stabilization Program funds to the Borrower in the principal amount of \$5,000,000 (the "NSP Acquisition Loan") for the acquisition of the Facility Property; and

WHEREAS, the NSP Acquisition Loan is evidenced by a certain note dated as of the

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NSP Closing Date (the "NSP Note"), in the amount of \$5,000,000 executed by the Borrower in favor of the City, which is secured by: (i) a mortgage, dated as of the NSP Closing Date, executed by the Borrower in favor of the City and recorded in the Recorder's Office on the NSP Recording Date as Document No. 1302931069, and which encumbers the Facility Property (the "NSP Mortgage"), (ii) an assignment of rents and leases (the "NSP Assignment of Rents") dated as of the NSP Closing Date, executed by the Borrower in favor of the City and recorded in the Recorder's Office on the NSP Recording Date as Document No. 1302931070, and which encumbers the Facility Property, (iii) an assignment of contracts and documents, dated as of the NSP Closing Date and executed by the Borrower in favor of the City (the "NSP Assignment of Contracts"), and (iv) other agreements under which the City was granted a lien or security interest to secure the payment and performance by the Borrower of the NSP Note (the NSP Redevelopment Agreement, the NSP Note, the NSP Mortgage, the NSP Assignment of Rents, the NSP Assignment of Contracts and any other agreements under which the City was granted a lien or security interest to secure the payment and performance by the Borrower of the NSP Note shall be known collectively herein as the "NSP Loan Documents," including that certain regulatory agreement, dated as of the NSP Closing Date, executed by the City and the Borrower and recorded in the Recorder's Office on the NSP Recording Date as Document No. 1302931067, and which encumbers the Facility Property (the "NSP Regulatory Agreement"); and

WHEREAS, the Borrower has requested that the City restructure the NSP Acquisition Loan (the "NSP Loan Restructuring") in a manner which (1) will not alter the principal amount of the NSP Acquisition Loan, (2) may alter the interest rate on the principal balance of the NSP Acquisition Loan, (3) may extend the maturity date of the NSP Acquisition Loan, (4) may alter the repayment terms of the NSP Acquisition Loan, (5) will subordinate the NSP Mortgage and the NSP Assignment of Rents to the Senior Mortgage and the mortgage securing the CHA Loan (described on Exhibit E hereto), (6) will amend the NSP Loan Documents in certain other respects, including to allow, at the option of the Borrower, the master lease of the Project to an affiliate of the Borrower, and for the recordation of liens and other encumbrances against the Project to evidence and secure certain of the additional financing as shown in Exhibit E, (7) to recognize the Managing Member as the new managing member of the General Partner, and (8) may otherwise restructure the NSP Acquisition Loan, all in substantial accordance with the terms described above (the "NSP Loan Restructuring Material Terms") and as may otherwise be required to conform the terms of the NSP Acquisition Loan to the other transactions hereby authorized; 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 and the Redevelopment 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 Authorized Officer (as defined in Section 3) to establish the terms of the Funding Loan

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Agreement and related Note, the Borrower Loan Agreement and the Borrower Note on such terms as and to the extent such officer determines that such terms are desirable and in the best financial interest of the City. Any such designation and determination by an 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.

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 as shown in Exhibit E (the "Additional Financing"), the execution and delivery of the Funding Loan Agreement and the Note in an aggregate principal amount not to exceed Fifty-Eight Million Six Hundred Thousand Dollars (\$58,600,000) is hereby authorized. 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 40 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 12% or 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 Note therein and as set forth in the Funding Loan Notification. 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 (as defined below) or (iii) any other officer designated in writing by the Mayor (the Mayor, the Chief Financial Officer or any such other officer being referred to as an "Authorized Officer") 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, in substantially the form attached hereto as Exhibit A 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.

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 said 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.

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 hereby authorized to attest, the Borrower Loan Agreement 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

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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.

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 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 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 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.

#### 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 the following security (other than certain Unassigned Rights of the City):

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

b) all right, title and interest of the City 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 City 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 the Funding Loan Agreement, subject to the provisions of the Funding Loan Agreement permitting the application thereof for the purposes and on the terms and conditions set forth therein; and

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(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 the Funding Loan Agreement as additional security by the City or anyone on its part or with its consent, or which pursuant to any of the provisions of the Borrower Loan Agreement may come into the possession or control of the Funding Lender or a receiver appointed pursuant to 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. Nothing contained in this Ordinance shall limit or restrict the subordination of the pledge of such rights, proceeds and investment income as set forth in the Funding Loan Agreement to the payment of any other obligations of the City enjoying a lien or claim on such rights, proceeds and investment income as of the date of execution and delivery of the Funding Loan Agreement and the Note, all as shall be determined by the Authorized Officer at the time of the execution and delivery of the Funding Loan Agreement and the Note. The Funding Loan Agreement shall set forth such covenants with respect to the application of such rights, proceeds and investment income as shall be deemed necessary by the Authorized Officer in connection with the execution and delivery of the Funding Loan Agreement and the Note.

Section 5. Delivery of the Funding Loan Agreement and the Note. It has been determined that Citibank, N.A., a national banking association, or such other funding lender as approved by the Authorized Officer, shall be the initial Funding Lender and shall hold the Funding Loan Agreement and the Note, subject to the terms and conditions of a "sophisticated investor" letter (the "Investor Letter") which shall be delivered to the City by the Funding Lender. Any subsequent Funding Lender approved by the 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 an Investor Letter, substantially in the form of the Investor Letter set forth in the Funding Loan Agreement. The aggregate costs of origination of the Funding Loan paid from the proceeds of the Funding Loan shall not exceed two percent (2%) of the aggregate principal amount of the Note.

Section 6. Funding Loan Notification. Subsequent to the execution and delivery of any Funding Loan Agreement and the Note, the Authorized Officer shall file in the Office of the City Clerk a 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, payment schedule, prepayment provisions for the Note, (ii) the extent of any tender rights to be granted to the holder of the Note, (iii) the interest rate on the Note, (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, (vi) any other matter authorized by this Ordinance to be determined by an Authorized Officer at the time of the execution and delivery of the Funding Loan Agreement and the 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.

Section 7. Use of Proceeds. The proceeds from the Funding Loan (as evidenced by the Note) shall be deposited as provided in the Funding Loan Agreement and used for the Residential Project.

Section 8. Volume Cap. The Funding Loan Agreement and the Note are obligations

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taken into account under Section 146 of the Code in the allocation of the City's volume cap.

Section 9. Developer Designation. The Developer is hereby designated as the developer for the Project pursuant to Section 5/11-74.4-4 of the Act.

Section 10. Redevelopment Agreement. Upon the approval and availability of the Additional Financing, the Commissioner of HED or a designee thereof (the "Authorized HED Officer") is hereby authorized, with the approval of the City's Corporation Counsel as to form and legality, to negotiate, execute and deliver the Redevelopment Agreement and such other supporting documents as may be necessary to carry out and comply with the provisions of such agreements, with such changes, deletions and insertions as shall be approved by the persons executing such agreements. The Redevelopment Agreement shall be in substantially the form attached hereto as Exhibit D and made a part hereof and hereby approved with such changes therein as shall be approved by the Authorized HED Officer executing the same, with such execution to constitute conclusive evidence of such officer's approval of any changes or revisions from the form of Redevelopment Agreement attached to this Ordinance.

### **Section 11. Payment of Incremental Taxes.**

a) The City Council hereby finds that the City is authorized to issue its tax increment allocation revenue obligation in an aggregate principal amount not to exceed \$25,000,000 for the purpose of paying a portion of the eligible costs included within the Project.

b) There shall be borrowed for and on behalf of the City a principal amount not to exceed \$25,000,000 for the payment of a portion of the eligible redevelopment project costs (as such term is defined under the Act) included within the Project (such costs shall be known herein and in the Redevelopment Agreement as "TIF-Funded Improvements"). A note of the City in a principal amount up to \$25,000,000 shall be issued and shall be designated "Tax Increment Allocation Revenue Note (47<sup>th</sup> and King Drive Redevelopment Project), Series 2013A" (the "TIF Note"). The TIF Note shall be substantially in the form

attached to the Redevelopment Agreement as Exhibit M and made a part hereof, with such additions or modifications as shall be determined to be necessary by the Chief Financial Officer, at the time of issuance to reflect the purpose of the issue. The TIF Note shall be dated the date of delivery thereof, and shall also bear the date of authentication, shall be in fully registered form, shall be in the denomination of the outstanding principal amount thereof and shall become due and payable as provided therein. The proceeds of the TIF Note are hereby appropriated for the purposes set forth in this Section 11.

The TIF Note shall mature on the later of payment in full or not to exceed twenty years from its issuance, and shall not bear interest.

The principal of the TIF Note shall be paid by check, draft or wire transfer of funds by the City Comptroller of the City, as registrar and paying agent (the "Registrar"), payable in lawful money of the United States of America to the persons in whose names the TIF Note is registered at the close of business on the payment date, in any event no later than at the close of business on the 15th day of the month immediately after the applicable payment date; provided, that the final installment of the principal and accrued but unpaid interest of the TIF Note shall be payable in lawful money of the United States of America at the principal office of the Registrar or as otherwise directed by the City on or before the maturity date.

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The seal of the City shall be affixed to or a facsimile thereof printed on the TIF Note, and the TIF Note shall be signed by the manual or facsimile signature of the Mayor of the City and attested by the manual or facsimile signature of the City Clerk of the City, and in case any officer whose signature shall appear on the TIF Note shall cease to be such officer before the delivery of the TIF Note, such signature shall nevertheless be valid and sufficient for all purposes, the same as if such officer had remained in office until delivery.

The TIF Note shall have thereon a certificate of authentication substantially in the form hereinafter set forth duly executed by the Registrar, as authenticating agent of the City for the TIF Note, and showing the date of authentication. The TIF Note shall not be valid or obligatory for any purpose or be entitled to any security or benefit under this Ordinance unless and until such certificate of authentication shall have been duly executed by the Registrar by manual signature, and such certificate of authentication upon the TIF Note shall be conclusive evidence that the TIF Note has been authenticated and delivered under this Ordinance.

(c) The City shall cause books (the "Register") for the registration and for the transfer of the TIF Note (to the extent such transfer is permitted under the Redevelopment Agreement) as provided in this Ordinance to be kept at the principal office of the Registrar, which is hereby constituted and appointed the registrar of the City for the TIF Note. The City is authorized to prepare, and the Registrar shall keep custody of, multiple TIF Note blanks executed by the City for use in the transfer of the TIF Note.

Upon surrender for a transfer of the TIF Note authorized under the Redevelopment Agreement at the principal office of the Registrar, duly endorsed by, or accompanied by (i) a written instrument or instruments of transfer in form satisfactory to the Registrar, (ii) an investment representation in form satisfactory to the City and duly executed by, the registered owner or his attorney duly authorized in writing, (iii) the written consent of the City evidenced by the signature of the Chief Financial Officer (or his or her designee) on the instrument of transfer, and (iv) any deliveries required under the Redevelopment Agreement, the City shall execute and the Registrar shall authenticate, date and deliver in the name of any such authorized transferee or transferees a new fully registered TIF Note of the same maturity, of authorized denomination, for the authorized principal amount of the TIF Note less previous retirements. The execution by the City of the fully registered TIF Note shall constitute full and due authorization of the TIF Note and the Registrar shall thereby be authorized to

authenticate, date and deliver the TIF Note. The Registrar shall not be required to transfer or exchange the TIF Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of the TIF Note nor to transfer or exchange the TIF Note after notice calling the TIF Note for prepayment has been made, nor during a period of five (5) days next preceding mailing of a notice of prepayment of principal of the TIF Note. No beneficial interests in the TIF Note shall be assigned, except in accordance with the procedures for transferring the TIF Note described above.

The person in whose name each TIF Note shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes, and payment of the principal of the TIF Note shall be made only to or upon the order of the registered owner thereof or his legal representative. All such payments shall be valid and effectual to satisfy and discharge the liability upon the TIF Note to the extent of the sum or sums so paid.

No service charge shall be made for any transfer of the TIF Note, but the City or the Registrar may require payment of a sum sufficient to cover any tax or other governmental charge that may be imposed in connection with any transfer of the TIF Note.

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d) Subject to the limitations set forth herein, the Chief Financial Officer is authorized to determine the terms of the TIF Note and to issue the TIF Note on such terms as the Chief Financial Officer may deem to be in the best interest of the City. The principal of the TIF Note shall be subject to prepayment as provided in the form of TIF Note attached to the Redevelopment Agreement as Exhibit M. As directed by the Chief Financial Officer, the Registrar shall proceed with prepayment without further notice or direction from the City.

e) The Registrar shall note on the Debt Service Schedule attached to the TIF Note the amount of any payment of principal on the TIF Note, including the amount of any prepayment, and the amount of any reduction in principal pursuant to the Redevelopment Agreement.

f) The TIF Note hereby authorized shall be executed as in this Ordinance and the Redevelopment Agreement provided as soon after the passage hereof as may be practicable and consistent with the terms of the Redevelopment Agreement, and thereupon, be deposited with the Authorized HED Officer, and be by said Authorized HED Officer delivered to the Sponsor.

g) Pursuant to the TIF Ordinance, the City has created the Fund. The City Comptroller of the City is hereby directed to maintain the Fund as a segregated interest-bearing account, separate and apart from the General Fund or any other fund of the City, with a bank that is insured by the Federal Deposit Insurance Corporation or its successor. Pursuant to the TIF Ordinance, all Incremental Taxes received by the City for the Redevelopment Area are to be deposited into the Fund. There is hereby created within the Fund a special subaccount to be known as the "Rosenwald Courts Account" (the "Rosenwald Courts Account"). The City shall designate and deposit into the Rosenwald Courts Account an amount equal to the Incremental Taxes deposited into the Fund. Subject to the terms and conditions of the Redevelopment Agreement, the City shall use the Incremental Taxes to make payments with respect to the TIF Note until the TIF Note has been fully repaid. In the event that an event of default under the Redevelopment Agreement entitles the City to permanently terminate further payments of City Funds (as defined in the Redevelopment Agreement) with respect to the TIF Note, the City may in its discretion, return the amounts in the Rosenwald Courts Account established above that would otherwise be allocated to the payment of the TIF Note to the Fund of the City and the Rosenwald Courts Account shall be closed.

The City hereby assigns, pledges and dedicates the Rosenwald Courts Account, together with all amounts on deposit therein, to the payment of the principal of and interest, if any, on the TIF Note when due under the terms of the Redevelopment Agreement. Upon deposit, the moneys on deposit in the Rosenwald

Courts Account may be invested as hereinafter provided. Interest and income on any such investment shall be deposited in the Rosenwald Courts Account. All moneys on deposit in the Rosenwald Courts Account shall be used to pay the principal of and interest on the TIF Note, at maturity or upon payment or redemption prior to maturity, in accordance with its terms, which payments from the Rosenwald Courts Account are hereby authorized and appropriated by the City. Upon payment of all amounts due under the TIF Note and the Redevelopment Agreement in accordance with their terms (or the termination of the City's obligation to make such payments), the amounts on deposit in the Rosenwald Courts Account, as applicable, shall be deposited in the Fund of the City and the Rosenwald Courts Account shall be closed.

Notwithstanding any of the foregoing, payments on the TIF Note will be subject to the availability of Incremental Taxes in the Rosenwald Courts Account.

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(h) The TIF Note is a special limited obligation of the City, and is payable solely from amounts on deposit in the Rosenwald Courts Account and shall be a valid claim of the registered owner thereof only against said sources. The TIF Note shall not be deemed to constitute an indebtedness or a loan against the general taxing powers or credit of the City, within the meaning of any constitutional or statutory provision. The registered owner(s) of the TIF Note shall not have the right to compel any exercise of the taxing power of the City, the State of Illinois or any political subdivision thereof to pay the principal of or interest on the TIF Note. The City's obligation to fully repay the TIF Note is further limited by the terms and conditions of the Redevelopment Agreement.

(i) Moneys on deposit in the Fund or the Rosenwald Courts Account, as the case may be, may be invested as allowed under Section 2-32-520 of the Municipal Code of Chicago (the "Municipal Code"). Each such investment shall mature on a date prior to the date on which said amounts are needed to pay the principal of or interest on the TIF Note.

(j) Pursuant to the Redevelopment Agreement, the Developer shall complete the Project. The eligible redevelopment project costs of the Project constituting TIF-Funded Improvements up to the principal amount of \$25,000,000 shall be deemed to be a disbursement of the proceeds of the TIF Note. Upon issuance, the TIF Note shall have an initial principal balance equal to the Sponsor's prior expenditures for TIF-Funded Improvements up to a maximum amount of \$25,000,000, as supported by a Certificate of Expenditure in accordance with the TIF Note, and subject to the reductions described in the Redevelopment Agreement. After issuance, the principal amount outstanding under the TIF Note shall be the initial principal balance of the TIF Note, minus any principal amount paid on the TIF Note and other reductions in principal as provided in the Redevelopment Agreement.

(k) The Registrar shall maintain a list of the names and address of the registered owners from time to time of the TIF Note and upon any transfer shall add the name and address of the new registered owner and eliminate the name and address of the transferor.

(l) The provisions of this Ordinance shall constitute a contract between the City and the registered owners of the TIF Note. All covenants relating to the TIF Note are enforceable by the registered owners of the TIF Note.

(m) Notwithstanding the foregoing, the Developer may, prior to the execution of the Redevelopment Agreement, forgo issuance of the TIF Note and in lieu thereof receive not to exceed \$25,000,000 in Incremental Taxes as a grant from the City to the Sponsor, in which case the Authorized HED Officer is

authorized to make such changes as are necessary to the form of the Redevelopment Agreement attached as Exhibit D hereto to reflect the same.

Section 12. NSP Loan Restructuring. Upon the approval and availability of the Additional Financing, the Authorized HED 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 NSP Loan Restructuring. The Authorized HED Officer is hereby authorized, subject to the approval of the Corporation Counsel, to negotiate any and all terms and provisions in connection with the NSP Loan Restructuring. The Authorized HED Officer is hereby further authorized, subject to approval by the Corporation Counsel, to enter and execute such agreements and instruments and perform any and all acts as shall be necessary or advisable, and to negotiate any and all terms and provisions in connection with any future restructuring of the NSP Loan which does

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not substantially modify the NSP Loan Restructuring Material Terms.

Section 13. Conveyance of the City Property. The City is hereby authorized to sell and convey to the Borrower the City Property for the sum of Five Dollars (\$5.00) in accordance with and subject to the terms of the Redevelopment Agreement. The Mayor or his proxy is authorized to execute, and the City Clerk or Deputy Clerk to attest, a quitclaim deed conveying to the Borrower the City Property for the consideration described therein and otherwise in accordance with and subject to the terms of the Redevelopment Agreement. The Authorized HED Officer is hereby authorized to negotiate, execute and deliver such documents as may be necessary or appropriate to implement this Section 13, subject to the approval of the Corporation Counsel. Such documents may contain terms and provisions that the Authorized HED Officer deems appropriate, including, without limitation, indemnification.

Section 14. Additional Authorization. Each Authorized Officer, the City Treasurer, and the Authorized HED Officer, are each hereby authorized to execute and deliver and the City Clerk and the Deputy City Clerk are each hereby authorized to 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 related 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 17 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 Sections 3, 10 and 12 hereof), if any portion of the Additional Financing is not approved and available at such time as the Authorized Officer and the Authorized HED Officer otherwise deem it in the best interest of the City to execute the City Agreements, then the Authorized Officer and the Authorized HED Officer may so execute the City Agreements (with such changes thereto as the Authorized Officer and the Authorized HED 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 15. 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 16. Administrative Fee. HED is hereby authorized to charge an administrative fee or fees in connection with the delivery and administration of the Funding Loan Agreement and the Note, which shall be collected under such terms and conditions as determined by the Authorized HED Officer and which shall be in an amount as determined by the Authorized HED Officer but not to exceed the maximum amount permitted

under Section 148 of the Code to avoid characterization of the Funding Loan Agreement and the Note as "arbitrage bonds" as defined in such Section 148. Such administrative fee or fees shall be used by HED for administrative expenses and other housing activities. Initially, such administrative fee or fees shall be an amount equal to (i) 1.5% of the original principal amount of the Note payable upon issuance of the Note, plus (ii) an on-going compliance fee of \$25 per unit payable annually.

The City's legal reserve fee with respect to the Project, payable upon issuance of the Note from the proceeds of the Note or from funds contributed by the Borrower, shall be 0.10%

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## **Ordinance Exhibit A Form of Funding Loan Agreement**

See Attached.

### **FUNDING LOAN AGREEMENT Between**

**CITIBANK, N.A., as Funding Lender**

**and**

**CITY OF CHICAGO, as Governmental Lender**

**Dated as of**

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## FUNDING LOAN AGREEMENT

**This Funding Loan Agreement, dated as of 1, 2013 (this "Funding Loan Agreement"), is entered into by CITIBANK, N.A. (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 of the 1970 Constitution of the State 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 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, Rosenwald Courts Apartments, LP, an Illinois limited partnership (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, and (ii) apply the proceeds of the Funding Loan to make a loan (the "Borrower Loan") to the Borrower to finance the acquisition, construction, rehabilitation, development, and equipping of a multifamily residential project located in the City of Chicago, Cook County, Illinois, known or to be known as Rosenwald Courts and consisting of approximately 239 rental units, including approximately 225 affordable units and approximately 14 unrestricted units, community service facilities and related common areas along with 3 parking lot facilities (collectively, the "Project"); 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 Multifamily Note dated the Closing Date (the "Borrower Note") and the obligations of the Borrower under the Borrower Note will be secured by a lien on and security interest in the Project pursuant to a Multifamily Mortgage, Assignment of Rents, Security Agreement of even date herewith (the "Security Instrument"), made by the Borrower

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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 Multifamily Mortgage Revenue Note dated as of the Closing Date (the "Governmental Lender Note") evidencing its obligation to make the payments due to the Funding Lender under the Funding Loan as provided in this Funding Loan Agreement, all things necessary to make the Funding Loan Agreement the valid, binding and legal limited obligation of the Governmental Lender, have been done and performed and the execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental 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 Project or a "related person" (within the meaning of Section 147 of the Code) thereto) from gross income for federal income tax purposes pursuant to Section 103(a) of the Code.

The following terms have the meanings set forth below:

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"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.

"Authorized Amount" shall mean an amount not to exceed \$58,600,000, the maximum principal amount of the Funding Loan under this Funding Loan Agreement.

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

"Authorized Denomination" shall mean \$100,000 principal amount and any multiple of \$0.01 in excess thereof; provided, however, that the initial advance of the Funding Loan may be in an amount of \$51,000 or greater.

"Borrower" shall mean Rosenwald Courts Apartments, LP, an Illinois limited partnership.

"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 \$58,600,000.

"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.

"Business Day" shall mean any day other than (i) a Saturday or a Sunday, or (ii) a day on which federally insured depository institutions in New York, New York, Chicago, Illinois or the cities in which the offices of the Funding Lender are located are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

"Closing Date" shall mean \_\_\_\_\_, 2013, 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,

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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 Agreement dated as of \_\_\_\_\_, 2013 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.

"Event of Default" shall have the meaning ascribed thereto in Section 9.1 hereof. "Fitch" shall mean Fitch, Inc.

"Funding Lender" shall mean Citibank N.A., a national banking association, and any successor under this Funding Loan Agreement and the Borrower Loan Documents.

"Funding Loan Agreement" shall mean this Funding Loan Agreement, of even date herewith, 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, nonprepayable (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.

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"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 "A1" by Moody's is not rated in the Highest Rating Category.

"Investor Letter" shall mean a letter in substantially the form attached to this Funding Loan Agreement as Exhibit B, duly executed by the holder of the Governmental Lender Note and delivered to the Governmental Lender.

"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, the Funding Lender fails to advance funds requisitioned by the Borrower pursuant to the Borrower Loan Agreement and the Construction Funding Agreement other than by reason of non-conformance of such requisition with the requirements of the Borrower Loan Agreement or the Construction Funding Agreement or other failure of any condition to the funding of a requisition set forth in Article [ ] of the Construction Funding Agreement, AND (i) a petition has been filed and is pending against the Funding Lender under any bankruptcy, 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 60 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 to the filing of any petition against it under such law; or (iii) the Funding Lender shall have a receiver, liquidator or trustee appointed for it or for the whole or substantially all of its property. 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

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precluding such declaration or exercise during the pendency of or immediately following any bankruptcy, liquidation or reorganization proceedings;

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 for any reason ceases to be valid and binding on the Funding Lender or is declared to be null and void, or the validity or enforceability of any provision of the Funding Loan Agreement or the Construction Funding Agreement material to the performance by the Funding Lender of its obligations thereunder is denied by the Funding Lender or any court of applicable jurisdiction, or the Funding Lender is denying further liability or obligation under the Funding Loan Agreement or the Construction Funding Agreement, in all of the above cases contrary to the terms of the Funding Loan Agreement and the Construction Funding Agreement, in any case, in a final nonappealable judgment; (ii) the Funding Lender has 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; or

c) Failure by the Funding Lender (i) to respond to a complete and compliant funding requisition properly presented by the Borrower to the Funding Lender for advancement of Loan funds pursuant to the Borrower Loan Agreement and the Construction Funding Agreement within 7 days of the receipt of such funding

requisition, or (ii) to fully fund within 10 days after the Funding Lender approves a funding requisition from the Borrower to the Funding Lender and has confirmed such requisition for payment pursuant to the terms of the Borrower Loan Agreement and the Construction Funding Agreement.

"Maturity Date" shall mean \_\_\_\_\_, 2016.

"Maximum Rate" shall mean the lesser of (i) 12% 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.

"Noteowner" or "owner of the Governmental Lender Note" means 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 \$ \_\_\_\_\_. The Ongoing Governmental Lender Fee is payable in equal semiannual installments in advance by the Borrower to the Governmental Lender on each \_\_\_\_\_ and \_\_\_\_\_, commencing on 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 Tax Counsel.

"Ordinance" shall mean the Ordinance adopted by the Governmental Lender on October \_\_\_\_\_, 2013 authorizing the Funding Loan and the execution and delivery of the Funding Loan Documents to which Governmental Lender is a party.

"Permitted Investments" shall mean, to the extent authorized by law for investment of any 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

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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;

3) 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, (B) 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 (B)) to perform.

(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 is 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 is 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) 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.

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

Permitted Investments shall not include any of the following:

1) 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 (1) 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 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.

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"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 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.

"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 or the Securities, 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.

"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 is 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

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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) 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 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 the Multifamily Mortgage, Assignment of Rents, Security Agreement (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 to the Funding Lender 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, collectively, Ice Miller LLP and Shanahan & Shanahan LLP, 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 150 (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 constitutes 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)-

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

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"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 Fee and any other fees payable to the Governmental Lender under Section 2.5 thereof, its rights of access under Section 5.17 thereof, its rights to indemnification under Section 5.15 thereof, its rights to attorneys' fees under Section 5.14 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 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 II TERMS; GOVERNMENTAL LENDER NOTE

### Section 2.1. Terms.

a) Principal Amount. The total 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

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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 \$ [at least \$51,000]. 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 , 2016; 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 on the Closing Date and shall mature on the Maturity Date at which time the entire principal amount, to the extent not previously paid, and all accrued and unpaid interest, shall be due and payable.

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 under the Borrower Loan Agreement and the Construction Funding 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 Funding Loan and 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 Funding Loan and the Governmental Lender Note.

g) 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

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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.

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, such 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. Any 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. Investor Letter; Participations; Sale and Assignment.**

(a) Subject to paragraph (b) below, the Governmental Lender Note shall be held and subsequently transferred only in Authorized Denominations and only to holders that execute and deliver to the Governmental Lender an Investor Letter in substantially the form attached hereto as Exhibit B. Notwithstanding the preceding sentence, no Investor Letter shall be required for the Funding Lender to (i) transfer the Governmental Lender Note, or any interest therein, to any Affiliate or other party related to the Funding Lender or (ii) sell or transfer the Governmental Lender Note, or any interest therein, to a

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special purpose entity, a trust or custodial arrangement, from which the Governmental Lender Note, or any interest therein, is not expected to be sold except in Authorized Denominations to beneficial holders who are Qualified Institutional Buyers (as defined in Rule 144A of the Securities Act) or Accredited Investors (as defined in Regulation D promulgated under the Securities Act) and who will sign an investor letter to substantially the same effect as the Investor Letter.

b) In addition to transfers permitted by Section 2.4(a), the Governmental Lender Note, or any interest therein, may be transferred in whole or in part to one or more purchasers upon receipt by the Governmental Lender and each person making such transfer of either (i)(A) an Investor Letter in substantially the form attached hereto as Exhibit B, and (B) if any amendment is to be made to this Funding Loan Agreement or any other Funding Loan Document in conjunction with such transfer, a Tax Counsel No Adverse Effect Opinion; or (ii)(A) any disclosure document which is prepared in connection with such transfer of the Governmental Lender Note, in such form acceptable to the Governmental Lender and accompanied by an opinion of counsel in a form satisfactory to the Governmental Lender regarding the information contained in such disclosure document, (B) evidence that each such Governmental Lender Note or interest therein is rated "A" or better by one of S&P or Moody's, and (C) an opinion of Tax Counsel to the effect that (1) the exemption of the Governmental Lender Note or interest therein or any securities evidenced thereby from the registration requirements of the Securities Act of 1933, as amended, and the exemption of this Funding Loan Agreement from qualification under the Trust Indenture Act of 1939, as amended, will not be impaired as a result of such transfer, and (2) such transfer will not adversely affect the tax-exempt status of the Governmental Lender Note.

c) 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.

d) No service charge shall be made for any sale or assignment of any portion of the Governmental Lender Note, but the Governmental Lender may require payment of a sum sufficient to cover any tax or other Governmental

charge that may be imposed in connection with any such sale or assignment 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 or portion thereof.

### ARTICLE III 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 of the Governmental Lender 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, 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

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the Borrower Note, without the prior written consent of Funding Lender, which may be withheld in Funding Lender's sole and absolute discretion.

The Governmental Lender Note shall be subject to mandatory prepayment in whole or in part upon prepayment of the Borrower Note 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 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 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

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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 by the Governmental Lender. The Security so pledged and then or thereafter received by the Funding 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 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.

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**ARTICLE V LIMITED  
LIABILITY**

Section 5.1. 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, is a special, limited obligation 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 is a special, limited obligation 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.

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 Governmental Lender Note;
- b) Receipt by the Funding Lender of the original executed Borrower Note, endorsed to the Funding Lender by the Governmental Lender;
- c) 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;

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- d) A certified copy of the Ordinance;
- e) An executed Investor Letter from the Funding Lender;
- f) 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;
- g) Receipt by the Funding Lender of a Tax Counsel Approving Opinion;
- h) Receipt by the Funding Lender of an Opinion of Counsel from Tax Counsel to the effect that the Governmental Lender Note is exempt from registration under the Securities Act of 1933, and this Funding Loan Agreement is exempt from qualification under the Trust Indenture Act of 1939, as amended;
  - (i) Delivery of an opinion of counsel to the Borrower addressed to the Governmental 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;
  - (j) [Receipt by the Funding Lender of executed Subordinate Loan Documents;] and
  - (k) Receipt by the Funding Lender of any other documents or opinions that the Funding Lender or Tax Counsel may 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

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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 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.

c) 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.

d) 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 Project or that the Project will be adequate or sufficient for the Borrower's intended purposes.

e) 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 notes or bonds other than the repayment of the Funding Loan.

THE GOVERNMENTAL LENDER MAKES NO REPRESENTATION, COVENANT OR AGREEMENT AS TO THE FINANCIAL POSITION OR BUSINESS CONDITION OF THE BORROWER OR THE 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.

Section 8.4. Funding Loan Agreement Performance. The Funding Lender, on behalf 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 Borrower 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 Funding Lender, including without

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limitation the fulfillment of rights and responsibilities granted by Governmental Lender to 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 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, may perform any such agreement or covenant if no Borrower Loan Agreement Default or Potential Default under the Borrower Loan Agreement exists.

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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 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 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, and the Governmental Lender in writing of the occurrence of any Event of Default 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 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.

Section 8.12. Funding Lender Limitations. Notwithstanding anything herein or in the Borrower Loan Agreement to the contrary, prior to the advancement by the Funding Lender of all advances of loan funds hereunder (and, by virtue hereof, under the Borrower Loan Agreement and the Construction Funding Agreement), and only prior to such final advancement of all loan funds hereunder, no notice to or consent of the Funding Lender shall be required under any provision of this Funding Loan Agreement or the Borrower Loan Agreement nor shall the Funding Lender have any right to receive notice of, consent to, direct or control any actions, restrictions, rights, remedies, waivers or acceleration

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pursuant to any provision of this Funding Loan Agreement or the Borrower Loan Agreement during any time that (a) any Material Funding Lender Event shall have occurred and be continuing; or (b) the Funding Loan Agreement and the Construction Funding Agreement are not in effect and all obligations of the Governmental Lender and the Borrower, including payment obligations, pursuant to the Funding Loan Agreement, Governmental Lender Note, Borrower Loan Agreement and Borrower Note have been fully satisfied.

## 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

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 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 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.

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(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 Funding Loan, (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 Governmental 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 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;

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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 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 9.15, 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 Unassigned 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 2.5, 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 (subject to the last paragraph of Section 9.14 hereof).

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;



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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 Servicing Agreement, the provisions of the 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.

Section 9.6. Restoration of Positions. If 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

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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 or not 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.

b) 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 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 9.3.

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")], (i) 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 Governmental Lender pursuant to Section 2.4(b) hereof and acceptable to the Borrower; provided, however, that no such transfer shall become effective until 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, and 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 and, unless the loss has not in any material respect been caused by the action or inaction of the Borrower, be indemnified by the Borrower for any losses incurred by Funding Lender with respect thereto (except for losses resulting from remedies awarded at law or equity pursuant to clause (ii) below, as to which no indemnity shall be provided), and (ii) the Governmental Lender (or the Borrower pursuant to the Borrower Loan Agreement or the Construction Funding Agreement) may pursue any other remedy available at law or in equity.

## 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 not 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 (unless such change,

amendment or modification is requested by the Funding Lender solely to improve, but not maintain, the value of the Funding Loan), a Tax 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 Note may be undertaken without the prior Written Consent of the Governmental Lender and the Funding Lender and the provision to the Funding Lender and the Governmental Lender, at the expense of the Borrower (unless such change, amendment or modification is requested by the Funding Lender solely to improve, but not maintain, the value of the Funding Loan), of a Tax Counsel No Adverse Affect Opinion with regard to such proposed modification.

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

## **ARTICLE XI MISCELLANEOUS**

### **Section 11.1. 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 and Economic Development 121 North LaSalle  
Street, 10<sup>th</sup> Floor Chicago, Illinois 60602  
Attention: Commissioner, Department of Housing and Economic  
Development 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)744-8538

and with a copy to:                                      City of Chicago  
Office of the City Comptroller's Office 33 North  
LaSalle Street, Suite 600 Chicago, Illinois 60602  
Attention: City Comptroller Telephone: (312)744-  
7106 Facsimile: (312)742-6544

If to the Borrower:                                      Rosenwald Courts Apartments, LP  
Attn: Rosenwald Courts GP, LLC 20 Sandstone Court  
LeClaire, Iowa 52753

Copies to:    GB Rosenwald, LLC  
Attn:  
20 Sandstone Court LeClaire, Iowa  
527539



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. Nonrecourse Obligation of the Borrower. Except as otherwise provided in the Borrower Loan Agreement, any obligations of the Borrower under this Funding Loan Agreement are without recourse to the Borrower or to the Borrower's partners or members, as the case may be, and the provisions of Section 11.1 of the Borrower Loan Agreement are by this reference incorporated herein.

#### **Section 11.9. Reserved.**

Section 11.10. 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 11.11. Reference Date. This Funding Loan Agreement is dated for reference purposes

only as of the first day of , 2013.

(Remainder of this page intentionally left blank)

CITY OF CHICAGO / 2013 [ROSENWALD COURTS!

FUNDING LOAN AGREEMENT

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.

**CITIBANK, N.A.**

By: \_ Name: Title:

CITY OF CHICAGO / 2013 [ROSENWALD COURTS] FUNDING LOAN AGREEMENT

**CITY OF CHICAGO**

By.  
Name: Lois A. Scott  
Title: Chief Financial Officer

[SEAL] Attest:

By:  
Name: Susana A. Mendoza Title: City  
Clerk



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FUNDING LOAN AGREEMENT

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**EXHIBIT A**

**FORM OF GOVERNMENTAL LENDER NOTE**

**CITY OF CHICAGO MULTIFAMILY MORTGAGE  
REVENUE NOTE SERIES 2013 (ROSENWALD COURTS)**

**DATED** , 2013 **not to exceed \$58,600,000**

FOR VALUE RECEIVED, the undersigned CITY OF CHICAGO ("Obligor") promises to pay to the order of CITIBANK, N.A. ("Holder") the maximum principal sum of Fifty-Eight Million Six Hundred Thousand and no/100 Dollars \$58,600,000, on , 2016, 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 1, 2013 (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 construction loan (the "Borrower Loan") made by Obligor from proceeds of the Funding Loan to Rosenwald Courts Apartments, LP, an Illinois limited partnership, as borrower (the "Borrower"), under that certain Borrower Loan Agreement, dated as of 1, 2013 (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.

**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**

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**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 the 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 Holder 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 Holder 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 Holder 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 Holder at law or in equity or under any other agreement.

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

This Governmental 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

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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)

CITY OF CHICAGO / 2013 (ROSENWALD COURTS] FUNDING LOAN AGREEMENT

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: Lois A. Scott

Title: Chief Financial Officer

[SEAL] Attest:

By:  
Name: Susana A. Mendoza Title: City  
Clerk

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FUNDING LOAN AGREEMENT

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**EXHIBIT B**

**FORM OF INVESTOR LETTER**

[ ,20\_]

City of Chicago Chicago, Illinois

**Re: Loan in the Maximum Amount of \$58,600,000 from Citibank, N.A. to the City of Chicago (the "Governmental Lender") pursuant to an Ordinance adopted on October , 2013 (the "Ordinance") by the City of Chicago, as evidenced by the Governmental Lender Note, as such term is defined in the Funding Loan Agreement dated as of 1, 2013 (the "Funding Loan Agreement") between the Funding Lender and the Governmental Lender (the "Funding Loan")**

Ladies and Gentlemen:

The undersigned, as holder (the "Holder" or the "Funding Lender") of the above Governmental Lender Note issued pursuant to an Ordinance adopted on October , 2013 (the "Ordinance") by the City of Chicago (the "Governmental Lender") and under a Funding Loan Agreement dated as of 1, 2013 (the "Funding Loan Agreement") between the Governmental Lender and Holder, 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 \$58,600,000.

2. The Funding Lender has authority to make the Funding Loan and to execute this Investor Letter and any other instrument and documents required to be executed by the Funding Lender in connection with the executive and delivery of the Governmental Lender Note.

3. The Holder has sufficient knowledge and experience in financial and business matters with respect to the evaluation of residential real estate developments such as the 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 Holder 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 investor would attach significance in making investment decisions, and the Holder has had the opportunity to ask questions and receive answers from knowledgeable individuals concerning the Governmental Lender, the 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 investor, the Holder 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

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that it has not relied upon the addressee hereof for any information in connection with the Holder's purchase of the Governmental Lender Note [or an interest therein].

5. The Holder is a Qualified Institutional Buyer (as defined in Rule 144A promulgated under the Securities Act of 1933, as amended) or an Accredited Investor (as defined in Rule 501 of Regulation D promulgated under the Securities Act of 1933, as amended).

6. The Holder 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 investor letter from the transferee to substantially the same effect as this Investor Letter 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; provided, however, that no Investor Letter shall be required for the Funding Lender to (i) transfer the Governmental Lender Note, or interest therein, to any Affiliate or other party related to the Funding Lender or (ii) sell

or transfer the Governmental Lender Note, or interest therein, to a special purpose entity, a trust or custodial arrangement, from which the Governmental Lender Note, or interests therein, are not expected to be sold except to beneficial holders who are Qualified Institutional Buyers or Accredited Investors and who will sign an investor letter to substantially the same effect as this Investor Letter in compliance with all applicable federal and state securities laws then in effect.

7. In addition to the right to sell or transfer the Governmental Lender Note, or interests therein, as set forth in Paragraph 6 above, the Funding Lender further acknowledges its right to sell or transfer the Governmental Lender Note, or interests therein, to one or more purchasers upon receipt by the Governmental Lender, and each party to such transfer of (a) any disclosure document which is prepared in connection with such transfer of the Governmental Lender Note, or interest therein, in such form acceptable to the Governmental Lender and accompanied by an opinion of counsel in a form satisfactory to the Governmental Lender regarding the information contained in such disclosure document, (b) evidence that each such Funding Loan is rated "A" or better by one of S&P or Moody's, and (c) an opinion of Tax Counsel to the effect that the exemption of the Governmental Lender Note, or interest therein, or any securities evidenced thereby from the registration requirements of the Securities Act of 1933, as amended, and the exemption of this Funding Loan Agreement from qualification under the Trust Indenture Act of 1939, as amended, will not be impaired as a result of such transfer, and such transfer will not adversely affect the exclusion of interest accrued on the Governmental Lender Note from gross income of the holders thereof (other than a holder who is a "substantial user" of the Project or a "related person" to a "substantial user," as defined in Section 147(a) of the Code) for federal income tax purposes. 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 Holder 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

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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 is a special, limited obligation 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.]

CITY OF CHICAGO / 2013 [ROSENWALD COURTS] FUNDING LOAN AGREEMENT

[Signature Page to Investor Letter]

[ ], as Holder

By:\_\_\_\_  
Name:  
Its:



CITY OF CHICAGO / 2013 [ROSENWALD COURTS] FUNDING LOAN AGREEMENT

**Ordinance Exhibit B Form of Borrower Loan Agreement**

See Attached.

**BORROWER LOAN AGREEMENT**

**Between**

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

**and**

**ROSENWALD COURTS APARTMENTS, LP, an Illinois  
limited partnership, as Borrower**

**Dated as of                      1,2013**

**Relating to: \$58,600,000**

**Funding Loan originated by CITIBANK, N.A., 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 pledged and assigned to Citibank, N.A., 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.

C/183216.7

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BORROWER LOAN AGREEMENT

THIS BORROWER LOAN AGREEMENT (this "Borrower Loan Agreement") is entered into as of the first day of \_\_\_\_\_, 2013, 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 ROSENWALD COURTS APARTMENTS, LP, an Illinois limited partnership (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 the acquisition, construction, rehabilitation, development, and equipping of a multifamily residential project located in the City of Chicago, Cook County, Illinois, known or to be known as Rosenwald Courts and consisting of approximately 239 rental units, including approximately 225 affordable units and approximately 14 unrestricted units, community service facilities and related common areas along with 3 parking lot facilities (collectively, the "Project"); 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 Citibank, N.A. (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, rehabilitation, development, equipping and/or operation of the Project; and;

WHEREAS, the Borrower Loan is secured by, among other things, that certain Multifamily Multifamily Mortgage, Assignment of Rents, Security Agreement (as amended, restated and/or supplemented from time to time, the "Security Instrument"), of even date herewith and assigned to the

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Funding Lender to secure the Funding Loan, encumbering the 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 4.1.38 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 5.14 (Expenses) and Section 10 of the Borrower Note (Voluntary and Involuntary Prepayments).

"Agreement of Environmental Indemnification" shall mean the Agreement of Environmental Indemnification, of even date herewith, executed by the Borrower for the benefit of the Funding Lender and any lawful holder, owner or pledgee of the Borrower Note from time to time.

"Appraisal" shall mean an appraisal of the Project and Improvements, which appraisal shall be (i) performed by a qualified appraiser licensed in the State selected by Funding Lender, and

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BORROWER LOAN AGREEMENT

(ii) satisfactory to Funding Lender (including, without limitation, as adjusted pursuant to any internal review thereof by Funding Lender) in all respects.

"Architect" shall mean any licensed architect, space planner or design professional that Borrower may engage from time to time, with the approval of Funding Lender, to design any portion of the Improvements, including the preparation of the Plans and Specifications. [INCLUDE NAME OF INITIAL ARCHITECT]

"Architect's Agreement" means 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 of the Plans and Specifications, as approved by 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 Security Instrument.

"Bankruptcy Proceeding" shall have the meaning set forth in Section 4.1.8 hereof.

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

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

"Borrower Affiliate" means, as to the Borrower, its General Partner or the Guarantor, (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, its General Partner or the Guarantor, (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, its General Partner or the Guarantor, (iii) any partner, shareholder or, if a limited liability company, member of Borrower, its General Partner or the Guarantor, or (iv) any other person that is related (to the third degree of consanguinity) by blood or marriage to the Borrower, its General Partner or the Guarantor (to the extent any of the Borrower, its General Partner or the Guarantor is a natural person).

"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, or if the Borrower is a not for profit corporation, the shareholders thereof.

"Borrower Deferred Equity" shall mean the Equity Contributions to be made by the Equity Investor to Borrower pursuant to the Partnership Agreement other than Borrower Initial Equity, in accordance with the following schedule:

Amount Date

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October 1, 2015

October 1, 2016

April 1, 2017

\$41,421,360

"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 [\$5,898,958] 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 \$58,600,000, the original maximum principal amount of the Borrower Note.

"Borrower Loan Documents" shall mean this Borrower Loan Agreement, the Construction Funding Agreement, the Borrower Note, the Security Instrument, the Agreement of Environmental Indemnification, the Guaranty, the



Replacement Reserve Agreement, the Contingency Draw Down Agreement and all other documents or agreements evidencing or relating to the Borrower Loan.

"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 Construction Funding Agreement.

"Borrower Note" shall mean that certain Multifamily Note dated as of the Closing Date in the original maximum principal amount of the Borrower Loan Amount made by Borrower and payable to Governmental Lender, as endorsed and assigned to the Funding Lender, as it may be amended, supplemented 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 mean any day other than (i) a Saturday or Sunday, or (ii) a day on which federally insured depository institutions in New York, New York, Chicago, Illinois or the cities in which the offices of the Funding Lender are located are authorized or obligated by law, regulation, governmental decree or executive order to be closed.

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"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 Project or the Mortgaged Property.

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

"Closing Date" shall mean \_\_\_\_\_, 2013, 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 Project, all of which collateral is pledged and assigned to Funding Lender under the Funding Loan Agreement to secure the Funding Loan.

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

"Completion Date" shall mean [December 31, 2015].

"Computation Date" shall have the meaning ascribed thereto in Section 1.148-3(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 Project, whether direct or indirect.

"Construction Consultant" shall mean a third-party architect or engineer selected and retained by Funding Lender, at the cost and expense of Borrower, to monitor the progress of construction and/or rehabilitation of the 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 Agreement dated as of 1, 2013 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

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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 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. [INCLUDE NAMES OF INITIAL CONTRACTORS]

"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 funding of the Borrower Loan and the Funding Loan, the negotiation and preparation of this Borrower Loan Agreement and each of the other Borrower 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 Tax 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.

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"Credit Enhancer" shall mean a government sponsored enterprise that at any time, directly or indirectly, purchases the Borrower Loan or provides credit enhancement with respect to the Borrower Loan.

"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, (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 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 have the meaning set forth in the Partnership Agreement.

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

"Engineer" shall mean any licensed civic, 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.

"Equipment" shall have the meaning given to the term "Personalty" in the Security Instrument.

"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 Partnership Agreement [and Historic Tax Credit Documents].

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"Equity Investor" shall mean the equity investor for the historic tax credits and the low income housing tax credits and shall include [USA Rosenwald Courts LLC, a Delaware limited liability company] and .

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

"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.

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

"Expenses of the Project" shall mean, for any period, the current expenses, paid or accrued, for the operation, maintenance and current repair of the 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 characterized) not to exceed 5.5% of Gross Income, costs of billings and collections, costs of insurance, and costs of audits. Expenses of the Project shall not include any payments, however characterized, on account of any subordinate financing in respect of the Project or other indebtedness, allowance for depreciation, amortization or other non-cash items, gains and losses or prepaid expenses not customarily prepaid.

"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) 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.

"Funding Lender" shall mean Citibank, N.A., a national banking association, in its capacity as lender under the Funding Loan.

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"Funding Loan" means the Funding Loan in the original maximum principal amount of \$58,600,000 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.

"General Partner" shall mean Rosenwald Courts GP, LLC, an Illinois limited liability company, and/or any other Person that the partners of the Borrower, with the prior written approval of the Funding Lender (or as otherwise permitted with the Funding Lender's approval pursuant to the Borrower Loan Documents), selected to be a general partner of the Borrower.

"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.

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

"Governmental Lender Note" shall mean that certain Governmental Lender Note dated the Closing Date in the original maximum principal amount of the Funding Loan, made by the Governmental Lender and payable to Funding Lender, as it may be amended, supplemented or replaced from time to time.

"Governmental Lender's Closing Fee" shall mean . The Governmental Lender's Closing Fee is payable to the Governmental Lender on the Closing Date 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 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 Project. Gross Income shall not include loan proceeds, equity or capital contributions, or tenant security deposits being held by Borrower in accordance with applicable law.

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"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.

"Guarantor" shall mean [James N. Bergman] 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, (i) the Completion and Repayment Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties, and (ii) the Exceptions to Non Recourse Guaranty, of even date herewith, by Guarantor for the benefit of the Beneficiary Parties.]

"Improvements" shall mean the multifamily residential project consisting of approximately 239 rental units, including approximately 225 affordable units and approximately 14 unrestricted units, community service facilities and related common areas along with 3 parking lot facilities, to be constructed upon the Land and known or to be known as Rosenwald Courts, and all other buildings, structures, fixtures, wiring, systems, equipment and other improvements and personal property to be constructed, rehabilitated and/or installed at or on the Land in accordance with the Cost Breakdown and the Plans and Specifications.

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

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

"Interest Rate" shall mean the rate of interest accruing on the Borrower Loan pursuant to 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 [7] 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 Project or any property (including the 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

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relating thereto, and all 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 Project, including any that may (i) require repairs, modifications or alterations in or to all or part of the 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 Project securing an obligation owed to, or a claim by, any Person other than the owner of the 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 Project.

"Management Agreement" shall mean the Management Agreement between the Borrower and the Manager, pursuant to which the Manager is to manage the 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.

"Material Adverse Change" means any 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 of this Borrower Loan Agreement or any other Borrower Loan Document; (b) 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, General Partner, Guarantor or the Mortgaged Property; (c) could reasonably be expected to impair materially the ability of the Borrower, General Partner, or 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.

"Net Operating Income" shall mean: (i) the Gross Income, less (ii) the Expenses of the 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 % of the outstanding amount of the Funding Loan accruing monthly and payable

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semiannually in advance to the Governmental Lender by Borrower on each and  
, commencing on , 20 [with a payment of all accrued but unpaid fees due  
on [ ] so long as any portion of the Borrower Loan is outstanding].

"Other Borrower Monies" shall mean monies of Borrower other than Loan Proceeds and includes, but is not limited to, the Subordinate Debt, Borrower's Equity Contributions and any other equity contributed by Borrower to the 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 Project, now or hereafter levied or assessed or imposed against the Project or any part thereof.

"Partnership Agreement" shall mean that certain Amended and Restated Partnership Agreement of the Borrower dated as of , 2013, 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 4.1.49 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.

"Permitted Encumbrances" shall have the meaning given to that term in the Security Instrument.

"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 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 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 of passage of time, be an Event of Default.

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

"Project" shall mean the Mortgaged Property (as defined in the Security Instrument) and Improvements thereon owned by the Borrower and encumbered by the Security Instrument, together with all rights pertaining to such real property and Improvements, as more particularly described in the Granting Clauses of the Security Instrument and referred to therein as the "Mortgaged Property."

"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 Project or the Mortgaged Property.

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

"Qualified Project Costs" shall mean costs paid with respect to the 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 Project (in the case of rehabilitation, with respect to vacated units only) shall be eligible to be a Qualified Project Cost as bears the same ratio to all such interest as the Qualified Project Costs bear to all costs of the acquisition and construction or rehabilitation of the Project; and provided further that interest accruing after the date of completion of the Project shall not be a Qualified Project Cost; and provided still further that if any portion of the Project is being constructed or rehabilitated by an Affiliate (whether as general contractor or a subcontractor), Qualified Project Costs shall include only (A) the actual out of pocket costs incurred by such affiliate in constructing or rehabilitating the Project (or any portion thereof), (B) 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 Project, and shall not include, for example, intercompany profits resulting from members of an "affiliated group" (within the meaning of Section 1504 of the Code) participating in the rehabilitation or construction of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof); (ii) the costs are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) the costs are paid after the earlier of 60 days prior to October 5, 2011, being the date on which the Governmental Lender first declared its "official intent" to reimburse costs paid with respect to the 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 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(f)(2) of the Regulations) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition and construction or rehabilitation of the 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 Project that are reimbursed no later than 18 months after the later of the

date the expenditure was paid or the date the 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 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 Project Costs; (y) letter of credit fees and municipal bond insurance premiums which represent a transfer of credit risk shall be allocated between

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Qualified 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 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 annual fee of the Rebate Analyst in the amount of \$ . The Rebate Analyst's Fee is payable by the Borrower to the Rebate Analyst, commencing , 20 , every fifth anniversary thereof, and the Maturity Date.

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

"Redevelopment Agreement" shall mean that certain **Redevelopment Agreement of even date herewith, between the Governmental Lender, Borrower, and Burton Rosenwald GP, LLC, an Illinois limited liability company (the "Sponsor").**

"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 Partnership 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.

"Replacement Reserve Agreement" shall mean any Replacement Reserve Agreement between the Borrower and the Funding Lender, as the same may be amended, restated or supplemented from time to time.

"Replacement Reserve Fund Requirement" means Borrower's funding obligations from time to time under the Replacement Reserve Agreement.

"Retainage" shall mean, for each Construction Contract, the greater of (a) ten percent (10%) of all amounts required to be paid by 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.

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"Security Documents" shall mean the Security Instrument, the Replacement Reserve Agreement, the Collateral Agreements, the Collateral Assignments, this Borrower Loan Agreement, the Environmental Agreement, and such other security instruments that Funding Lender may reasonably request.

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

"Servicer" shall mean the Servicer contracting with or appointed by the Funding Lender to service the Borrower Loan. The initial Servicer shall be Citibank, N.A.

"Servicer's Fee" shall mean the fee due to the Servicer for services rendered pursuant to the Borrower Loan Documents and the Servicing Agreement in an amount equal to one twelfth of 0.05% of outstanding principal amount of the Borrower Loan payable monthly in arrears.

"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 LLC business division, or its successors.

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

["Subordinate Debt" shall mean the subordinate loans to Borrower (i) in the amount of \$17,370,000 being made by the Chicago Housing Authority, as a Subordinate Lender, as of the Closing Date pursuant to the Subordinate Loan Documents, (ii) in the amount of \$5,000,000 being made by [the City of Chicago, through its Neighborhood Stabilization Program], as a Subordinate Lender as of the Closing Date pursuant to the Subordinate Loan Documents, and (iii) in the amount of \$35,443,572 being made by Burton Rosenwald, LLC, as a Subordinate Lender as of the Closing Date pursuant to the Subordinate Loan Documents.]

"Subordinate Lender" shall mean Chicago Housing Authority, the City of Chicago, through its Neighborhood Stabilization Program and The Burton Foundation, each as applicable.

"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.

"Substantial Completion Date" means the date that is three (3) months prior to the Completion Date.

"Substantially Complete" or "Substantially Completed" means the Funding Lender has determined that construction or rehabilitation, as the case may be, of the Improvements is sufficiently complete such that the Improvements can be occupied by tenants as a multifamily residential rental project.

"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 Project.

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

"Title Company" means Old Republic National Title Insurance Company.

"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. "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 physical delivery thereof or any further act, except in the case of the Borrower Note, which shall be 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:

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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

(c) 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 directly to the Borrower by the Funding Lender through 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, rehabilitation, development, equipping and/or operation of the 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 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

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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);

(iii) payment of all fees payable in connection with the closing of the Borrower Loan including the Governmental Lender's Closing Fee.

**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., New York City 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 stated to be due on a day that is not a Business Day, such payment shall be due on the first Business Day immediately thereafter. In addition, the Borrower shall make Borrower Loan Payments in accordance with the Borrower Note in the amounts and at the times necessary to make all payments due and payable on the Funding Loan. All payments made by the Borrower hereunder or by the Borrower under the other Borrower Loan Documents, shall be made irrespective of, and without any deduction for, any set-offs or counterclaims, but such payment shall not constitute a waiver of any such set offs or counterclaims.

b) 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 Analysts' 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 Project, as and when the same become due;

iii) to the Servicer, the Servicer's Fee, payable monthly in arrears;

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 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

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the 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 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

iii) all expenses, costs and fees relating to inspections of the 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 if Default. If any Borrower Payment Obligation is not paid by or on behalf of the Borrower when due, the Borrower shall pay to the Servicer, 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; (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; and (c) deposits with respect to any replacement reserve funds required by the Funding Lender shall be calculated by the Servicer in accordance with the Replacement Reserve Agreement. In the event and to the extent that the Servicer or the Funding Lender, pursuant to the terms hereof, shall determine at any time that there exists a deficiency in amounts previously owed but not paid with respect to deposits to such replacement reserve fund, such deficiency shall be immediately due and payable hereunder following Written Notice to the Borrower.

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 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 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, General Partner or 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 2.9.

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 Construction Funding Agreement.

**ARTICLE  
[RESERVED]**

**III**

**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 remade, as of the date of each Disbursement, 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 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 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 Partnership 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 upon any of the property or assets of the Borrower, which conflict, violation, 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. Except as otherwise disclosed to the Governmental Lender and the Funding Lender by the Borrower in writing to the satisfaction of the Governmental Lender and the Funding Lender, 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 or the Guarantor, or their respective assets, properties or operations which, if determined adversely to the Borrower or its 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, General Partner and 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 upon the financial condition, assets (including the Project), properties or operations of the Borrower or the Guarantor. None of the Borrower, General Partner or 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, General Partner and 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, General Partner or Guarantor. None of Borrower, General Partner or 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 Project), condition (financial or otherwise) or prospects of Borrower, General Partner or 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 Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable; or (c) in default with respect to any

agreement to which Borrower, General Partner or Guarantor, as applicable, are a party or by which they are bound, which default would have a material adverse effect on the business, operations, assets (including the Project), condition (financial or otherwise) or prospects of Borrower, General Partner or Guarantor, as applicable; and (d) there is no Legal Action pending or, to the knowledge of Borrower, threatened against or affecting Borrower, General Partner or 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 Project, or the Borrower's business, properties, operations or financial condition or business prospects, except the Permitted Encumbrances. 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 party or by which it or the 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 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, perfected first priority lien on the fee (or leasehold, if applicable) interest in the Project and (ii) perfected security interests in and to, and perfected collateral assignments of, all personalty included in the 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

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Project, nor are there any claims for payment for work, labor or materials affecting the 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 Project delivered to the Governmental Lender and the Funding Lender does not fail to reflect any material matter affecting the 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 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 I 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 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 involved with the operation or use of the Project any act or omission affording any Governmental Authority the right of forfeiture as against the 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 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 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 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

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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 Project or for the relocation of roadways providing access to the 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 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 Project are or will be located in the public right-of-way abutting the Project, and all such utilities are or will be connected so as to serve the Project without passing over other property absent a valid easement. All roads necessary for the use of the 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 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 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.

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

Section 4.1.19 Assessments. Except as otherwise disclosed to the Governmental Lender and the Funding Lender by the Borrower in writing to the satisfaction of the Governmental Lender and the Funding Lender, there are no pending or, to the Borrower's best knowledge, proposed special or other assessments for public improvements or otherwise affecting the Project, or any contemplated improvements to the 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.

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Section 4.1.21 Insurance. The Borrower has obtained the insurance required by this Borrower Loan Agreement, if applicable, and the Security Instrument and has delivered to the Servicer 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 Project will be used exclusively as a multifamily residential rental project and other appurtenant and related uses, which use is consistent with the zoning classification for the 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 Project (collectively, the "Licenses") required at this time for the construction or rehabilitation, as appropriate, and equipping of the 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 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 Project, including any transfer pursuant to foreclosure

sale under the Security Instrument or deed in lieu of foreclosure thereunder. The 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 Project.

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

Section 4.1.24 Physical Condition. The 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 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 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 Project will lie wholly within the boundaries and building restriction lines of the Project, and no improvement on an adjoining property encroaches upon the Project, and no easement or other encumbrance upon the Project encroaches upon any of the Improvements, so as to affect the value or marketability of the Project, except those insured against by the Title Insurance Policy or disclosed in the survey of the Project as approved by the Servicer.

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 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 Project to the Borrower have been paid. 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,

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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 Partnership 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, the 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. The Borrower will execute and deliver the Agreement of Environmental Indemnification.

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 other than "Rosenwald Courts" 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 Project and such principal place of business.

Section 4.1.33 Subordinated Debt. There is no secured or unsecured indebtedness with respect to the 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

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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 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 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 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 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 Project satisfies all requirements of the Code and the Regulations applicable to the Project.

Section 4.1.40 Regulatory Agreement. The Project is, as of the date of origination of the Funding Loan, 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 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 Project. The Borrower intends to hold the Project for its own account and has no current plans, and has not entered into any agreement, to sell the Project or any part of it; and the Borrower intends to occupy the Project or cause the 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 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 General Partner.**

a) The General Partner of Borrower is a limited liability company, duly organized and validly existing under the laws of the State. The General Partner 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 General Partner for its own account and on behalf of Borrower, as General Partner of Borrower, under this Borrower Loan Agreement and the other Borrower Loan Documents and the Funding Loan Documents.

b) General Partner 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 General Partner.

c) General Partner 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 General Partner on behalf of Borrower, and by all necessary action on behalf of General Partner.

e) The execution, delivery and performance by General Partner, on behalf of Borrower, of the Borrower Loan Documents and the Funding Loan Documents will not violate (i) General Partner's organizational documents; (ii) any other Legal Requirement affecting General Partner or any of its properties; or (iii) any agreement to which General Partner 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 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 such 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 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 General Partner of any of the Borrower Loan Documents or the Funding Loan Documents or the Related Documents executed by Borrower or General Partner, as applicable. All required zoning approvals have been obtained, and the zoning of the Land for the Project is not conditional upon the happening of any further event.

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Section 4.1.44 Concerning Guarantor. The Borrower Loan Documents and the Funding Loan Documents to which the Guarantor is a party or a signatory executed simultaneously with this Borrower Loan Agreement have been duly executed and delivered by Guarantor and are legally valid and binding obligations of Guarantor, enforceable against Guarantor 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 Project or any portion or interest thereof or therein; (ii) any lease or other agreement affecting the 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 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 Project and is not adequately covered by insurance; (3) that might materially and adversely affect the ability of Borrower, General Partner or Guarantor or 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, General Partner and Guarantor required to be filed have been timely filed, and all taxes,



assessments, fees and other governmental charges upon Borrower, General Partner and Guarantor, 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 General Partner or Guarantor that would be material to the condition (financial or otherwise) of Borrower, General Partner or Guarantor, and neither Borrower nor General Partner have contracted with any Government Authority in connection with such taxes.

Section 4.1.47 Rights to Project Agreements and Licenses. Borrower is the legal and beneficial owner of all rights in and to the Plans and Specifications and all existing Project Agreements and Licenses, and will be the legal and beneficial owner of all rights in and to all future Project Agreements and Licenses. Borrower's interest in the Plans and Specifications and all 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.

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

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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 Government 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 Project substantially in the form attached as an exhibit to the Construction Funding Agreement, 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 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 General Partner 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 Reserved.**

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 (ii) 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, 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 11.1 hereof.

### **ARTICLE V AFFIRMATIVE 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:

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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, except to the extent that the amount, validity or application thereof is being contested in good faith as permitted by the Security Instrument.

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 Project to be maintained in a good, habitable and safe (so as to not threaten the health or safety of the 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 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 any agreement or instrument materially affecting or pertaining to the Project.

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 Project that materially and adversely affects the Borrower's ability to meet its obligations hereunder or under any of the other Borrower Loan Document 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.

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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 Project alters any existing building foundations or footprints), certificates, plans and specifications, appraisals, title and other insurance reports and agreements, 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 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 a Secondary Market Disclosure Document, the Borrower shall, concurrently with any delivery to the Funding Lender or the Servicer, deliver copies of all financial information required under Article IX.

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

Materials Laws, and (c) commence and thereafter diligently prosecute to completion all remedial work necessary with respect to the Project required under any Hazardous Material Laws, in each case as set forth in the Security Instrument or 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

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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 request by the Funding Lender and the Servicer, with a statement, duly acknowledged and certified, setting forth (i) the unpaid principal of the 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 Project 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.

Section 5.13. 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 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 Project to make repairs or take other action to protect the security of the 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 to 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 Funding Loan Documents. In 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

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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 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 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 Section 18(i) and [ 43(i) ] of the Security Instrument.

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, Citigroup, Inc., Citicorp Funding, Inc., 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 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 Project,

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the operation of the 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 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 Project;

d) Any violation of any environmental law, rule or regulation with respect to, or the release of any toxic substance from, the Project or any part thereof during the period in which the Borrower is in possession or control of the Project;

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;

f) [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 (or alleged 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, General Partner 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 (or alleged failure) by Borrower, the Funding Lender 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 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 Project or

any part thereof; or

(1) 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,

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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 XI 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 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 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 defeasance of the Borrower Loan and the Funding 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 Project or that it will be suitable for the Borrower's purposes or needs.

Section 5.17. Right of Access to the 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 Project without material interference or prejudice to the

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Borrower's operations and (b) to perform such work in and about the 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 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 Note 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 Note from time to time.

Section 5.20. Obligation of the Borrower to Construct or Rehabilitate the Project. The Borrower shall proceed with reasonable dispatch to construct or rehabilitate, as appropriate, and equip the 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 Project is not completed or if the proceeds of the Borrower Loan are insufficient to pay all costs of the 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 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 Project is not completed.

Section 5.21. Maintenance of Insurance. Borrower will maintain the insurance required by the Security Instrument.

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 Security Instrument, 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;

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c) General Partner. As soon as available and in any event within one hundred twenty (120) days after the end of each fiscal year of General Partner, copies of the financial statements of General Partner 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 fifteen (15) 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 Project during such Calendar Month and on a cumulative basis since 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. Promptly upon 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 Project or to Borrower or General Partner naming Governmental Lender or Funding Lender as addressee or which could reasonably be deemed to affect the structural integrity of the 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

(i) Other Items and Information. Such other information concerning the assets, business, financial condition, operations, property, prospects and results of operations of Borrower, General Partner, Guarantor or the 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 Project, or any part thereof, other than Liens expressly permitted under this Borrower Loan Agreement;

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b) any Legal Action which is instituted by or against Borrower, General Partner or Guarantor, or any Legal Action which is threatened against Borrower, General Partner or 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, General Partner Guarantor or the 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, General Partner or Guarantor is a party or by or to which Borrower, General Partner or 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 Project), condition (financial or otherwise) or prospects of Borrower, General Partner or 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 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 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 General Partner's executive headquarters or principal place of business; (ii) the legal, trade, or fictitious business names used by Borrower or General Partner; 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, General Partner and the Equity Investor) under the Partnership Agreement.

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

a) Borrower shall timely perform and comply with, and shall cause General Partner to timely perform and comply with the covenants, agreements, obligations and restrictions imposed on them under the Partnership 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 Project or construction and/or rehabilitation of the Improvements, and will furnish Funding Lender with reports of any official 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, fixturing, use or operation of the 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 Project or the terms of any other lease of all or any portion of the Project. Funding Lender shall at all times have the right to audit, at

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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 Project.

Section 5.25. Completion and Maintenance of 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 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 Project. Borrower shall first apply all Gross Income to Expenses of the 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 the Replacement Reserve Fund Requirement, before using or applying such Gross Income for any other purpose. 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 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:

A) The Tenant Lease Form is a Permitted Lease, and is executed in the form attached as an exhibit to the Construction Funding Agreement 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.

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 or guarantor.

b) Landlord's Obligations. Borrower shall perform all obligations required to be performed by it as landlord under any lease affecting any part of the 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. 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 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 General Partner has assigned or granted, or will assign or grant, a security interest in any of the 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 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.

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 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 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.

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 of the Partnership Agreement.

Section 5.34. Tax Covenants. The Borrower further represents, warrants and covenants as follows:

a) General. The Borrower shall not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the exclusion of interest on the Governmental Lender Note from gross income (as defined in Section 61 of the Code), for federal income tax purposes and, if it should take or permit any such action, the Borrower will take all lawful actions that it can take to rescind such action promptly upon having knowledge thereof and that the Borrower will take such action or actions, including amendment of this 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 Treasury or the Internal Revenue Service applicable to the Governmental Lender Note, the Funding Loan or affecting the 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 Project Costs that are costs of a "qualified residential rental project" (within the meaning of Sections 142(a)(7) and 142(d) of the Code) and property 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.

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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 by the Governmental Lender in preparing its certifications with respect to Section 148 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 origination of the Funding Loan.

vii) Limitation of Project Expenditures. The acquisition, construction and equipping of the Project were not commenced (within the meaning of Section 144(a) of the Code) prior to the 60th day preceding the adoption of the resolution of the

Governmental Lender with respect to the Project on January , 2013, and no obligation

for which reimbursement will be sought from proceeds of the Funding Loan relating to the acquisition, construction or equipping of the 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 Project, and which do not exceed 20% of the aggregate issue price of the Governmental Lender Note.

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-l(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 Note shall be deemed allocated on a pro rata basis to each building in the Project and the land on which it is located so that each building and the land on which it is located will have been financed fifty percent (50%) or more by the proceeds of the Governmental Lender Note 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

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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 Note 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 Note does not exceed 120 percent of the average reasonably expected economic life of the 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 Note 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 Note to be classified as an "arbitrage bond" within the meaning of Section 148 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 Note, 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 Note, 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 Note, invest or cause any Gross Proceeds to be invested 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 Note 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 Note 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.

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e) 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 Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations and rulings thereunder.

f) 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 Note 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 Project. The Borrower hereby covenants and agrees that the Project will be operated as a "qualified residential rental project" within the meaning of Section 142(d) of the Code, on a continuous basis during the longer of the Qualified Project Period (as defined in the Regulatory Agreement) or any period during which any portion of the Governmental Lender Note remains outstanding, to the end that the interest on the Governmental Lender Note shall be excluded from gross income for federal income tax purposes. The Borrower hereby covenants and agrees, continuously during the Qualified 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 Note to be filed with the Internal Revenue Service within prescribed time limits.

- (i) Governmental Lender Note Not a Hedge Bond. The Borrower covenants and agrees that not more than 50% of the proceeds of the Governmental Lender Note will be invested in Nonpurpose Investments having a substantially guaranteed Yield for four years or more within

the meaning of Section 149(f)(3)(A)(ii) of the Code, and the Borrower reasonably expects that at least 85% of the spendable proceeds of the Governmental Lender Note will be used to carry out the governmental purposes of the Governmental Lender Note 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 in accordance with Section 10.14 hereof, 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 Note will not be used in a manner that deviates in any substantial degree from the Project described in the written notice of a public hearing regarding the Governmental Lender Note.

(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 Project. The Borrower hereby represents,

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covenants and agrees, continuously during the Qualified 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 Note 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 Note 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.



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 Note in an amount related to the amount of the Borrower Loan.

### **Section 5.35. Payment of Rebate.**

(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 Note 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:

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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(f)(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(f)(1) 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 Note 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 Note or the date the Funding Loan is retired in full.

iv) 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 Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the 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.

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(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 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 (f) of the Code in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Lender Note. In such event, the Borrower shall be entitled to withdraw funds from the Rebate Fund to the extent the Borrower shall provide a Tax Counsel No Adverse Effect Opinion to the Governmental Lender and the Funding Lender with respect to such withdrawal.

h) 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 Tax 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

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to any duty or undertaking of the Governmental Lender which by its nature cannot be delegated or assigned.

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 Note, the Borrower and other matters as specifically provided for in such agreement.

## **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, 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); provided, the Borrower may annually renew the Management Agreement on the same terms and conditions without the Funding Lender's prior written consent. [INDICATE THAT INITIAL MANAGEMENT AGREEMENT WITH [MERCY HOUSING] HAS BEEN APPROVED.]

Section 6.2. Dissolution. Dissolve or liquidate, in whole or in part, 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 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 the continuance of its present business and activities incidental or related thereto or otherwise cease to operate the 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 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 Project.

Section 6.6. Transfers. Make, suffer or permit the occurrence of any Transfer other than a transfer permitted under the Security Instrument, nor transfer any material License required for the operation of the 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 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, and (iv) 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. Partnership Agreement. Without the Funding Lender's prior Written Consent (which consent shall not be unreasonably withheld) 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 Partnership Agreement; provided, however, the consent of Funding Lender is not required for an amendment of the Partnership Agreement resulting solely from the "Permitted Transfer" of partnership interests of Borrower as defined in and permitted by the Security Instrument.

Section 6.11. ERISA. Maintain, sponsor, contribute to or become obligated to contribute to, or suffer or permit any ERISA 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 ERISA.

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 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.

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 Partnership 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 General Partner 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 General Partner 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 General Partner from identifying Funding Lender or its Affiliates as the source of such financing to the extent that Borrower or General Partner are required to do so by disclosure requirements applicable to publicly held companies). Borrower and General Partner agree that no sign shall be posted on the Project in connection with the construction or rehabilitation of the Improvements unless such sign identifies Citigroup 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. Reserved.**

### **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 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 the Borrower Note, the Security Instrument 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 or any Guarantor 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 Guarantor or the General Partner 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 Guarantor or the General Partner 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 in all cases the Borrower Controlling Entity is replaced with a substitute Borrower Controlling Entity that satisfies the requirements of Section 21 of the Security Instrument; 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 Equity Investor and required for (i) completion of the construction or rehabilitation, as the case may be, of the Improvements, or (iii) the operation of the Improvements, is not received in accordance with the Partnership 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, any General Partner or 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: (i) if such Bankruptcy Event occurs on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such Bankruptcy Event occurs prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and 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;

(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 ten (10) days of the date thereof or (ii) after completion of the construction or rehabilitation, as the case may be, of the Improvements, within thirty (30) 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, any General Partner or Guarantor, or property of Borrower, any General Partner or Guarantor, or any part thereof, and such litigation or proceeding is not defended diligently and in good faith by Borrower, any General Partner or Guarantor, as applicable, provided that any such material litigation or proceeding against a Guarantor shall not constitute an Event of Default: (i) if such material litigation is commenced on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with

their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such material litigation or proceeding is commenced prior to the date upon which the Guaranty terminates in accordance with its terms (or

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the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and 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;

(m) a final judgment or decree for monetary damages in excess of \$50,000 (if against Borrower or General Partner) or \$100,000 (if against Guarantor) or a monetary fine or penalty (not subject to appeal or as to which the time for appeal has expired) is entered against Borrower, any General Partner or Guarantor by any Governmental Authority, and such judgment, decree, fine or penalty is not paid and discharged 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, fine or penalty) , provided that any such judgment, decree, fine or penalty against a Guarantor shall not constitute an Event of Default: (i) if such judgment, decree, fine or penalty is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, decree, fine or penalty is entered prior to the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor) and 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;

(n) a final, un-appealable and uninsured money judgment or judgments, in favor of any Person other than a Governmental Authority, in the aggregate sum of \$50,000 (if against Borrower or General Partner) or \$100,000 (if against Guarantor) or more shall be rendered against Borrower, any General Partner or 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, any General Partner or Guarantor, or against any of their respective assets (that is likely to have a material adverse effect upon the ability of Borrower, any General Partner or 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, levy, writ, warrant, attachment or similar process against a Guarantor shall not constitute an Event of Default: (i) if such judgment, levy, writ, warrant, attachment or similar process is entered on or after the date upon which the Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in accordance with their terms, if more than one Guaranty was executed by such Guarantor), or (ii) if such judgment, levy, writ, warrant, attachment or similar process is entered prior to the date upon which the

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Guaranty terminates in accordance with its terms (or the date upon which all of the Guaranties have terminated in



accordance with their terms, if more than one Guaranty was executed by such Guarantor) and 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;

(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 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;

(p) the construction or rehabilitation of the Improvements is abandoned or halted prior to completion for any period of thirty (30) consecutive days, [unless Borrower has furnished to Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date];

(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 Project orders or requires that construction or rehabilitation of the 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 [unless Borrower has furnished to Funding Lender satisfactory evidence that the completion of the construction or rehabilitation of the Improvements can be accomplished by the Completion Date];

(r) failure by the Borrower to Substantially 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 Substantial Completion Date;

(s) failure by Borrower to complete the construction or rehabilitation, as they may be, of the Improvements in accordance with this Borrower Loan Agreement on or prior to the Completion Date;

(t) [Reserved];

(u) 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;

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(v) an "Event of Default" or "Default" (as defined in the applicable agreement) shall occur under any of the Subordinate Loan Documents or the Redevelopment Agreement, after the expiration of all applicable notice and cure periods; or

(w) Borrower fails to obtain all grading, foundation, building and all other construction permits, licenses and authorizations from all applicable Government Authorities or third parties necessary for the completion of the construction or rehabilitation, as the case may be, of the Improvements, and the operation of, and access to, the Project, within [ ] days after the

Closing Date; or

(x) 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 9.1), 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.

(y) additionally, except with respect to any payment due on the Borrower Note and Additional Borrower Payments, (a) any Potential Default or Event of Default that occurs by reason of acts or omissions of a general partner of Borrower shall be deemed cured if such general partner of Borrower is replaced, within thirty (30) days after notice to Borrower of such Potential Default or Event of Default by Funding Lender, by a substitute general partner approved by Funding Lender in its sole discretion, except if such replacement is an affiliate of the Equity Investor, no such approval by Funding Lender shall be required, provided in either case such [replacement is approved by the Governmental Lender in the manner and to the extent provided in the Regulatory Agreement (as defined in the Funding Loan Agreement) and such] substitute general partner timely cures such Potential Default or Event of Default; and (b) any Potential Default or Event of Default that occurs which can be cured by replacement of any guarantor of the Borrower Loan shall be deemed cured if such guarantor is replaced by a substitute guarantor approved by Funding Lender in its sole discretion, which substitute guarantor executes such guaranty agreements requested by Funding Lender within thirty (30) days after notice to Borrower of such Potential Default or Event of Default by Funding Lender.

## **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 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

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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 any 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 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 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 entire 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 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

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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 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 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 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 of the Borrower.

Section 8.2.6 Accounts Receivable. Upon the occurrence and continuation 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 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 (unless the funding of the Disbursement would result in the cure of such 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 and continuation of any Event of Default.

Section 8.2.9 Completion of Improvements. Upon the occurrence and continuation 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 Project and to perform any and all work and labor necessary for the completion of the 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 and Funding Lender shall not impair Governmental Lender's enforcement of Unassigned Rights. 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, the covenants, terms and conditions of the Security Instrument shall prevail.

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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 hereby 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 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 General Partner, 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 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 Project, the Improvements or the 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 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 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.

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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 Funding Lender assignees or designees become the owner of the 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 Note 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 Note or participations therein or securitizations of single or multi-class securities (the "Securities") secured by or evidencing ownership interests in all or a portion of the Borrower 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 Project, the Borrower, the Manager, the contractor of the Project or the Borrower Controlling Entity, (ii) provide financial statements, audited, if available, relating to the 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 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 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

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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.

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 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 Project or such third party (and portions of any other sections reasonably requested by the Funding Lender pertaining to the Borrower, the 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 Project or the Manager, and such portions (and portions of any other sections reasonably requested and pertaining to the Borrower, the 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 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 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.

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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(f) of the Securities Act) shall be entitled to contribution from any Person not guilty of such fraudulent misrepresentation. In determining the amount of contribution to which the respective parties are entitled, the following factors shall be considered: (i) the indemnified parties and the Borrower's relative knowledge and access to information concerning the matter with respect to which the claim was asserted; (ii) the opportunity to correct and prevent any statement or omission; and (iii) any other equitable considerations appropriate in the circumstances. The parties hereto hereby agree that it may not be equitable if the amount of such contribution were determined by pro rata or per capita allocation.

#### 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), 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:                      Rosenwald Courts Apartments, LP  
Attn: Rosenwald Courts GP, LLC 20 Sandstone  
Court LeClaire, Iowa 52753

Copies to:                                  GB Rosenwald, LLC  
Attn:  
20 Sandstone Court LeClaire, Iowa  
52753

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Rosenwald LGG, LLC Attn: Virginia Pace 39 S.  
LaSalle St., Suite 808 Chicago, Illinois 60603

USA Rosenwald Courts LLC c/o The Richman Group  
Attn: Joanne D. Flanagan, Esq. 340 Pemberwick Road  
Greenwich, CT 06831

If to the Governmental Lender: City of Chicago  
Department of Housing and Economic Development 121 North LaSalle Street,  
Suite 1006 Chicago, Illinois 60602  
Attention: Commissioner, Department of Housing and Economic Development  
Telephone: (312)744-9476 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) 744-8538

and with a copy to:                      City of Chicago  
Office of the City Comptroller's Office 33 North LaSalle Street,  
Suite 600 Chicago, Illinois 60602 Attention: City Comptroller  
Telephone: (312)744-7106 Facsimile: (312)742-6544

If to Funding Lender:                      [Citibank, N.A.  
c/o Citi Community Capital Transaction Management  
Group 390 Greenwich Street, 2nd Floor New York, New  
York 10013  
Attention:      Desk Head, Transaction Management Group  
Loan/Transaction/File # [                      /                      ]  
Facsimile:      (212)723 8642]



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and

325 East Hillcrest Drive, Suite 160  
Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Loan/Transaction/File #[ ]  
Facsimile: (805) 557 0924

With a copy to: [Account Specialist][Consult Citi to obtain the Account  
Specialist's notice information] [Insert Account  
Specialist Address]  
Attention: [ ]  
Loan/Transaction/File #[ ]  
Facsimile: [Insert Account Specialist Facsimile Number]

And a copy of any notices  
of default sent to:

Citibank, N.A.  
Municipal Securities Division  
388 Greenwich Street  
New York, New York 10013  
Attention: General Counsel's Office  
Loan/Transaction/File #[ ]  
Facsimile: (212) 723-8939

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,

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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 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.

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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 in its sole discretion, whether by operation of law (pursuant to a merger or other successor in interest) 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, General Partner Guarantor or any Affiliate, or the 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. [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 Lender, the Funding Lender or the Servicer the right or power to exercise control over the affairs or management of the Borrower, the power of the Governmental Lender, 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 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 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 Project in the Funding Lender or the Servicer, or any sharing of liabilities, losses, costs or expenses.

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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 5.11 (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 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 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

shall be satisfactory to and subject to approval by Funding Lender. Funding Lender's approval of any matter in connection with the 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 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 be disregarded in construing this Borrower Loan Agreement.

Section 10.28. Servicer. Borrower hereby acknowledges and agrees that, pursuant to the terms of Section 39 of the Security Instrument: (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 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                      attached to this Borrower Loan Agreement. In the event of a

Transfer under the terms of the Security Instrument, 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.

Section 10.33. Reference Date. This Borrower Loan Agreement is dated for reference purposes only as of the first day of                      , 2013, 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 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 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 (and not against any money due or to become due to the Governmental Lender pursuant to Unassigned Rights). No holder of the Funding Loan 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 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 Note 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.

CITY OF CHICAGO / 2013 [ROSENWALD COURTS] 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 wilful 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 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 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 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 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 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.

CITY OF CHICAGO / 2013 [ROSENWALD COURTS] BORROWER LOAN AGREEMENT

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]



CITY OF CHICAGO / 2013 [ROSENWALD COURTS] BORROWER LOAN AGREEMENT

IN WITNESS WHEREOF, 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:**

ROSENWALD COURTS APARTMENTS, LP, an Illinois limited partnership

By: Rosenwald Courts GP, LLC,  
an Illinois limited liability company, its General

Partner

By: GB Rosenwald, LLC,  
an Illinois limited liability company, its Managing  
Member

By: \_\_\_\_\_  
Name: James N. Bergman Title:  
Managing Member

(signatures follow on subsequent page)

S-1 CITY OF CHICAGO/2013 [ROSENWALD COURTS] BORROWER LOAN AGREEMENT

GOVERNMENTAL LENDER: CITY  
OF CHICAGO

By:  
Name: Lois A. Scott  
Title: Chief Financial Officer

[SEAL] Attest:

By:  
Name: Susana A. Mendoza Title: City  
Clerk

S-2 CITY OF CHICAGO / 2013 [ROSENWALD COURTS] BORROWER LOAN AGREEMENT

**Agreed to and Acknowledged by: FUNDING**

**LENDER: CITIBANK, N.A.**

By:  
Name:  
Title:

S-3 CITY OF CHICAGO / 2013 [ROSENWALD COURTS]

C/183216.7

BORROWER LOAN AGREEMENT

**Ordinance Exhibit C Form of Land Use Restriction Agreement**

**See Attached.**

Above Space for Recorder's Use Only

**LAND USE RESTRICTION AGREEMENT**

Dated as of 1,2013

between

CITY OF CHICAGO and

ROSENWALD COURTS APARTMENTS, LP, an Illinois limited partnership, as  
Borrower

This Instrument Was Prepared

By (and mail to): Ice Miller LLP 200 West Madison Street Chicago, Illinois  
60606 Attention: Steven L. Washington

C/183565.6

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EXHIBIT A: LEGAL DESCRIPTION A-1

EXHIBIT B: INCOME COMPUTATION AND CERTIFICATION B-1

EXHIBIT C: CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE  
(to be completed with respect to the Residential Project)

C-1

EXHIBIT D: RATABLE RENT-UP SCHEDULE

D-1

**LAND USE RESTRICTION AGREEMENT**

THIS LAND USE RESTRICTION AGREEMENT (this "Agreement"), entered into as of 1, 2013, by and 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 (the "Issuer"), and Rosenwald Courts Apartments, LP, an Illinois limited partnership (the "Borrower").

WITNESSETH:

WHEREAS, pursuant to a Funding Loan Agreement, dated as of 1, 2013 (the "Funding Loan Agreement") between the Issuer, the Borrower and Citibank, N.A. (the "Funding Lender") and an ordinance adopted by the Issuer on , 2013 (the "Note Ordinance"), the Funding Lender will advance funds (the "Funding Loan") in an aggregate principal amount not to exceed Fifty-Eight Million Six Hundred Thousand and 00/100 Dollars (\$58,600,000) and the Issuer will execute and deliver a promissory note (the "Governmental Lender Note") evidencing the obligation to repay the Funding Loan.

WHEREAS, the Funding Loan and the Governmental Lender Note, together with interest thereon (the "Obligations"), shall be limited obligations of the City secured under the Funding Loan Agreement for the benefit of the Funding Lender, and will be payable from the loan payments received by the City pursuant to a loan agreement (the "Borrower Loan Agreement") between the City and the Borrower, pursuant to which the City will loan the proceeds of the Funding Loan to the Borrower (the "Borrower Loan") the proceeds of which will be used by the Borrower to finance the acquisition, construction and equipping of a "qualified residential rental project" within the meaning of Section 142 of the Internal Revenue Code of 1986, as amended (the "Code") located in Chicago, Illinois (the "Residential Project") on the real property described on Exhibit A attached hereto.

WHEREAS, in order to assure the Issuer and the owners of the Obligations that interest on the Obligations will be excluded from gross income for federal income tax purposes under the Code, and to further the public purposes of the Issuer, certain restrictions on the use and occupancy of the Residential Project under the Code must be established;

NOW, THEREFORE, in consideration of the mutual promises and covenants hereinafter set forth, and of other valuable consideration, the Borrower and the Issuer agree as follows:

Section 1. Term of Restrictions, (a) Occupancy Restrictions: With respect to the Residential Project, the term of the Occupancy Restrictions set forth in Section 3 hereof shall commence on the later of the first day on which at least ten percent (10%) of the units in the Residential Project are first occupied or the issue date of the Obligations, and shall end on the latest of (i) the date which is fifteen (15) years after the date on which at least fifty percent (50%) of the units in the Residential Project are first occupied; (ii) the first date on which no tax-exempt obligation (including any refunding obligation) issued and / or executed and delivered with respect to the Residential Project is outstanding; or (iii) the date on which any project-based housing assistance provided with respect to the Residential Project under Section 8 of the United States Housing Act of 1937, as amended, terminates (which period is hereinafter referred to, with respect to the Residential Project, as the "Qualified Project Period" for the Residential Project).

**b) Rental Restrictions: The Rental Restrictions set forth in Section 4 hereof shall remain in effect during the Qualified Project Period set forth in paragraph (a) of this Section 1.**

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 Residential 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 after the date of delivery of the Obligations, which prevents the Issuer from enforcing the Occupancy Restrictions and the Rental Restrictions, or condemnation or similar event, but only if, within a reasonable time period, (i) the portion of the Obligations allocable to the Residential Project (as determined by a firm of nationally recognized bond counsel acceptable to the Issuer) is promptly retired, or amounts received as a consequence of such event are used to provide a new project which meets all of the requirements of this Agreement, which new project is subject to new restrictions substantially equivalent to those contained in this Agreement, and which is substituted in place of the Residential Project by amendment of this Agreement; and (ii) an opinion from nationally recognized bond counsel (acceptable to the Issuer) is received to the effect that noncompliance with the Occupancy Restrictions and the Rental Restrictions as a result of such involuntary loss or substantial destruction resulting from an unforeseen event will not adversely affect the exclusion from the gross income of the owners thereof for purposes of federal income taxation of the interest on the Obligations; 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 subsequent to such event the Borrower or any Related Party (as defined in Section 147(a)(2) of the Code) obtains an ownership interest in the Residential Project for federal income tax purposes.

d) Termination: This Agreement shall terminate upon the earliest of (i) termination of the Occupancy Restrictions and the Rental Restrictions, 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 (acceptable to the Issuer) to the effect that continued compliance with the Rental Restrictions and Occupancy Restrictions on the Residential Project is not required in order for interest on the Obligations to remain excludible from gross income of the owners thereof for federal income tax purposes.

e) Certification: Upon termination of this Agreement, in whole or in part, the Borrower and the Issuer shall execute and the parties shall 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, and the portion of the Residential Project to which such termination relates.

Section 2. Project Restrictions. The Borrower represents, warrants and covenants as follows:

(a) The Borrower has reviewed the provisions of the Code, the Treasury Regulations thereunder (the "Regulations") and Internal Revenue Service rulings, procedures and pronouncements applicable to this Agreement (including, without limitation, Section 142(d) of the Code, Section 1.103-8(b) of the Regulations and IRS Revenue Procedure 2004-39, 2004-29 IRB 49) with its counsel and understands said provisions.

Land Use Restriction agreement

b) The Project is being constructed, acquired, rehabilitated and equipped for the purpose of providing a "qualified residential rental project" (within the meaning of Section 142(d) of the Code) and will, during the term of the Rental Restrictions and Occupancy Restrictions hereunder, 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) At least 95% of the Residential 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). Each such building or structure (or several proximate buildings or structures comprising the Residential Project) shall contain five (5) or more similarly constructed units.

d) None of the residential units in the Residential Project will at any time be used on a transient basis, nor will the Residential Project itself be used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, hospital, nursing home, sanitarium, rest home or trailer park or court for use on a transient basis.

e) In no event will continual or frequent nursing, medical or psychiatric services be made available at the Residential Project, within the meaning of Revenue Ruling 98-47, 1998-2 CB 399, or any successor thereto.

f) All of the residential units in the Residential Project will be leased, rented, or available for lease or rental on a continuous basis to members of the general public (other than (i) units for a resident manager or maintenance personnel, (ii) 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), and (iii) units which may be rented as "public housing" pursuant to Section 3(b) and Section 9 of the United States Housing Act of 1937, as amended, which units (subject to the Public Housing Program) shall be leased to eligible tenants in accordance with "public housing" requirements subject, however, to the requirements of Section 3(a) hereof. Each Qualifying Tenant (as hereinafter defined) occupying a residential unit in the Residential Project shall be required to execute a written Lease Agreement with a stated term of not less than six (6) months nor more than two (2) years.

g) Any functionally related and subordinate facilities (e.g., parking areas, swimming pools, tennis courts, etc.) which are financed by the Obligations and are included as part of the Residential Project will be of a character and size commensurate with the character and size of the Residential Project, and will be made available to all tenants 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 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

#### Land Use Restriction Agreement

related and subordinate facilities will be made available to persons other than tenants or their guests.

(h) Each residential unit in the Residential Project will contain separate and complete facilities for living, sleeping, eating, cooking (including a refrigerator, sink, oven and range top) and sanitation for a single person or family.

(i) No portion of the Residential Project will be used to provide any 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, in violation of Section 147(e) of the Code.

Section 3. Occupancy Restrictions. The Borrower represents, warrants and covenants as follows:

a) Pursuant to the election of the Issuer and the Borrower in accordance with the provisions of Section 142(d)(1)(B) of the Code, at all times during the Qualified Project Period at least forty percent (40%) of the completed residential units in the Residential 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, subject to Section 3(d) hereof, individuals or families whose aggregate adjusted incomes do not exceed sixty percent (60% of the applicable median gross income (adjusted for family size) for the area in which the Residential 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 termination).

b) Prior to the commencement of occupancy of any unit to be occupied by a Qualifying Tenant, the prospective tenant's eligibility shall be established by execution and delivery by such prospective tenant of an Income Computation and Certification in the form attached hereto as Exhibit B (the "Income Certification") evidencing that the aggregate adjusted income of such prospective tenant does not exceed the applicable income limit. In addition, such prospective tenant shall be required to provide whatever other information, documents or certifications are reasonably deemed necessary by the 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 the tenant(s) 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 to the Borrower the Income Certification attached hereto as Exhibit B.

d) Any unit vacated by a Qualifying Tenant shall be treated as continuing to be occupied by such Qualifying Tenant until reoccupied. Upon such unit being reoccupied, the Borrower shall have thirty-one (31) days from such date to determine whether such unit is being occupied by a Qualifying Tenant.

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 such individual or

Land Use restriction Agreement

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 one hundred and forty percent (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 Residential Project of comparable or smaller size to such individual's or family's unit is occupied by any tenant other than a Qualifying Tenant.

f) For purposes of satisfying the requirement that 40% of the completed residential units

be occupied by Qualifying Tenants, the following principles shall apply: (i) upon the later of the first day on which at least 10% of all of the residential units in the Residential Project are occupied or the issue date of the Obligations, 40% of such units must be occupied by Qualifying Tenants; and (ii) after 10% of the residential units in the Residential Project are occupied, Qualifying Tenants must occupy residential units in the Residential Project in the number set forth in Exhibit D hereto, and the Qualifying Tenants' occupancies must predate the non-Qualifying Tenants' occupancies.

g) The lease agreement to be utilized by the Borrower in renting any residential units in the Residential Project to a prospective Qualifying Tenant shall provide for termination of the lease agreement and consent by such person to eviction following thirty (30) days' 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 Qualifying Tenant.

h) All Income Certifications will be maintained on file at the Residential Project (or at an off-site storage location) so long as any Obligations are outstanding and for five (5) years thereafter with respect to each Qualifying Tenant who occupied a residential unit in the Residential Project during the period the restrictions hereunder are applicable, and the Borrower will, promptly upon receipt, file a copy thereof with the Issuer.

(i) On the first day of the Qualified Project Period, on the fifteenth day of January, April, July and October of each year during the Qualified Project Period, and within thirty (30) days "after the final day of each month in which there occurs any change in the occupancy of a residential unit in the Residential Project, the Borrower will submit to the Issuer the "Certificate of Continuing Program Compliance," in the form attached hereto as Exhibit C, executed by the Borrower.

(j) The Borrower shall submit to the Secretary of the United States Treasury (at such time and in such manner as the Secretary shall prescribe) an annual certification as to whether the Residential 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. The Borrower shall submit a copy of each such annual certification to the Issuer.

Section 4. Rental Restrictions. The Borrower represents, warrants and covenants that once available for occupancy, each residential unit in the Residential Project will be rented or available for rental on a continuous basis to members of the general public (other than (a) units for a resident manager or maintenance personnel and (b) units for Qualifying Tenants as provided for in Section 3 hereof).

#### Land Use Restriction Agreement

Section 5. Transfer Restrictions. The Borrower covenants and agrees that no conveyance, transfer, assignment or any other disposition of title to the Residential Project (a "Transfer"), shall be made prior to the termination of the Rental Restrictions and Occupancy Restrictions hereunder, unless the transferee pursuant to the Transfer assumes in writing, in a form reasonably acceptable to the Issuer, all of the executory duties and obligations hereunder of the Borrower, including 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 (the "Assumption Agreement"). The Borrower shall deliver the Assumption Agreement to the Issuer at least thirty (30) days prior to a proposed Transfer.

Section 6. Enforcement, (a) The Borrower shall, upon at least 48 hours prior written notice and during regular business hours, permit all duly authorized representatives of the Issuer to inspect any books and records of the Borrower regarding the Residential 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 any Regulations heretofore or hereafter promulgated thereunder and applicable thereto.

b) In addition to the information provided for in Section 3(h) 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 any Regulations heretofore or hereafter promulgated thereunder and applicable thereto.

c) The Issuer and the Borrower each covenants that it will not take or permit to be taken any action within its control that it knows would adversely affect the exclusion of interest on the Obligations from the gross income of the owners thereof for purposes of federal income taxation pursuant to Section 103 of the Code. Moreover, the Issuer and the Borrower covenant to take any lawful action within their control and as may be necessary, (in the opinion of nationally recognized bond counsel acceptable to 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 and / or executed and delivered under Section 142(d) of the Code and affecting the Residential Project.

d) The Borrower covenants and agrees to inform the Issuer by written notice of any violation of its obligations hereunder within five (5) 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 (A) the lesser of (i) forty-five (45) days after the effective date of any notice to or from the Borrower, or (ii) sixty (60) days from the date such violation would have been discovered by the Borrower by the exercise of reasonable diligence, or (B) such longer period as is specified in an opinion of nationally recognized bond counsel (acceptable to the Issuer) as will not result in the loss of such exclusion of interest on the Obligations, 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 purpose for requiring compliance with the restrictions provided in this Agreement is to preserve

#### Land Use Restriction Agreement

the exclusion of interest on the Obligations from gross income for purposes of federal income taxation, and that the Issuer, on behalf of the owners of the Obligations, 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, which in the opinion of the Issuer and nationally recognized bond counsel could adversely affect the exclusion of interest on the Obligations from gross income for purposes of federal income taxation.

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 Residential Project.

g) Nothing in this Section shall preclude the Issuer from exercising any remedies they might otherwise have, by contract, statute or otherwise, upon the occurrence of any violation hereunder, which in the opinion of the Issuer and nationally recognized bond counsel could adversely affect the exclusion of interest on the Obligations from gross income for purposes of federal income taxation.

Section 7. Covenants to Run With the Land. The Borrower hereby subjects the Residential Project 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 Residential Project throughout the term of this Agreement. Each and every contract, deed, mortgage, lease or other instrument hereafter executed covering or conveying the Residential Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed, 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. Reserved.

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 terms not defined in this Agreement shall have the same meaning as terms defined in the Indenture, the Borrower Loan Agreement, or Section 142(d) of the Code and any Regulations heretofore or hereafter promulgated thereunder and applicable thereto.

Section 12. Amendment. This Agreement may be amended by the parties hereto, among other things, to reflect changes in Section 142(d) of the Code, the Regulations and any

Land Use Restriction agreement

revenue rulings or procedures promulgated thereunder, or in the interpretation thereof, subject to an opinion of nationally recognized bond counsel that such amendment will not adversely affect the exclusion of the interest on the Obligations from the gross income of the owners thereof for purposes of federal income taxation.

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 addressed to a party at its address set forth below or to such other address the party to receive such notice may have designated to all other parties by notice in accordance herewith:

If to the Issuer:	City of Chicago Department of Housing and Economic Development 121 North LaSalle Street, 10 <sup>th</sup> Floor Attention: Commissioner, Department of Housing and Economic Development 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: 312-744-8538
and with a copy to:	City of Chicago Office of the City Comptroller's Office 33 North LaSalle Street, Suite 600 Chicago, Illinois 60602 Attention: City Comptroller Telephone: 312-744-7106 Facsimile: 312- 744-6544
If to the Borrower:	Rosenwald Courts Apartments, LP Attn: Rosenwald Courts GP, LLC 20 Sandstone Court
 Land Use Restriction Agreement	
	LeClaire, Iowa 52753
and with a copy to:	GB Rosenwald, LLC Attn: James N. Bergman 20 Sandstone Court LeClaire, Iowa 52753
and with a copy to:	Rosenwald LGG, LLC Attn: Virginia Pace 39 S. LaSalle St., Suite 808 Chicago, Illinois 60603
and with a copy to:	USA Rosenwald Courts LLC c/o The Richman Group Attn: Joanne D. Flanagan,

Esq. 340 Pemberwick Road Greenwich, CT 06831

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

[The remainder of this page is intentionally left blank.]

Land Use Restriction Agreement

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.

[SEAL] Attest:

By:

Susana A. Mendoza, City Clerk

CITY OF CHICAGO, as Issuer

By:

Lois A. Scott, Chief Financial Officer

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF COOK )

BEFORE ME, the undersigned authority, on this day personally appeared Lois A. Scott and Susana A. Mendoza, Chief Financial Officer and City Clerk, respectively, of 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 (the "Issuer"), known to me to be the persons whose names are subscribed to the foregoing instrument, and acknowledged to me that each executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said Issuer.

GIVEN UNDER MY HAND and seal of office, this the            day of            2013.

Notary Public in and for the State of Illinois [SEAL]

My commission expires on:

[Signatures continue on next page.]

Land Use Restriction Agreement

CONTINUATION            OF            SIGNATURE            PAGE            LAND            USE  
RESTRICTION AGREEMENT

ROSENWALD COURTS APARTMENTS, LP, an Illinois limited partnership

By: Rosenwald Courts GP, LLC,  
an Illinois limited liability company, its General Partner

By: GB Rosenwald, LLC,  
an Illinois limited liability company, its Managing Member

By:

Name: James N. Bergman Title:  
Managing Member

STATE OF ILLINOIS )  
 ) ss:  
COUNTY OF COOK )

BEFORE ME, the undersigned authority, on this day personally appeared James N. Bergman, the Managing Member of GB ROSENWALD, LLC, an Illinois limited liability company and the managing member of ROSENWALD COURTS GP, LLC, the general partner of ROSENWALD COURTS APARTMENTS, LP (the "Borrower"), known to me to be the person whose name is subscribed to the foregoing instrument, and known to me to be an authorized representative of said Borrower and acknowledged to me that he executed the same for the purposes and consideration therein expressed and in the capacity therein stated, as the act and deed of said Borrower.

GIVEN UNDER MY HAND and seal of office, this the            day of            , 2013.

Notary Public in and for the State of Illinois [SEAL]

My commission expires on:

[The remainder of this page is intentionally left blank:]

Land Use Restriction Agreement S-2

**EXHIBIT A: LEGAL DESCRIPTION ROSENWALD COURTS RESIDENTIAL**

[INSERT LEGAL DESCRIPTION]



**A-1**

**EXHIBIT B: INCOME COMPUTATION AND CERTIFICATION<sup>1</sup>**

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 1, 2013, among Rosenwald Courts Apartments, LP (the "Borrower"), and the City of Chicago.

Re: Rosenwald Courts Apartments Project

Chicago, Illinois

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:

1.	2.	3.	4.	5.
Name of Members of the Household	Relationship to Head of Household HEAD SPOUSE	Age	Social Security Number	Place of Employment

6. Total Anticipated Income. The total anticipated income, calculated in accordance with this paragraph 6, of all persons listed above for the 12-month period beginning the date that I/we plan to move into a unit (i.e., ) is \$ .

Included in the total anticipated income listed above are:

a) the full amount, before payroll deductions, of wages and salaries, overtime pay, commissions, fees, tips and bonuses, and other compensation for personal services;

b) the net income from operation of a business or profession or net income from real or personal property (without deducting expenditures for business expansion or amortization or capital indebtedness); an allowance for depreciation of capital assets used in a business or profession may be deducted, based on straight line depreciation, as provided in Internal Revenue Service regulations; include any withdrawal of cash or

The form of Income Computation and Certification shall be conformed to any amendments made to 24 CFR Part 5, or any regulatory provisions promulgated in substitution therefor.

#### B-1

assets from the operation of a business or profession, except to the extent the withdrawal is reimbursement of cash or assets invested in the operation by the above persons;

c) interest and dividends (see 7(C) below);

d) the full amount of periodic payments received from social security, annuities, insurance policies, retirement funds, pensions, disability or death benefits, and other similar types of periodic receipts, including a lump sum payment for the delayed start of a periodic payment;

e) payments in lieu of earnings, such as unemployment and disability compensation, workmen's compensation and severance pay;

f) the amount of any public welfare assistance payment; if the welfare assistance payment includes any amount specifically designated for shelter and utilities that is subject to adjustment by the welfare assistance agency in accordance with the actual cost of shelter and utilities, the amount of welfare

assistance income to be included as income shall consist of:

i) the amount of the allowance or grant exclusive of the amount specifically designated for shelter or utilities, plus

ii) the maximum amount that the welfare assistance agency could in fact allow the family for shelter and utilities (if the family's welfare assistance is ratably reduced from the standard of need by applying a percentage, the amount calculated under this paragraph 6(f)(ii) 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) payments 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;

#### B-2

f) the full amount of student financial assistance paid directly to the student or to the educational institution;

g) special pay to a family member serving in the Armed Forces who is exposed to hostile fire;

h) amounts received under training programs funded by the Department of Housing and Urban Development ("HUD");

(i) amounts received by a disabled person that are disregarded for a limited time for purposes of Supplemental Security Income eligibility and benefits because they are set aside for use under a Plan to Attain Self-Sufficiency (PASS);

(j) amounts received by a participant in other publicly assisted programs which are specifically for or in reimbursement of out-of-pocket expenses incurred (special equipment, clothing, transportation, child care, etc.) and which are made solely to allow participation in a specific program;

(k) a resident service stipend in a modest amount (not to exceed \$200 per month) received by a

resident for performing a service for the Borrower, on a part-time basis, that enhances the quality of life in the Residential 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 and 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) reparation payments paid by a foreign government pursuant to claims filed under the laws of that government by 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;

### B-3

(s) temporary, nonrecurring or sporadic income (including gifts); and

(t) amounts specifically excluded by any other federal statute from consideration as income for purposes of determining eligibility or benefits under a category of assistance programs that includes assistance under any program to which the exclusions set forth in 24 CFR 5.609(c) apply.

7. Assets. (A) Do the persons whose income or contributions are included in Item 6 above:

(i) have savings, stocks, obligations, equity in real property or other forms of capital investment (excluding the values of necessary items of personal property such as furniture and automobiles, equity in HUD homeownership programs, 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.

(C) If the answer to (B) above is yes, state:

- i) the total value of all such assets: \$ ,
- ii) the amount of income expected to be derived from such assets in
- ii) the 12-month period beginning on the date of initial occupancy of the unit that
- ii) you propose to rent: \$ , and
- iii) the amount of such income, if any, that was included in Item 6
- iii) above: \$ .

8. Full-Time Students. (A) If ALL of the persons listed in column 1 above are or will be full-time students\* during five calendar months of this calendar year at an education institution (other than a correspondence school) with regular faculty and students, answer the questions (a) through (d) below; otherwise check here: NOT APPLICABLE

\*A full-time student is an individual who during each of the 5 calendar months during the calendar year in which occupancy of the unit begins is a full-time student 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 on-farm training under the supervision of an accredited agent of such an educational organization or of a state or political subdivision thereof.

(a) Is any such person (other than nonresident aliens) married and filing a joint federal income tax return?

Yes No

#### B-4

b) Is any such person receiving assistance under Title IV of the Social Security Act (relating to Aid to Families with Dependent Children or AFDC)?

Yes No

c) Is any such person enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws?

Yes No

d) Are such persons single parents and their children (not one of whom is a dependent of a person not residing in the unit)?

Yes No

9. Relationship to Project Borrower. • Neither myself nor any other occupant of the unit I/we propose to rent is the owner of the rental housing project in which the unit is located (hereinafter the "Borrower"), has any family relationship to the Borrower, or owns directly or indirectly any interest in the Borrower. For purposes of this paragraph, indirect ownership by an individual shall mean ownership by a family member; ownership by a corporation, partnership, estate or trust in proportion to the ownership or beneficial interest in such corporation, partnership, estate or trust held by the individual or a family member; and ownership, direct or indirect, by a partner of the individual.

10. Reliance. This certificate is made with the knowledge that it will be relied upon by the Borrower 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 and / or executed and delivered 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 trustee 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 Borrower 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 Borrower to lease the unit, and may entitle the Borrower to prevent or terminate my/our occupancy of the unit by institution of an action for ejection or other appropriate proceedings.

## B-5

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 17 years listed in number 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:

**B-6**

**FOR COMPLETION BY APARTMENT OWNER ONLY:**

1. Calculation of eligible income:

a. Enter amount entered for entire household

in 6 above: \$ \_

b. (1) if the amount entered in 7(C)(i) above is greater  
than \$5,000, enter the total amount entered in

7(C)(ii), subtract from that figure the amount entered in 7(C)(iii) and enter the remaining balance (\$ );

2) multiply the amount entered in 7(C)(i) times the current passbook savings rate as determined by HUD to determine what the total annual earnings on the amount in 7(C)(i) would be if invested in passbook savings (\$ ), subtract from that figure the amount entered in 7(C)(iii) and enter the remaining balance (\$ ); and

3) enter at right the greater of the amount calculated under (1) or (2) above: \$ \_

c. TOTAL ELIGIBLE INCOME (Line 1 .a plus line 1 .b(3)):

2. The amount entered in 1.c is:

Less than 60% of Median Gross Income for Area.<sup>2</sup>

More than 60% of Median Gross Income for the Area.<sup>3</sup>

3. Number of apartment unit assigned:

Bedroom Size: Rent: \$

4. The last tenants of this apartment unit for a period of at least 30 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.

"Median Gross Income for the Area" means the median income for the area where the Residential Project is located as determined by the Secretary of Housing and Urban Development under Section 8 of the United States Housing Act of 1937, as amended, or if programs under Section 8 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.

<sup>3</sup> See footnote 2.

## B-7

5. Method used to verify applicant(s) income:

Employer income verification.

Copies of tax returns.

Other ( )



Borrower or Manager

**B-8**  
**INCOME VERIFICATION** (for  
employed persons)

The undersigned employee has applied for a rental unit located in the Residential 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 \_\_\_\_\_, an Illinois limited liability company, in order that it may determine my income eligibility for rental of an apartment located in its project which has been financed by the City of Chicago.

Signature Date

Please send to:

B-9  
INCOME VERIFICATION (for self-  
employed persons)

I hereby attach copies of my individual federal and state income tax returns for the immediately preceding two calendar years and certify that the information shown in such income tax returns is true and

complete to the best of my knowledge.

Signature Date

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***EXHIBIT C: CERTIFICATE OF CONTINUING PROGRAM COMPLIANCE (to be  
completed with respect to the Residential Project)***

The undersigned, the managing member of Landwhite Developers, LLC, the managing member of the general partner of Rosenwald Courts Apartments, LP, an Illinois limited partnership (the "Borrower"), hereby certify as follows:

1. The undersigned has read and is thoroughly familiar with the provisions of the Land Use Restriction Agreement, dated as of - . 1, 2013, between the Borrower and the City of Chicago (the "Land Use Restriction Agreement").

2. Based on Income Computations and Certifications on file with the Borrower, as of the date of this Certificate the following number of completed residential units in the Residential Project (i) are occupied by Qualifying Tenants (as defined in the Land Use Restriction Agreement), or (ii) were previously occupied by Qualifying Tenants and have been vacant and not reoccupied except for a temporary period of no more than 31 days:

Occupied by Qualifying Tenants <sup>1</sup> :	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 residential units in the Residential Project is

4. No default has occurred and is subsisting under the Land Use Restriction Agreement.

ROSENWALD COURTS APARTMENTS, LP, an Illinois limited partnership

By: Rosenwald Courts GP, LLC,  
an Illinois limited liability company, its General Partner

By: GB Rosenwald, LLC,  
an Illinois limited liability company, its Managing Member

By:  
Name: James N. Bergman Title:  
Managing Member

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 or were (i) entitled to file a joint tax return, (ii) receiving assistance under Title IV of the Social Security Act (relating to Aid to Families with Dependent Children), (iii) enrolled in a job training program receiving assistance under the Job Training Partnership Act or under other similar Federal, State, or local laws, or (iv) single parents and their children (not one of whom is a dependent of a person not residing in the unit).

C-1

## EXHIBIT D: RATABLE RENT-UP SCHEDULE

The Borrower expects and covenants that approximately 225 of the approximately 239 residential units will be rented to Qualifying Tenants and it is not currently anticipated that more than 14 residential units in the Residential Project will be rented to individuals who are not Qualifying Tenants under the applicable income requirements.

D-1

**Ordinance Exhibit D Form of Redevelopment Agreement**

See Attached.

[leave blank 3" x 5" space for recorder's office]

S:\SHARED\Finance\Rosenwald <file:///S:/SHARED/Finance/Rosenwald> CourtsYTIF RDA\rda 10.doc

This agreement was prepared by and after recording  
return to: Michael L. Gaynor, Senior Counsel City of  
Chicago Department of Law 121 North LaSalle  
Street, Room 600 Chicago, Illinois 60602

**ROSENWALD COURTS TIF REDEVELOPMENT AGREEMENT**

This Rosenwald Courts TIF Redevelopment Agreement (this "Agreement" or "RDA") is made as of this    day of   , 2013, among the City of Chicago, an Illinois municipal corporation (the "City"), through its Department of Housing and Economic Development ("HED"), Rosenwald Courts Apartments, LP, an Illinois limited partnership (the "Owner"), the general partner of which is Rosenwald Courts GP, LLC, an Illinois limited liability company (the "General Partner"), the managing member of which is GB Rosenwald, LLC, an Illinois limited liability company (the "Managing Member"), and Burton Rosenwald GP, LLC, an Illinois limited liability company (the "Sponsor," and together with the Owner, the "Developer"), the sole member of which is The Burton Foundation, an Illinois not-for-profit corporation (the "Foundation").

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**RECITALS**

A. Constitutional Authority: As a home rule unit of government under Section 6(a), Article VII of the 1970 Constitution of the State of Illinois (the "State"), the City has the power to regulate for the protection of the public health, safety, morals and welfare of its inhabitants, and pursuant thereto, has the power to encourage private development in order to enhance the local tax base, create employment opportunities and to enter into contractual agreements with private parties in order to achieve these goals.

B. Statutory Authority: The City is authorized under the provisions of the Tax Increment Allocation Redevelopment Act, 65 ILCS 5/11-74.4-1 et seq., as amended from time to time (the "Act"), to finance projects that eradicate blighted conditions and conservation area factors through the use of tax increment allocation financing for redevelopment projects.

C. City Council Authority: To induce redevelopment pursuant to the Act, the City Council of the City (the "City Council") adopted the following ordinances on March 27, 2002, published at pages 81231 through 81472 of the Journal of Proceedings of the City Council of the City for said date: (1) approving a redevelopment plan (the "Redevelopment Plan") for the 47<sup>th</sup> and King Drive Redevelopment Project Area (the "Area"); (2) designating the Area as a Redevelopment Project Area pursuant to the Act; and (3) adopting tax increment allocation financing for the Area (the "TIF Adoption Ordinance") (items(1)-(3) collectively referred to herein as the "TIF Ordinances"). The redevelopment project area referred to above (the "Redevelopment Area") is legally described in Exhibit A hereto.

D. The Project: The Owner has purchased certain property and improvements located within the Redevelopment Area located at 4600 South Michigan Avenue, Chicago, Illinois 60653, and legally described on Exhibit B-1 hereto (the "Apartment Property"). The Apartment Property is currently the site of the historic Michigan Boulevard Garden Apartments (also known as the Rosenwald Apartments), and is bounded by East 46<sup>th</sup> Street on the north, East 47<sup>th</sup> Street on the south, South Wabash Avenue on the west, and South Michigan Avenue on the east. In addition to the Apartment Property, the Owner intends to purchase five (5) vacant, City-owned parcels of land located within the Redevelopment Area, and legally described on Exhibit B-2 hereto (the "City Parking Property"), and three (3) vacant, privately-owned parcels of land located within the Redevelopment Area, and legally described on Exhibit B-3 hereto (the "Private Parking Property"). A portion of the City Parking Property is located on Michigan Avenue across the street from the Apartment Property, and the other portion is located on Wabash Avenue across the street from the Apartment Property. The Private Parking Property is located on Wabash Avenue adjacent to the City Parking Property located on Wabash Avenue. After the Owner purchases the City Parking Property and the Private Parking Property (collectively the "Parking Property," and together with the Apartment Property, the "Property"), the Developer, within the time frames set forth in Section 3.01 hereof, shall commence and complete rehabilitation of a mixed-use building on the Apartment Property, including approximately 239 rental residential units therein and an area to be utilized as a community service facility and general commercial and retail space, and construction of parking facilities on the Parking Property (together, the "Facility"). The Facility and related improvements (including but not limited to those TIF-Funded Improvements as defined below and set forth on Exhibit C) are collectively referred to herein as the "Project." The Project shall consist of two phases: first, facade restoration, interior demolition, environmental remediation, and site work ("Phase I"); and second, build-out of the units, the community service facility and the "white box" of the commercial and retail space ("Phase II"). The completion of the Project would not reasonably be anticipated without the financing contemplated in this Agreement. It is contemplated that the Owner

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may lease all or a portion of the Facility pursuant to a written lease (the "Master Lease") between the Owner and an affiliate thereof (the "Master Tenant"). The Owner shall provide the City with a certified copy of the Master Lease upon the execution thereof.

E. Redevelopment Plan: The Project will be carried out in accordance with this Agreement and the Redevelopment Plan.

F. City Financing: The City agrees to use, in the amounts set forth in Section 4.03 hereof, (i) [intentionally omitted], (ii) the proceeds of the TIF Note (defined below) and/or (iii) Incremental Taxes (as defined below), to pay for or reimburse the Sponsor for the costs of TIF-Funded Improvements pursuant to the terms and conditions of this Agreement and the TIF Note.

In addition, the City may, in its discretion, issue tax increment allocation bonds ("TIF Bonds") secured by Incremental Taxes pursuant to a TIF bond ordinance (the "TIF Bond Ordinance") at a later date as described in Section 4.03(d) hereof, the proceeds of which (the "TIF Bond Proceeds") may be used to pay for the costs of the TIF-Funded Improvements not previously paid for from Incremental Taxes (including any such payment made pursuant to any TIF Note provided to the Sponsor pursuant to this Agreement), to make

payments of principal on the TIF Note, or in order to reimburse the City for the costs of TIF-Funded Improvements.

Now, therefore, in consideration of the mutual covenants and agreements contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree as follows:

## SECTION 1. RECITALS

The foregoing recitals are hereby incorporated into this agreement by reference.

## SECTION 2. DEFINITIONS

For purposes of this Agreement, in addition to the terms defined in the foregoing recitals, the following terms shall have the meanings set forth below:

"2FM" shall mean the City's Department of Fleet and Facilities Management.

"47<sup>th</sup> and King Drive TIF Fund" shall mean the special tax allocation fund created by the City in connection with the Redevelopment Area into which the Incremental Taxes will be deposited.

"Act" shall have the meaning set forth in the Recitals hereof.

"Actual residents of the City" shall mean persons domiciled within the City.

"Acquisition" shall have the meaning set forth in the Recitals hereof.

"Affiliate" shall mean any person or entity directly or indirectly controlling, controlled by or under common control with the Developer.

"Annual Compliance Report" shall mean a signed report from the Developer to the City (a) itemizing each of the Developer's obligations under the RDA during the preceding calendar year, (b) certifying the Developer's compliance or noncompliance with such obligations, (c) attaching evidence (whether or not previously submitted to the City) of such compliance or noncompliance

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and (d) certifying that the Developer is not in default with respect to any provision of the RDA, the agreements evidencing the Lender Financing, if any, or any related agreements; provided, that the obligations to be covered by the Annual Compliance Report shall include the following: (1) [intentionally omitted]; (2) [intentionally omitted]; (3) delivery of Financial Statements and unaudited financial statements (Section 8.13); (4) delivery of updated insurance certificates, if applicable (Section 8.14); (5) delivery of evidence of payment of Non-Governmental Charges, if applicable (Section 8.15); (6) [intentionally omitted]; (7) [intentionally omitted]; and (8) compliance with all other executory provisions of the RDA.

"Apartment Property" shall have the meaning set forth in the Recitals hereof.

"Available Project Funds" shall have the meaning set forth for such term in Section 4.07  
hereof.

"Borrower Loan Agreement" shall mean that certain Borrower Loan Agreement dated as of the Closing Date between the City and the Owner.

"Building Court Case" shall mean Circuit Court of Cook County case no. 2010 M1 400696 or any



successor or substitute legal action filed by the City to ensure that the Apartment Property is in compliance with all City ordinances relating to building standards.]

"Certificate" shall mean the Certificate of Completion of Rehabilitation described in Section 7.01 hereof.

"Change Order" shall mean any amendment or modification to the Scope Drawings, Plans and Specifications or the Project Budget as described in Section 3.03, Section 3.04 and Section 3.05, respectively.

"Citibank" shall mean Citibank, N.A. (or an affiliate thereof), a provider of Lender Financing.

"City Contract" shall have the meaning set forth in Section 8.01(1) hereof.

"City Council" shall have the meaning set forth in the Recitals hereof.

"City Funds" shall mean the funds paid to the Developer pursuant to the TIF Note.

"City Parking Property" shall have the meaning set forth in the Recitals hereof.

"City Title Commitments" shall have the meaning set forth in Section 3.13(c) hereof.

"Closing Date" shall mean the date of execution and delivery of this Agreement by all parties hereto, which shall be deemed to be the date appearing in the first paragraph of this Agreement.

"Contract" shall have the meaning set forth in Section 10.03 hereof.

"Contractor" shall have the meaning set forth in Section 10.03 hereof.

"Construction Contract" shall mean, collectively, that (i) certain contract [to be] entered into between the Developer and Tishman Burling Rosenwald Joint Venture dated [ ] providing for Phase I, and (ii) certain contract [to be] entered into between the Developer and The

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George Sollitt Construction Company / Powers and Sons Construction Company, Inc. / Brown & Momen, Inc. Joint Venture dated [ ] providing for Phase II.

"Corporation Counsel" shall mean the City's Office of Corporation Counsel.

"Deed" shall have the meaning set forth in Section 3.13(b) hereof.

"Developer Parties" shall have the meaning set forth in Section 3.13(g) hereof.

["Draft NFR Letter for the Apartment Property" shall mean a draft comprehensive NFR Letter from the IEPA for the Apartment Property based on TACO Tier I residential remediation objectives, as amended or supplemented from time to time.]

["Draft NFR Letter for the Parking Property" shall mean a draft NFR Letter from the IEPA for applicable portions of the Parking Property (as determined pursuant to Section 11.02 hereof) based on commercial remediation objectives, as amended or supplemented from time to time; provided, however, any landscaped areas shall meet TACO Tier I residential remediation objectives.]

"DTC Regulatory Agreement" shall mean that certain Donations Tax Credit Regulatory Agreement, [dated contemporaneously herewith,] executed by the City and the Sponsor and recorded in the office of the Cook County Recorder of Deeds contemporaneously herewith.

"Employer(s)" shall have the meaning set forth in Section 10 hereof.

"Environmental Documents" shall have the meaning set forth in Section 11.01 hereof.

"Environmental Laws" shall mean any and all federal, state or local statutes, laws (including common law), regulations, ordinances, codes, rules, orders, licenses, judgments, decrees or requirements relating to the regulation and protection of human health, safety, the environment and natural resources now or hereafter in force, as amended and hereafter amended, including but not limited to (i) the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601 et seq.); (ii) any so-called "Superfund" or "Superlien" law; (iii) the Hazardous Materials Transportation Act (49 U.S.C. Section 5101 et seq.); (iv) the Resource Conservation and Recovery Act (42 U.S.C. Section 6901 et seq.); (v) the Clean Air Act (42 U.S.C. Section 7401 et seq.); (vi) the Federal Water Pollution Control Act (33 U.S.C. Section 1251 et seq.); (vii) the Toxic Substances Control Act (15 U.S.C. Section 2601 et seq.); (viii) the Federal Insecticide, Fungicide and Rodenticide Act (7 U.S.C. Section 136 et seq.); (ix) the Occupational Safety and Health Act (29 U.S.C. Section 651 et seq.), (x) the Illinois Environmental Protection Act (415 ILCS 5/1 et seq.); (xi) any and all regulations promulgated under the foregoing acts, and all analogous state and local counterparts or equivalents, including, without limitation, regulations in the Municipal Code of Chicago; and (xii) any theory of common law tort or toxic tort, including, without limitation, negligence, trespass, nuisance, strict liability or ultrahazardous activity.

"Equity" shall mean funds of the Developer (other than funds derived from Lender Financing) irrevocably available for the Project, in the amount set forth in Section 4.01 hereof, which amount may be increased pursuant to Section 4.06 (Cost Overruns) or Section 4.03(b) (Sources of City Funds).

"Escrow" shall mean the construction escrow established pursuant to the Escrow Agreement.

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"Escrow Agreement" shall mean the Escrow Agreement establishing a construction escrow, to be entered into as of the date hereof by the Title Company (or an affiliate of the Title Company), the Developer and the Developer's lender(s).

"Event of Default" shall have the meaning set forth in Section 15 hereof.

"Facility" shall have the meaning set forth in the Recitals hereof.

["Final NFR Letter for the Apartment Property" shall mean a final comprehensive NFR Letter from the IEPA approving the use of the Apartment Property for the construction, development and operation of the Project, as amended or supplemented from time to time. The Final NFR Letter shall state that the Apartment Property meets TACO Tier I remediation objectives for residential properties as set forth in 35 Ill. Adm. Code Part 742, but may be reasonably conditioned upon use and maintenance of engineered barriers and other institutional or engineering controls acceptable to the IEPA.]

["Final NFR Letter for the Parking Property" shall mean a final NFR Letter from the IEPA approving the use of applicable portions of the Parking Property (as determined pursuant to Section 11.02 hereof) for the construction, development and operation of parking facilities, as amended or supplemented from time to time. The Final NFR Letter shall state that the Parking Property meets commercial remediation objectives as set forth in 35 Ill. Adm. Code Part 742; provided, however, any landscaped areas shall meet TACO Tier I residential remediation objectives.]

"Financial Statements" shall mean complete audited financial statements of the Developer prepared by a certified public accountant in accordance with generally accepted accounting principles and practices consistently applied throughout the appropriate periods.

"General Contractor" shall mean, collectively, the general contractors hired by the Developer pursuant to Section 6.01. The General Contractor for Phase I shall be Tishman Burling Rosenwald Joint Venture and the General Contractor for Phase II shall be The George Sollitt Construction Company / Powers and Sons Construction Company, Inc. / Brown & Momen, Inc. Joint Venture.

"Hazardous Materials" shall mean any toxic substance, hazardous substance, hazardous material, hazardous chemical or hazardous, toxic or dangerous waste defined or qualifying as such in (or for the purposes of) any Environmental Laws, or any pollutant, toxic vapor, or contaminant, and shall include, but not be limited to, polychlorinated biphenyls (PCBs), crude oil, any fraction thereof, or refined petroleum products such as oil, gasoline, or other petroleum-based fuels, lead paint, asbestos or asbestos-containing materials, urea formaldehyde, any radioactive material or byproduct material, radon and mold.

"Human Rights Ordinance" shall have the meaning set forth in Section 10 hereof.

"IEPA" shall mean the Illinois Environmental Protection Agency.

"In Balance" shall have the meaning set forth in Section 4.07 hereof.

"Incremental Taxes" shall mean such ad valorem taxes which, pursuant to the TIF Adoption Ordinance and Section 5/11 -74.4-8(b) of the Act, are allocated to and when collected are paid to the Treasurer of the City of Chicago for deposit by the Treasurer into the 47<sup>th</sup> & King Drive TIF Fund established to pay Redevelopment Project Costs and obligations incurred in the payment thereof.

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"Indemnitee" and "Indemnitees" shall have the meanings set forth in Section 13.01 hereof.

"Lender Financing" shall mean funds borrowed by the Developer from lenders and irrevocably available to pay for Costs of the Project, in the amount set forth in Section 4.01 hereof.

"Limited Partner" shall mean USA Rosenwald Courts LLC, a Delaware limited liability company.

"Losses," as used in Section 3.13(g) hereof, shall mean any and all debts, liens, claims, causes of action, demands, complaints, legal or administrative proceedings, losses, damages, obligations, liabilities, judgments, amounts paid in settlement, arbitration or mediation awards, interest, fines, penalties, costs and expenses (including, without limitation, reasonable attorney's fees and expenses, consultants' fees and expenses and court costs).

"MBE(s)" shall mean a business identified in the Directory of Certified Minority Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a minority-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

"MBEAA/BE Program" shall have the meaning set forth in Section 10.03 hereof.

"Municipal Code" shall mean the Municipal Code of the City of Chicago.

"NFR Letter" shall mean a "No Further Remediation" letter issued by the IEPA pursuant to the SRP and, with respect to any USTs subject to Title 16 of the Illinois Environmental Protection Act, a "No Further Remediation" letter with respect to such USTs pursuant to Title 16, whichever is applicable, as amended or supplemented from time to time.]

"New Mortgage" shall have the meaning set forth in Article 16 hereof.

"Non-Governmental Charges" shall mean all non-governmental charges, liens, claims, or encumbrances relating to the Developer, the Property or the Project.

"NSP Redevelopment Agreement" shall mean that certain redevelopment agreement dated as of January 28, 2013 and recorded in the office of the Cook County Recorder of Deeds on January 29, 2013 as Document No. 1302931068, as amended on the Closing Date, pursuant to which the City made a loan to the Owner in the principal amount of \$5,000,000 for the acquisition of the building located at 4600 South Michigan Avenue, Chicago, Illinois 60615.

"NSP Regulatory Agreement" shall mean that certain regulatory agreement, dated as of the January 28, 2013, executed by the City and the Owner and recorded in the office of the Cook County Recorder of Deeds on January 29, 2013 as Document No. 1302931067, as amended on the Closing Date.

"Parking Property" shall have the meaning set forth in the Recitals hereof.

"Permitted Liens" shall mean those liens and encumbrances against the Property and/or the Project set forth on Exhibit G hereto.

"Permitted Mortgage" shall have the meaning set forth in Article 16 hereof.

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"Plans and Specifications" shall mean [final] [initial] construction documents containing a site plan and working drawings and specifications for the Project, as submitted to the City as the basis for obtaining building permits for the Project.

"Prior Expenditure(s)" shall have the meaning set forth in Section 4.05(a) hereof.

"Private Parking Property" shall have the meaning set forth in the Recitals hereof.

"Project" shall have the meaning set forth in the Recitals hereof.

"Project Budget" shall mean the budget attached hereto as Exhibit H-1, showing the total cost of the Project by line item, furnished by the Developer to HED, in accordance with Section 3.03 hereof.

"Property" shall have the meaning set forth in the Recitals hereof.

"Purchase Price" shall have the meaning set forth in Section 3.13(a) hereof.

"RECs" shall have the meaning set forth in Section 11.01 hereof.

"Redevelopment Area" shall have the meaning set forth in the Recitals hereof.

"Redevelopment Plan" shall have the meaning set forth in the Recitals hereof.

"Redevelopment Project Costs" shall mean redevelopment project costs as defined in Section 5/11 -

74.4-3(q) of the Act that are included in the budget set forth in the Redevelopment Plan or otherwise referenced in the Redevelopment Plan.

"Released Claims" shall have the meaning set forth in Section 3.13(g) hereof.

"Remediation Costs" shall mean governmental or regulatory body response costs, natural resource damages, property damages, and the costs of any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the Property or any improvements, facilities or operations located or formerly located thereon.

["Remediation Work" shall mean all investigation, sampling, monitoring, testing, removal, response, disposal, storage, remediation, treatment and other activities necessary to obtain a Final NFR Letter for the Apartment Property and applicable portions of the Parking Property (as determined pursuant to Section 11.02 hereof) in accordance with the terms and conditions of the Draft NFR Letter for the Apartment Property (and the Parking Property to the extent required under Section 11.02(b) hereof), the SRP Documents, all requirements of the IEPA and all applicable federal, state and local laws, ordinances and regulations, including, without limitation, all applicable Environmental Laws.]

"Regquisition Form" shall mean the document, in the form attached hereto as Exhibit L, to be delivered by the Developer to HED pursuant to Section 4.04 of this Agreement.

"Scope Drawings" shall mean preliminary construction documents containing a site plan and preliminary drawings and specifications for the Project.

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"SRP" shall mean the IEPA's Site Remediation Program as set forth in Title XVII of the Illinois Environmental Protection Act, 415 ILCS 5/58 et seq., and the regulations promulgated thereunder.

"SRP Documents" shall mean all documents submitted to the IEPA under the SRP Program, as amended or supplemented from time to time, including, without limitation, the Comprehensive Site Investigation and Remediation Objectives Report, the Remedial Action Plan, and the Remedial Action Completion Report.

"Survey" shall mean one or more Class A plat of survey(s) of the Property in the most recently revised form of ALTA/ACSM survey dated within 45 days prior to the Closing Date, acceptable in form and content to the City and the Title Company, prepared by a surveyor registered in the State of Illinois, certified to the City and the Title Company, and indicating whether the Property is in a flood hazard area as identified by the United States Federal Emergency Management Agency (and updates thereof to reflect improvements to the Property in connection with the construction of the Facility and related improvements as required by the City or lender(s) providing Lender Financing).

"TACO" shall mean the Tiered Approach to Corrective Action Objectives codified at 35 Ill. Adm. Code Part 742 et seq.

"Term of the Agreement" shall mean the period of time commencing on the Closing Date and ending on the date on which the Redevelopment Area is no longer in effect (through and including December 31, 2026).

"TIF Adoption Ordinance" shall have the meaning set forth in the Recitals hereof.

"TIF Bonds" shall have the meaning set forth in the Recitals hereof.

"TIF Bond Ordinance" shall have the meaning set forth in the Recitals hereof.

"TIF Bond Proceeds" shall have the meaning set forth in the Recitals hereof.

"TIF-Funded Improvements" shall mean those improvements of the Project which (i) qualify as Redevelopment Project Costs, (ii) are eligible costs under the Redevelopment Plan and (iii) the City has agreed to pay for out of the City Funds, subject to the terms of this Agreement. Exhibit C lists the TIF-Funded Improvements for the Project.

"TIF Ordinances" shall have the meaning set forth in the Recitals hereof.

"TIF Note" shall mean a note, to be in the form attached hereto as Exhibit M. in the maximum principal amount of \$25,000,000, issued by the City to the Sponsor on the Closing Date. The TIF Note shall not bear interest.

"Title Company" shall mean [Near North National Title LLC, as agent for Old Republic National Title Insurance Company].

"Title Policy" shall mean a title insurance policy in the most recently revised ALTA or equivalent form, showing the Developer as the insured, noting the recording of this Agreement as an

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encumbrance against the Property, and a subordination agreement in favor of the City with respect to previously recorded liens against the Property related to Lender Financing, if any, issued by the Title Company.

"UST(s)" shall mean underground storage tank(s) whether or not subject to Title 16 of the Illinois Environmental Protection Act, including without limitation (i) any underground storage tank as defined in 415 ILCS 5/57.2, (ii) any farm or residential tank of 1,100 gallons or less capacity used for storing motor fuel for noncommercial purposes, (iii) any tank used for storing heating oil for consumption on the premises where stored, (iv) any septic tank, (v) any tank that is excluded from the definition in 415 ILCS 5/57.2 based upon the existence of any Hazardous Substance therein, and (vi) any pipes connected to items (i) through (v) above.

"WARN Act" shall mean the Worker Adjustment and Retraining Notification Act (29 U.S.C. Section 2101 et seq.).

"WBE(s)" shall mean a business identified in the Directory of Certified Women Business Enterprises published by the City's Department of Procurement Services, or otherwise certified by the City's Department of Procurement Services as a women-owned business enterprise, related to the Procurement Program or the Construction Program, as applicable.

### SECTION 3. THE PROJECT

1 The Project. With respect to the Facility, the Developer shall, pursuant to the Plans and Specifications and subject to the provisions of Section 18.17 hereof: (i) commence rehabilitation/construction no later than [60] days after the Closing Date (the "Commencement Date"); and (ii) complete rehabilitation/construction and conduct residential rental business operations therein no later than [36] months following the Commencement Date, as such date may be extended pursuant to Section 15.04 and/or Section 18.17 (the "Completion Date," which the Commissioner of HED may also extend in his or her discretion to accommodate a foreclosure or deed in lieu of foreclosure process under Section 16).

2 Scope Drawings and Plans and Specifications. The Developer has delivered the Scope Drawings and Plans and Specifications to HED and HED has approved same. After such initial approval, subsequent proposed changes to the Scope Drawings or Plans and Specifications shall be submitted to HED as a Change Order pursuant to Section 3.04 hereof. The Scope Drawings and Plans and Specifications shall at all times conform to the Redevelopment Plan and all applicable federal, state and local laws, ordinances and regulations. The Developer shall submit all necessary documents to the City's Department of Buildings, Department of Transportation and such other City departments or governmental authorities as may be necessary to acquire building permits and other required approvals for the Project.

3 Project Budget. The Developer has furnished to HED, and HED has approved, a Project Budget showing total costs for the Project in an approximate amount not less than \$109,000,000. The Developer hereby certifies to the City that (a) it has Lender Financing and Equity in an amount sufficient to pay for all Project costs; and (b) the Project Budget is true, correct and complete in all material respects. The Developer shall promptly deliver to HED certified copies of any Change Orders with respect to the Project Budget for approval pursuant to Section 3.04 hereof.

4 Change Orders. Except as provided below, all Change Orders (and documentation substantiating the need and identifying the source of funding therefor) relating to material changes to the Project must be submitted by the Developer to HED for HED's prior written approval. The

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Developer shall not authorize or permit the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of HED's written approval. The Construction Contract, and each contract between the General Contractor and any subcontractor, shall contain a provision to this effect. An approved Change Order shall not be deemed to imply any obligation on the part of the City to increase the amount of City Funds which the City has pledged pursuant to this Agreement or provide any other additional assistance to the Developer. If the Developer authorizes or permits the performance of any work relating to any Change Order or the furnishing of materials in connection therewith prior to the receipt by the Developer of HED's written approval the Developer must promptly notify HED of any such Change Orders in writing; if HED does not ratify such Change Order then the cost of such Change Order may not be paid for out of any contingency or similar use or line item in the Project Budget.

5 HED Approval. Any approval granted by HED of the Scope Drawings, Plans and Specifications and the Change Orders is for the purposes of this Agreement only and does not affect or constitute any approval required by any other City department or pursuant to any City ordinance, code, regulation or any other governmental approval, nor does any approval by HED pursuant to this Agreement constitute approval of the quality, structural soundness or safety of the Property or the Project.

6 Other Approvals. Any HED approval under this Agreement shall have no effect upon, nor shall it operate as a waiver of, the Developer's obligations to comply with the provisions of Section 5.03 (Other Governmental Approvals) hereof. The Developer shall not commence construction of the Project until the Developer has obtained all necessary permits and approvals and proof of the General Contractor's and each subcontractor's bonding as required hereunder; provided, however, the Developer may perform demolition work prior to the issuance of a Draft NFR Letter with 2FM's prior written approval, which approval may be subject to conditions.

7 Progress Reports and Survey Updates. The Developer shall provide HED with written monthly progress reports detailing the status of the Project, including a revised Completion Date, if necessary (with any change in Completion Date being considered a Change Order, requiring HED's written approval pursuant to Section 3.04). The Developer shall provide three (3) copies of an updated Survey to HED upon the request of HED or any lender providing Lender Financing, reflecting improvements made to the Property after the Completion Date.

8 Inspecting Agent or Architect. The developer's architect shall be act as the City's inspecting agent or architect, at the Developer's expense, for the Project. The inspecting agent or architect shall perform periodic inspections

with respect to the Project, providing certifications with respect thereto to HED, prior to requests for disbursement for costs related to the Project hereunder.

- 3.09           Barricades. Prior to commencing any construction requiring barricades, the Developer shall install a construction barricade of a type and appearance satisfactory to the City and constructed in compliance with all applicable federal, state or City laws, ordinances and regulations. HED retains the right to approve the maintenance, appearance, color scheme, painting, nature, type, content and design of all barricades.

3.10   Signs and Public Relations. The Developer shall erect a sign of size and style approved by the City in a conspicuous location on the Property during the Project, indicating that financing has been provided by the City. The City reserves the right to include the name, photograph, artistic rendering of the Project and other pertinent information regarding the Developer, the Property and the Project in the City's promotional literature and communications.

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11 Utility Connections. The Developer may connect all on-site water, sanitary, storm and sewer lines constructed on the Property to City utility lines existing on or near the perimeter of the Property, provided the Developer first complies with all City requirements governing such connections, including the payment of customary fees and costs related thereto.

12 Permit Fees. In connection with the Project, the Developer shall be obligated to pay only those building, permit, engineering, tap on and inspection fees that are assessed on a uniform basis throughout the City of Chicago and are of general applicability to other property within the City of Chicago.

13 Conveyance of the City Parking Property. The following provisions shall govern the City's conveyance of the City Parking Property to the Owner:

a) Purchase Price. The City hereby agrees to sell, and the Owner hereby agrees to purchase, upon and subject to the terms and conditions of this Agreement, the City Parking Property, for One Dollar (\$1.00) per parcel (the "Purchase Price"), which is to be paid to the City on or before the Closing Date in cash or by certified or cashier's check or wire transfer of immediately available funds. The Owner shall pay all escrow fees and other title insurance fees, premiums and closing costs. The Owner acknowledges and agrees that (i) the appraised fair market value of the City Parking Property is approximately \$155,000 based on an appraisal prepared in [    ], and (ii) the City has only agreed to sell the City Parking Property to the Owner for the Purchase Price because the Owner has agreed to execute this Agreement and comply with its terms and conditions.

b) Form of Deed. The City shall convey the City Parking Property to the Owner by quitclaim deed (the "Deed"), subject to the terms of this Agreement and, without limiting the quitclaim nature of the deed, the following:

- i)       the Redevelopment Plan;
- ii)      the standard exceptions in an ALTA title insurance policy;
- iii)     all general real estate taxes and any special assessments or other taxes;
- iv)      all easements, encroachments, covenants and restrictions of record and not shown of record;



- v) such other title defects as may exist; and
- vi) any and all exceptions caused by the acts of the Owner, its Affiliates and their agents.

c) Title and Survey. The Developer acknowledges that it has received commitments for an owner's policy of title insurance for the City Parking Property, issued August 12, 2013 (Commitment Nos. N01131119, N01131120 and N0112117) by Near North National Title LLC, as issuing agent for Chicago Title Insurance Company (the "City Title Commitments"), showing the City in title to the City Parking Property. The Developer shall be solely responsible for and shall pay all costs associated with updating the City Title Commitments (including all search, continuation and later-date fees), and obtaining the Title Policy. The City shall have no obligation to cure title defects; provided, however, if there are exceptions for general real estate taxes due or unpaid prior to the Closing Date with respect to the City Parking Property or liens for such unpaid property taxes, the City shall, as applicable, request that the County void the unpaid taxes as provided in Section 21-

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100 of the Property Tax Code, 35 ILCS 200/21-100, or file an application for a Certificate of Error with the Cook County Assessor, or file a tax injunction suit or petition to vacate a tax sale in the Circuit Court of Cook County. If, after taking the foregoing actions and diligently pursuing same, the City Parking Property remains subject to any tax liens, or if the City Parking Property is encumbered with any other exceptions that would adversely affect the use and insurability of the City Parking Property for the development of the Project, the Owner shall have the option to do one of the following: (i) accept title to the City Parking Property subject to the exceptions; or (ii) with the Sponsor as the Developer, terminate this Agreement. If the Developer elects not to terminate this Agreement as aforesaid, the Owner agrees to accept title subject to all exceptions.

d) The Land Closing. The conveyance of the City Parking Property shall take place on the Closing Date at the downtown offices of the Title Company or such other place as the parties may mutually agree upon in writing; provided, however, in no event shall the closing of the land sale occur unless the Developer has satisfied all conditions precedent set forth in this Agreement, unless HED, in its sole discretion, waives such conditions. On or before the Closing Date, the City shall deliver to the Title Company the Deed, all necessary state, county and municipal real estate transfer tax declarations, and an ALTA statement. The City will not provide a gap undertaking.

e) Recording Costs. The Developer shall pay to record the Deed, this Agreement, and any other documents incident to the conveyance of the City Parking Property to the Owner.

f) "AS IS" SALE. THE OWNER ACKNOWLEDGES THAT IT HAS HAD ADEQUATE OPPORTUNITY TO INSPECT AND EVALUATE THE STRUCTURAL, PHYSICAL AND ENVIRONMENTAL CONDITION AND RISKS OF THE CITY PARKING PROPERTY AND ACCEPTS THE RISK THAT ANY INSPECTION MAY NOT DISCLOSE ALL MATERIAL MATTERS AFFECTING THE CITY PARKING PROPERTY. THE OWNER AGREES TO ACCEPT THE CITY PARKING PROPERTY IN ITS "AS IS," "WHERE IS" AND "WITH ALL FAULTS" CONDITION AT CLOSING WITHOUT ANY COVENANT, REPRESENTATION OR WARRANTY, EXPRESS OR IMPLIED, OF ANY KIND, AS TO THE STRUCTURAL, PHYSICAL OR ENVIRONMENTAL CONDITION OF THE CITY PARKING PROPERTY OR THE SUITABILITY OF THE CITY PARKING PROPERTY FOR ANY PURPOSE WHATSOEVER. THE OWNER ACKNOWLEDGES THAT IT IS RELYING SOLELY UPON ITS OWN INSPECTION AND OTHER DUE DILIGENCE ACTIVITIES AND NOT UPON ANY INFORMATION (INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL STUDIES OR REPORTS OF ANY KIND) PROVIDED BY OR ON BEHALF OF THE CITY OR ITS AGENTS OR EMPLOYEES WITH RESPECT THERETO. THE DEVELOPER AGREES THAT IT IS ITS SOLE RESPONSIBILITY AND OBLIGATION TO PERFORM ANY REMEDIATION WORK AND TAKE SUCH OTHER ACTION AS IS NECESSARY TO PUT THE CITY PARKING PROPERTY IN A CONDITION WHICH IS SUITABLE FOR ITS INTENDED USE.

g) Release and Indemnification. The Developer, on behalf of itself and its officers, directors, employees, successors, assigns and anyone claiming by, through or under them (collectively, "Developer Parties"), hereby release, relinquish and forever discharge the City, its officers, agents and employees, from and against any and all Losses which the Developer or any of the Developer Parties ever had, now have, or hereafter may have, whether grounded in tort or contract or otherwise, in any and all courts or other forums, of whatever kind or nature, whether known or unknown, foreseen or unforeseen, now existing or occurring after the Closing Date, based upon, arising out of or in any way connected with, directly or indirectly (i) any environmental contamination, pollution or hazards associated with the City Parking Property or any improvements, facilities or operations located or formerly located thereon, including, without limitation, any release, emission, discharge, generation, transportation, treatment, storage or disposal of Hazardous Materials, or threatened release, emission or discharge of Hazardous Materials; (ii) the structural,

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physical or environmental condition of the City Parking Property, including, without limitation, the presence or suspected presence of Hazardous Materials in, on, under or about the City Parking Property or the migration of Hazardous Materials from or to other City Parking Property; (iii) any violation of, compliance with, enforcement of or liability under any Environmental Laws, including, without limitation, any governmental or regulatory body response costs, natural resource damages or Losses arising under CERCLA; and (iv) any investigation, cleanup, monitoring, remedial, removal or restoration work required by any federal, state or local governmental agency or political subdivision or other third party in connection or associated with the City Parking Property or any improvements, facilities or operations located or formerly located thereon (collectively, "Released Claims"); provided, however, the foregoing release shall not apply to the extent such Losses are proximately caused by the gross negligence or willful misconduct of the City following the Closing Date. Furthermore, the Developer shall indemnify, defend (through an attorney reasonably acceptable to the City) and hold the City and its officers, agents and employees harmless from and against any and all Losses which may be made or asserted by any third parties (including, without limitation, any of the Developer Parties) arising out of or in any way connected with, directly or indirectly, any of the Released Claims, except as provided in the immediately preceding sentence for the City's gross negligence or willful misconduct following the Closing Date.

(h) Release Runs with the Land. The covenant of release in Section 3.13(g) above shall run with the City Parking Property, and shall be binding upon all successors and assigns of the Owner with respect to the City Parking Property, including, without limitation, each and every person, firm, corporation, limited liability company, trust or other entity owning, leasing, occupying, using or possessing any portion of the City Parking Property under or through the Developer following the date of the Deed. The Developer acknowledges and agrees that the foregoing covenant of release constitutes a material inducement to the City to enter into this Agreement, and that, but for such release, the City would not have agreed to convey the City Parking Property to the Owner. It is expressly agreed and understood by and between the Developer and the City that, should any future obligation of the Developer or any of the Developer Parties arise or be alleged to arise in connection with any environmental, soil or other condition of the City Parking Property, neither the Developer nor any of the Developer Parties will assert that those obligations must be satisfied in whole or in part by the City because Section 3.13(g) contains a full, complete and final release of all such claims, except as provided in such section for the City's gross negligence or willful misconduct following the Closing Date.

(i) Survival. This Section 3.13 shall survive the Closing Date or any termination of this Agreement (regardless of the reason for such termination).

#### SECTION 4. FINANCING

4.01 Total Project Cost and Sources of Funds. The cost of the Project is estimated to be \$[109,013,853], to be

applied in the manner set forth in the Project Budget. Such costs shall be funded from the following sources:

Equity (subject to Sections 4.03(b) and 4.06) Lender Financing ESTIMATED TOTAL

\$[            ]  
\$[            ]  
\$[109,013,853]

4.02 Developer Funds. Equity and/or Lender Financing may be used to pay any Project cost, including but not limited to Redevelopment Project Costs.

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4.03 City Funds.

a) Uses of City Funds. City Funds may only be used to pay directly or reimburse the Developer for costs of TIF-Funded Improvements that constitute Redevelopment Project Costs. Exhibit C sets forth, by line item, the TIF-Funded Improvements for the Project, and the maximum amount of costs that may be paid by or reimbursed from City Funds for each line item therein (subject to Sections 4.03(b) and 4.05(d)), contingent upon receipt by the City of documentation satisfactory in form and substance to HED evidencing such cost and its eligibility as a Redevelopment Project Cost.

b) Sources of City Funds. Subject to the terms and conditions of this Agreement, including but not limited to this Section 4.03 and Section 5 hereof, the City hereby agrees to issue the TIF Note to the Sponsor on the Closing Date. The principal amount of the TIF Note shall be in an amount equal to the costs of the TIF-Funded Improvements which have been incurred by-the Sponsor and are to be reimbursed by the City through payments of principal on the TIF Note, subject to the provisions hereof; provided, however, that the maximum principal amount of the TIF Note shall be an amount not to exceed \$25,000,000; and provided, however, that payments under the TIF Note are subject to the amount of Incremental Taxes deposited into the 47<sup>th</sup> and King Drive TIF Fund being sufficient for such payments, including but not limited to after the City makes required payments on the following prior obligations of the 47<sup>th</sup> and King Drive TIF Fund:

OBLIGATION	NOT TO EXCEED AMOUNT
Bronzeville Artist Lofts	\$1,085,807
Diaspora Cuisine	\$3,000,000
Educare Family Center	\$ 400,000
Chicago Public Schools-Mollison ADA Renovations	\$ 750,000
Assorted Lighting, Street Infrastructure and Landscaping	\$3,533,250
Small Business Improvement Fund (SBIF)	\$ 835,839
Neighborhood Improvement Fund (NIF)	\$ 800,000
Business retention and recruitment activities	\$ 20,041

Subject to the foregoing, the City shall make principal payments on the TIF Note to the Sponsor in the amounts of \$6,000,000, \$14,000,000 and \$5,000,000 upon 10%, 75% and 100% completion of construction of the Project, respectively, as such percentage of completion is certified to the City in writing by [the Developer's architect] based on the amount of expenditures incurred in relation to the Project construction budget attached hereto as Exhibit H-2 (a subset of the Project Budget) prior to and as a condition precedent of such payments; provided, however, that the \$5,000,000 principal payment to be made at 100% completion shall not be made until the Certificate is issued pursuant to Section 7.01 hereof.

(c) Notwithstanding any provision contained herein or in any agreement related hereto to the contrary, any obligations, pledges or commitments of Incremental Taxes in the 47th and King Drive TIF Fund approved by the City Council or otherwise executed or entered into by the City subsequent to [the date on which the City Council approved the ordinance authorizing the execution of this Agreement and the issuance of the TIF Note] shall be junior and subject to the

City's obligation and commitment under this Agreement and the TIF Note.

(d) [intentionally omitted]

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4 Construction Escrow; Requisition Form, (a) The City must receive copies of any draw requests and related documents submitted to the Title Company for disbursements under the Escrow Agreement.

(b) Until the Sponsor has been reimbursed in full under this Agreement, the Sponsor shall provide HED with Requisition Forms, along with the documentation described therein. Requisition for certification of the cost TIF-Funded Improvements to the TIF Note shall be made not more than two times per calendar year (or as otherwise permitted by HED). On each December 1 (or such other date as may be acceptable to the parties), beginning in 20  J and continuing throughout the Term of the Agreement, the Developer shall meet with HED at the request of HED to discuss the Requisition Form(s) previously delivered.

5 Treatment of Prior Expenditures and Subsequent Disbursements.

a) Prior Expenditures. Only those expenditures made by the Developer with respect to the Project prior to the Closing Date, evidenced by documentation satisfactory to HED and approved by HED as satisfying costs covered in the Project Budget, shall be considered previously contributed Equity or Lender Financing hereunder (the "Prior Expenditures"). HED shall have the right, in its sole discretion, to disallow any such expenditure as a Prior Expenditure. Exhibit I hereto sets forth the prior expenditures approved by HED as of the date hereof as Prior Expenditures. Prior Expenditures made for items other than TIF-Funded Improvements shall not be reimbursed to the Developer, but shall reduce the amount of Equity and/or Lender Financing required to be contributed by the Developer pursuant to Section 4.01 hereof.

b) [intentionally omitted]

c) [intentionally omitted]

d) Allocation Among Line Items. Disbursements for expenditures related to TIF-Funded Improvements may be allocated to and charged against the appropriate line only, with transfers of costs and expenses from one line item to another, without the prior written consent of HED, being prohibited; provided, however, that such transfers among line items, in an amount not to exceed \$100,000 or \$500,000 in the aggregate, may be made without the prior written consent of HED.

e) [intentionally omitted]

6 Cost Overruns. If the aggregate cost of the TIF-Funded Improvements exceeds City Funds available pursuant to Section 4.03 hereof, or if the cost of completing the Project exceeds the Project Budget, the Developer shall be solely responsible for such excess cost, and shall hold the City harmless from any and all costs and expenses of completing the TIF-Funded Improvements in excess of City Funds and of completing the Project.

7 Preconditions of Execution of Certificate of Expenditure. Prior to each execution of a Certificate of Expenditure by the City, the Developer shall submit a Requisition Form and documentation regarding the applicable expenditures to HED, which shall be satisfactory to HED in its sole discretion. Delivery by the Developer to HED of any request for execution by the City of a Certificate of Expenditure hereunder shall, in addition to the items therein expressly set forth, constitute a certification to the City, as of the date of such

request for execution of a Certificate of Expenditure, that:

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(a) the total amount of the request for Certificate of Expenditure represents the actual amount paid to the applicable General Contractor and/or subcontractors who have performed work on the Project, and/or their payees;

(b) all amounts shown as previous payments on the current request for Certificate of Expenditure have been paid to the parties entitled to such payment;

(c) the Developer has approved all work and materials for the current request for Certificate of Expenditure, and such work and materials conform to the Plans and Specifications;

(d) the representations and warranties contained in this Redevelopment Agreement are true and correct and the Developer is in compliance with all covenants contained herein;

(e) the Developer has received no notice and has no knowledge of any liens or claim of lien either filed or threatened against the Property except for the Permitted Liens and those liens or claims of lien which have been bonded or insured over to the City's satisfaction;

(f) no Event of Default or condition or event which, with the giving of notice or passage of time or both, would constitute an Event of Default exists or has occurred; and

(g) the Project is In Balance. The Project shall be deemed to be in balance ("In Balance") only if the total of the available Project funds equals or exceeds the aggregate of the amount necessary to pay all unpaid Project costs incurred or to be incurred in the completion of the Project. "Available Project Funds" as used herein shall mean: (i) the undisbursed City Funds; (ii) the undisbursed Lender Financing, if any; (iii) the undisbursed Equity and (iv) any other amounts deposited by the Developer pursuant to this Agreement. The Developer hereby agrees that, if the Project is not In Balance, the Developer shall, within 10 days after a written request by the City, deposit with the escrow agent or will make available (in a manner acceptable to the City), cash in an amount that will place the Project In Balance, which deposit shall first be exhausted before any further disbursement of the City Funds shall be made.

The City shall have the right, in its discretion, to require the Developer to submit further documentation as the City may require in order to verify that the matters certified to above are true and correct, and any execution of a Certificate of Expenditure by the City shall be subject to the City's review and approval of such documentation and its satisfaction that such certifications are true and correct; provided, however, that nothing in this sentence shall be deemed to prevent the City from relying on such certifications by the Developer. In addition, the Developer shall have satisfied all other preconditions of execution of a Certificate of Expenditure, including but not limited to requirements set forth in the TIF Ordinances and this Agreement.

4.08 Conditional Grant. The City Funds being provided hereunder are being granted on a conditional basis, subject to the Developer's compliance with the provisions of this Agreement. The City Funds are subject to being reimbursed as provided in Section 15.02 hereof.

## SECTION 5. CONDITIONS PRECEDENT

The following conditions have been complied with to the City's satisfaction on or prior to the Closing Date:

5.01 Project Budget. The Developer has submitted to HED, and HED has approved, a Project Budget in accordance with the provisions of Section 3.03 hereof.

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2 Scope Drawings and Plans and Specifications. The Developer has submitted to HED, and HED has approved, the Scope Drawings and Plans and Specifications accordance with the provisions of Section 3.02 hereof.

3 Other Governmental Approvals. The Developer has secured all other necessary approvals and permits required by any state, federal, or local statute, ordinance or regulation and has submitted evidence thereof to HED.

4 Financing. The Developer has furnished proof reasonably acceptable to the City that the Developer has Equity and Lender Financing in the amounts set forth in Section 4.01 hereof to complete the Project and satisfy its obligations under this Agreement. If a portion of such funds consists of Lender Financing, the Developer has furnished proof as of the Closing Date that the proceeds thereof are available to be drawn upon by the Developer as needed and are sufficient (along with the Equity set forth in Section 4.01) to complete the Project. The Developer has delivered to HED a copy of the construction escrow agreement entered into by the Developer regarding the Lender Financing. Except as otherwise approved by the City, any liens against the Property in existence at the Closing Date have been subordinated to certain encumbrances of the City set forth herein pursuant to a Subordination Agreement, in a form acceptable to the City, executed on or prior to the Closing Date, which is to be recorded, at the expense of the Developer, with the Office of the Recorder of Deeds of Cook County.

5 Acquisition and Title. On the Closing Date, the Developer has furnished the City with a copy of the Title Policy for the Property, certified by the Title Company, showing the Owner as the named insured. The Title Policy is dated as of the Closing Date and contains only those title exceptions listed as Permitted Liens on Exhibit G hereto and evidences the recording of this Agreement pursuant to the provisions of Section 8.18 hereof. The Title Policy also contains such endorsements as shall be required by the Corporation Counsel, including but not limited to an owner's comprehensive endorsement and satisfactory endorsements regarding zoning (3.1 with parking), contiguity, location, access and survey. The Developer has provided to HED, on or prior to the Closing Date, documentation related to the purchase of the Property and copies of all easements and encumbrances of record with respect to the Property not addressed, to HED's satisfaction, by the Title Policy and any endorsements thereto.

6 Evidence of Clean Title. The Developer, at its own expense, has provided the City with searches under the Owner's name and the Sponsor's name as follows:

Secretary of State	UCC search
Secretary of State	Federal tax search
Cook County Recorder	UCC search
Cook County Recorder	Fixtures search
Cook County Recorder	Federal tax search
Cook County Recorder	State tax search
Cook County Recorder	Memoranda of judgments search
U.S. District Court	Pending suits and judgments
Clerk of Circuit Court, Pending suits and judgments Cook County	

showing no liens against the Developer, the Property or any fixtures now or hereafter affixed thereto, except

for the Permitted Liens.

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5.07 Surveys. The Developer has furnished the City with three (3) copies of the Survey.

8 Insurance. The Developer, at its own expense, has insured the Property in accordance with Section 12 hereof, and has delivered certificates required pursuant to Section 12 hereof evidencing the required coverages to HED.

9 Opinion of the Developer's Counsel. On the Closing Date, the Developer has furnished the City with an opinion of counsel, substantially in the form attached hereto as Exhibit J, with such changes as required by or acceptable to Corporation Counsel.

10 Evidence of Prior Expenditures. The Developer has provided evidence satisfactory to HED in its sole discretion of the Prior Expenditures in accordance with the provisions of Section 4.05(a) hereof.

11 Financial Statements. The Developer has provided Financial Statements to HED for the Owner's and the Sponsor's most recent fiscal years, and available audited or unaudited interim financial statements.

12 Documentation; Employment Plan. The Developer has provided documentation to HED, satisfactory in form and substance to HED, with respect to current employment matters in connection with the construction or rehabilitation work on the Project, including the reports described in Section 8.07. At least thirty (30) days prior to the Closing Date, the Developer has met with the Workforce Solutions division of HED to review employment opportunities with the Developer after construction or rehabilitation work on the Project is completed. On or before the Closing Date, Developer has provided to HED, and HED has approved, the Employment Plan for the Project (the "Employment Plan"). The Employment Plan includes, without limitation, the Developer's estimates of future job openings, titles, position descriptions, qualifications, recruiting, training, placement and such other information as HED has requested relating to the Project.

13 Environmental. The Developer has provided HED with copies of that certain phase I environmental audit completed with respect to the Property and any phase II environmental audit with respect to the Property required by the City. The Developer has provided the City with a letter from the environmental engineer(s) who completed such audit(s), authorizing the City to rely on such audits.

14 Organizational Documents; Economic Disclosure Statement. The Developer has provided a copy of the Owner's, the General Partner's, the Managing Member's, the Sponsor's and the Foundation's: Articles or Certificate of Incorporation, Organization and/or Limited Partnership containing a certified copy of the original certification of the Secretary of State of the state of incorporation or organization; certificates of good standing from the Secretary of State of state of incorporation or organization and all other states in which the Developer is qualified to do business; a secretary's certificate in such form and substance as the Corporation Counsel may require; bylaws, operating agreement and/or partnership agreement; and such other corporate documentation as the City has requested. The Developer has provided to the City an Economic Disclosure Statement, in the City's then current form, dated as of the Closing Date.

15 Litigation. The Developer has provided to Corporation Counsel and HED, a description of all pending or threatened litigation or administrative proceedings involving the Developer, specifying, in each case, the amount of each claim, an estimate of probable liability, the amount of any reserves taken in connection therewith and whether (and to what extent) such potential liability is covered by insurance.

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SECTION 6. AGREEMENTS WITH CONTRACTORS

1 [intentionally omitted]

2 Construction Contract. Prior to the execution thereof, the Developer shall deliver to HED a copy of the proposed Construction Contract with the General Contractor selected to handle the Project, for HED's prior written approval, which shall be granted or denied within ten (10) business days after delivery thereof. Within ten (10) business days after execution of such contract by the Developer, the General Contractor and any other parties thereto, the Developer shall deliver to HED and Corporation Counsel a certified copy of such contract together with any modifications, amendments or supplements thereto.

3 Performance and Payment Bonds. Prior to the commencement of any portion of the Project which includes work on the public way, the Developer shall require that the General Contractor be bonded for its payment by sureties having an AA rating or better using a bond in the form attached as Exhibit P hereto. The City shall be named as obligee or co-obligee on any such bonds.

4 Employment Opportunity. The Developer shall contractually obligate and cause the General Contractor and each subcontractor to agree to the provisions of Section 10 hereof.

5 Other Provisions. In addition to the requirements of this Section 6. the Construction Contract and each contract with any subcontractor shall contain provisions required pursuant to Section 3.04 (Change Orders), Section 8.09 (Prevailing Wage), Section 10.01(e) (Employment Opportunity), Section 10.02 (City Resident Employment Requirement), Section 10.03 (MBE/WBE Requirements, as applicable), Section 10.04 (Multi-Project Labor Agreement), Section 12 (Insurance) and Section 14.01 (Books and Records) hereof. Photocopies of all contracts or subcontracts entered or to be entered into in connection with the TIF-Funded Improvements shall be provided to HED within five (5) business days of the execution thereof.

## SECTION 7. COMPLETION OF CONSTRUCTION OR REHABILITATION

7.01 Certificate of Completion of Construction or Rehabilitation. Upon completion of the rehabilitation and construction of the Project in accordance with the terms of this Agreement (including Section 10 hereof), and upon the Developer's written request [(which shall include evidence, reasonably satisfactory to the Corporation Counsel, of compliance with orders issued in the Building Court Case)], HED shall issue to the Developer a Certificate in recordable form certifying that the Developer has fulfilled its obligation to complete the Project in accordance with the terms of this Agreement. HED shall respond to the Developer's written request for a Certificate within forty-five (45) days by issuing either a Certificate or a written statement detailing the ways in which the Project does not conform to this Agreement or has not been satisfactorily completed, and the measures which must be taken by the Developer in order to obtain the Certificate. The Developer may resubmit a written request for a Certificate upon completion of such measures. Notwithstanding any of the foregoing, HED shall not issue the Certificate until HED is satisfied that the Developer's Part Three application has been approved by the Illinois Historic Preservation Agency; in the event the Developer's Part Three application has not been approved by the Illinois Historic Preservation Agency and lack of such approval is (A) the only matter preventing issuance of the Certificate, and (B) will not result in a reduction of the funds available to complete the Project, then HED may consider extending the date for approval of the Developer's Part Three application.

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HED may also, in its discretion, condition the issuance of the Certificate upon the Developer's consent to the landmark designation of the Facility.

2 Effect of Issuance of Certificate; Continuing Obligations. The Certificate relates only to the rehabilitation of the Project, and upon its issuance, the City will certify that the terms of the Agreement



specifically related to the Developer's obligation to complete such activities have been satisfied. After the issuance of a Certificate, however, all executory terms and conditions of this Agreement and all representations and covenants contained herein will continue to remain in full force and effect throughout the Term of the Agreement as to the parties described in the following paragraph, and the issuance of the Certificate shall not be construed as a waiver by the City of any of its rights and remedies pursuant to such executory terms.

Those covenants specifically described at Sections 8.02, 8.19 and 8.20 as covenants that run with the land are the only covenants in this Agreement intended to be binding upon any transferee of the Property (including an assignee as described in the following sentence) throughout the Term of the Agreement notwithstanding the issuance of a Certificate; provided, that upon the issuance of a Certificate, the covenants set forth in Section 8.02 shall be deemed to have been fulfilled. The other executory terms of this Agreement that remain after the issuance of a Certificate shall be binding only upon the Developer or a permitted assignee of the Developer who, pursuant to Sections 15.04, 16 and/or 18.15 of this Agreement, has contracted to take an assignment of the Developer's rights under this Agreement and assume the Developer's liabilities hereunder.

3 Failure to Complete. Subject to Section 15.04 with respect to Citibank and Limited Partner cure rights and Section 18.17 with respect to delays caused by Force Majeure, if the Developer fails to complete the Project in accordance with the terms of this Agreement, then the City has, but shall not be limited to, any of the following rights and remedies:

a) the right to terminate this Agreement and cease all disbursement of City Funds not yet disbursed pursuant hereto;

b) the right (but not the obligation) to complete those TIF-Funded Improvements that are public improvements and to pay for the costs of TIF-Funded Improvements (including interest costs) out of City Funds or other City monies. In the event that the aggregate cost of completing the TIF-Funded Improvements exceeds the amount of City Funds available pursuant to Section 4.01, the Developer shall reimburse the City for all reasonable costs and expenses incurred by the City in completing such TIF-Funded Improvements in excess of the available City Funds;

c) the right to seek reimbursement of the City Funds from the Developer; and

d) the right to re-enter and take possession of the City Parking Property, terminate the estate conveyed to the Owner, and revert title to the City Parking Property in the City; provided, however, the City's foregoing right of reverter shall be subordinate to the payment in full of Citibank's mortgage on the Project.

7.04 Notice of Expiration of Term of Agreement. Upon the expiration of the Term of the Agreement, HED shall provide the Developer, at the Developer's written request, with a written notice in recordable form stating that the Term of the Agreement has expired; provided, however, that the City may at such time require the Developer to enter into a separate agreement to implement the provisions of Section 8.20 hereof (as contemplated in Section 8.20(f)).

## SECTION 8. COVENANTS/REPRESENTATIONS/WARRANTIES OF THE DEVELOPER.

8.01 General. The Developer represents, warrants and covenants, as of the date of this Agreement and as of the date of each disbursement of City Funds hereunder, that:

a) the Developer is duly organized, validly existing, qualified to do business in its state of incorporation or organization and in Illinois, and licensed to do business in any other state where, due to the nature of its activities or properties, such qualification or license is required;

b) the Developer has the right, power and authority to enter into, execute, deliver and perform this Agreement;

c) the execution, delivery and performance by the Developer of this Agreement has been duly authorized by all necessary corporate or other action, and does not and will not violate its Articles of Incorporation or Articles of Organization or by-laws, partnership agreement or operating agreement as amended and supplemented, any applicable provision of law, or constitute a breach of, default under or require any consent under any agreement, instrument or document to which the Developer is now a party or by which the Developer is now or may become bound;

d) unless otherwise permitted or not prohibited pursuant to or under the terms of this Agreement, the Owner shall acquire and shall maintain good, indefeasible and merchantable fee simple title to the Property (and all improvements thereon) free and clear of all liens (except for the Permitted Liens, liens and claims of lien which the City agrees may be bonded or insured over pursuant to Section 4.07(e) hereof, Lender Financing as disclosed in the Project Budget and nongovernmental charges that the Developer is contesting in good faith pursuant to Section 8.15 hereof);

e) the Developer is now and for the Term of the Agreement shall remain solvent and able to pay its debts as they mature;

f) except as otherwise disclosed to the City by the Developer in writing to the satisfaction of the City, there are no actions or proceedings by or before any court, governmental commission, board, bureau or any other administrative agency pending, threatened or affecting the Developer which would impair its ability to perform under this Agreement;

g) the Developer has and shall maintain all government permits, certificates and consents (including, without limitation, appropriate environmental approvals) necessary to conduct its business and to construct, complete and operate the Project;

h) the Developer is not in default with respect to any indenture, loan agreement, mortgage, deed, note or any other agreement or instrument related to the borrowing of money to which the Developer is a party or by which the Developer is bound;

(i) the Financial Statements are, and when hereafter required to be submitted will be, complete, correct in all material respects and accurately present the assets, liabilities, results of operations and financial condition of the Developer, and there has been no material adverse change in the assets, liabilities, results of operations or financial condition of the Developer since the date of the Developer's most recent Financial Statements;

(j) prior to the issuance of a Certificate, the Developer shall not do any of the following without the prior written consent of HED: (1) be a party to any merger, liquidation or consolidation;

(2) sell, transfer, convey, lease or otherwise dispose of all or substantially all of its assets or any portion of the Property (including but not limited to any fixtures or equipment now or hereafter attached thereto) except in the ordinary course of business and as otherwise provided in the Master Lease; (3) enter into any transaction outside the ordinary course of the Developer's business; (4) assume, guarantee, endorse, or otherwise become liable in connection with the obligations of any other person or entity; or (5) enter into any transaction that would cause a material and detrimental change to the Developer's financial condition;

(k) the Developer has not incurred, and, prior to the issuance of a Certificate, shall not, without the prior written consent of the Commissioner of HED, allow the existence of any liens against the Property (or improvements thereon) other than the Permitted Liens and liens and claims of lien which the City agrees may be bonded or insured over pursuant to Section 4.07(e) hereof; or incur any indebtedness, secured or to be secured by the Property (or improvements thereon) or any fixtures now or hereafter attached thereto, except Lender Financing disclosed in the Project Budget; and

(l) the Developer has not made or caused to be made, directly or indirectly, any payment, gratuity or offer of employment in connection with the Agreement or any contract paid from the City treasury or pursuant to City ordinance, for services to any City agency ("City Contract") as an inducement for the City to enter into the Agreement or any City Contract with the Developer in violation of Chapter 2-156-120 of the Municipal Code of the City;

(m) neither the Developer nor any affiliate of the Developer is listed on any of the following lists maintained by the Office of Foreign Assets Control of the U.S. Department of the Treasury, the Bureau of Industry and Security of the U.S. Department of Commerce or their successors, or on any other list of persons or entities with which the City may not do business under any applicable law, rule, regulation, order or judgment: the Specially Designated Nationals List, the Denied Persons List, the Unverified List, the Entity List and the Debarred List. For purposes of this subparagraph (m) only, the term "affiliate," when used to indicate a relationship with a specified person or entity, means a person or entity that, directly or indirectly, through one or more intermediaries, controls, is controlled by or is under common control with such specified person or entity, and a person or entity shall be deemed to be controlled by another person or entity, if controlled in any manner whatsoever that results in control in fact by that other person or entity (or that other person or entity and any persons or entities with whom that other person or entity is acting jointly or in concert), whether directly or indirectly and whether through share ownership, a trust, a contract or otherwise; and

(n) the Developer will not withhold consent to landmark designation of the Facility in the future if requested by the City. The Foregoing covenant shall survive the issuance of the Certificate of Completion.

8.02 Covenant to Redevelop. Upon HED's approval of the Project Budget, the Scope Drawings and Plans and Specifications as provided in Sections 3.02 and 3.03 hereof, and the Developer's receipt of all required building permits and governmental approvals, including, without limitation, a Draft NFR Letter under Section 11.02 below (provided, however, the Developer may perform demolition work prior to the issuance of a Draft NFR Letter with 2FM's prior written approval, which approval may be subject to conditions), the Developer shall redevelop the Property in accordance with this Agreement and all Exhibits attached hereto, the TIF Ordinances, the Scope Drawings, Plans and Specifications, Project Budget and all amendments thereto, the Draft NFR Letter and all federal, state and local laws, ordinances, rules, regulations, executive orders and codes applicable to the Project, the Property and/or the Developer, including, without limitation, all Environmental Laws. The covenants set forth in this Section shall run with the land and be binding

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upon any transferee, but shall be deemed satisfied upon issuance by the City of a Certificate with respect thereto.

3     Redevelopment Plan. The Developer represents that the Project is and shall be in compliance with all of the terms of the Redevelopment Plan.

4 Use of City Funds. City Funds disbursed to the Developer shall be used by the Developer solely to pay for (or to reimburse the Developer for its payment for) the TIF-Funded Improvements as provided in this Agreement.

5 TIF Bonds. The Developer shall, at the request of the City, agree to any reasonable amendments to this Agreement that are necessary or desirable in order for the City to issue (in its sole discretion) any bonds in connection with the Redevelopment Area, the proceeds of which may be used to reimburse the City for expenditures made in connection with, or provide a source of funds for the payment for, the TIF-Funded Improvements (the "TIF Bonds"); provided, however, that any such amendments shall not have a material adverse effect on the Developer or the Project. The Developer shall, at the Developer's expense, cooperate and provide reasonable assistance in connection with the marketing of any such TIF Bonds, including but not limited to providing written descriptions of the Project, making representations, providing information regarding its financial condition and assisting the City in preparing an offering statement with respect thereto.

6 [intentionally omitted]

7 Employment Opportunity; Progress Reports. The Developer covenants and agrees to abide by, and contractually obligate and use reasonable efforts to cause the General Contractor and each subcontractor to abide by the terms set forth in Section 10 hereof. The Developer shall deliver to the City written progress reports detailing compliance with the requirements of Sections 8.09, 10.02, 10.03 and 10.04 of this Agreement. Such reports shall be delivered to the City when the Project is 25%, 50%, 75% and 100% completed (based on the amount of expenditures incurred in relation to the Project Budget). If any such reports indicate a shortfall in compliance, the Developer shall also deliver a plan to HED which shall outline, to HED's satisfaction, the manner in which the Developer shall correct any shortfall.

8 Employment Profile. The Developer shall submit, and contractually obligate and cause the General Contractor or any subcontractor to submit, to HED, from time to time, statements of its employment profile upon HED's request.

9 Prevailing Wage. The Developer covenants and agrees to pay, and to contractually obligate and cause the General Contractor and each subcontractor to pay, the prevailing wage rate as ascertained by the Illinois Department of Labor (the "Department"), to all Project employees. All such contracts shall list the specified rates to be paid to all laborers, workers and mechanics for each craft or type of worker or mechanic employed pursuant to such contract. If the Department revises such prevailing wage rates, the revised rates shall apply to all such contracts. Upon the City's request, the Developer shall provide the City with copies of all such contracts entered into by the Developer or the General Contractor to evidence compliance with this Section 8.09. This Section 8.09 shall be inapplicable if and to the extent the federal Davis-Bacon Act applies to the Project.

8.10 Arms-Length Transactions. Unless HED has given its prior written consent with respect thereto, no Affiliate of the Developer may receive any portion of City Funds, directly or indirectly, in payment for work done, services provided or materials supplied in connection with any TIF-Funded Improvement. The Developer shall provide information with respect to any entity to

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receive City Funds directly or indirectly (whether through payment to the Affiliate by the Developer and reimbursement to the Developer for such costs using City Funds, or otherwise), upon HED's request, prior to any such disbursement.

11 Conflict of Interest. Pursuant to Section 5/11-74.4-4(n) of the Act, the Developer represents, warrants and covenants that, to the best of its knowledge, no member, official, or employee of the City, or of any commission or committee exercising authority over the Project, the Redevelopment Area or the

Redevelopment Plan, or any consultant hired by the City or the Developer with respect thereto, owns or controls, has owned or controlled or will own or control any interest, and no such person shall represent any person, as agent or otherwise, who owns or controls, has owned or controlled, or will own or control any interest, direct or indirect, in the Developer's business, the Property or any other property in the Redevelopment Area.

12 Disclosure of Interest. The Developer's counsel has no direct or indirect financial ownership interest in the Developer, the Property or any other aspect of the Project.

13 Financial Statements. The Owner and the Sponsor shall each obtain and provide to HED Financial Statements for their respective fiscal years ending December 31, 2013 and each December 31st thereafter by April 1<sup>st</sup> of the following year for the Term of the Agreement. In addition, the Owner and the Sponsor shall each submit their respective unaudited financial statements as soon as reasonably practical following the close of each fiscal year and for such other periods as HED may request.

14 Insurance. The Developer, at its own expense, shall comply with all provisions of Section 12 hereof.

15 Non-Governmental Charges, (a) Payment of Non-Governmental Charges. Except for the Permitted Liens and liens and claims of lien which the City agrees may be bonded or insured over pursuant to Section 4.07(e) hereof, the Developer agrees to pay or cause to be paid when due any Non-Governmental Charge assessed or imposed upon the Project, the Property or any fixtures that are or may become attached thereto, which creates, may create, or appears to create a lien upon all or any portion of the Property or Project; provided however, that if such Non-Governmental Charge may be paid in installments, the Developer may pay the same together with any accrued interest thereon in installments as they become due and before any fine, penalty, interest, or cost may be added thereto for nonpayment. The Developer shall furnish to HED, within thirty (30) days of HED's request, official receipts from the appropriate entity, or other proof satisfactory to HED, evidencing payment of the Non-Governmental Charge in question.

(b) Right to Contest. The Developer has the right, before any delinquency occurs:

i) to contest or object in good faith to the amount or validity of any Non-Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted, in such manner as shall stay the collection of the contested Non-Governmental Charge, prevent the imposition of a lien or remove such lien, or prevent the sale or forfeiture of the Property (so long as no such contest or objection shall be deemed or construed to relieve, modify or extend the Developer's covenants to pay any such Non-Governmental Charge at the time and in the manner provided in this Section 8.15); or

ii) at HED's sole option, to furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or

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forfeiture of the Property or any portion thereof or any fixtures that are or may be attached thereto, during the pendency of such contest, adequate to pay fully any such contested Non-Governmental Charge and all interest and penalties upon the adverse determination of such contest.

16 Developer's Liabilities. The Developer shall not enter into any transaction that would materially and adversely affect its ability to perform its obligations hereunder or to repay any material liabilities or perform any material obligations of the Developer to any other person or entity. The Developer shall immediately notify HED of any and all events or actions which may materially affect the Developer's ability to carry on its business operations or perform its obligations under this Agreement or any other documents and agreements.

17 Compliance with Laws. To the best of the Developer's knowledge, after diligent inquiry, the Property and the Project are and shall be in compliance with all applicable federal, state and local laws, statutes, ordinances, rules, regulations, executive orders and codes pertaining to or affecting the Project and the Property. Upon the City's request, the Developer shall provide evidence satisfactory to the City of such compliance.

18 Recording and Filing. The Developer shall cause this Agreement, certain exhibits (as specified by Corporation Counsel), all amendments and supplements hereto to be recorded and filed against the Property on the date hereof in the conveyance and real property records of the county in which the Project is located. This Agreement shall be recorded prior to any mortgage made in connection with Lender Financing. The Developer shall pay all fees and charges incurred in connection with any such recording. Upon recording, the Developer shall immediately transmit to the City an executed original of this Agreement showing the date and recording number of record.

#### 8.19 Real Estate Provisions,

##### (a) Governmental Charges.

i) Payment of Governmental Charges. The Developer agrees to pay or cause to be paid when due all Governmental Charges (as defined below) which are assessed or imposed upon the Developer, the Property or the Project, or become due and payable, and which create, may create, or appear to create a lien upon the Developer or all or any portion of the Property or the Project. "Governmental Charge" shall mean all federal, State, county, the City, or other governmental (or any instrumentality, division, agency, body, or department thereof) taxes, levies, assessments, charges, liens, claims or encumbrances (except for those assessed by foreign nations, states other than the State of Illinois, counties of the State other than Cook County, and municipalities other than the City) relating to the Developer, the Property or the Project including but not limited to real estate taxes.

ii) Right to Contest. The Developer has the right before any delinquency occurs to contest or object in good faith to the amount or validity of any Governmental Charge by appropriate legal proceedings properly and diligently instituted and prosecuted in such manner as shall stay the collection of the contested Governmental Charge and prevent the imposition of a lien or the sale or forfeiture of the Property. The Developer's right to challenge real estate taxes applicable to the Property is limited as provided for in Section 8.19(c) below; provided, that such real estate taxes must be paid in full when due and may be disputed only after such payment is made.. No such contest or objection shall be deemed or construed in any way as relieving, modifying or extending the Developer's covenants to pay any such Governmental Charge at the time and in the manner provided in this

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Agreement unless the Developer has given prior written notice to HED of the Developer's intent to contest or object to a Governmental Charge and, unless, at HED's sole option,

i) the Developer shall demonstrate to HED's satisfaction that legal proceedings instituted by the Developer contesting or objecting to a Governmental Charge shall conclusively operate to prevent or remove a lien against, or the sale or forfeiture of, all or any part of the Property to satisfy such Governmental Charge prior to final determination of such proceedings; and/or

ii) the Developer shall furnish a good and sufficient bond or other security satisfactory to HED in such form and amounts as HED shall require, or a good and sufficient undertaking as may be required or permitted by law to accomplish a stay of any such sale or forfeiture of the Property during

the pendency of such contest, adequate to pay fully any such contested Governmental Charge and all interest and penalties upon the adverse determination of such contest.

b) Developer's Failure To Pay Or Discharge Lien. If the Developer fails to pay any Governmental Charge or to obtain discharge of the same, the Developer shall advise HED thereof in writing, at which time HED may, but shall not be obligated to, and without waiving or releasing any obligation or liability of the Developer under this Agreement, in HED's sole discretion, make such payment, or any part thereof, or obtain such discharge and take any other action with respect thereto which HED deems advisable. All sums so paid by HED, if any, and any expenses, if any, including reasonable attorneys' fees, court costs, expenses and other charges relating thereto, shall be promptly disbursed to HED by the Developer. Notwithstanding anything contained herein to the contrary, this paragraph shall not be construed to obligate the City to pay any such Governmental Charge. Additionally, if the Developer fails to pay any Governmental Charge, the City, in its sole discretion, may require the Developer to submit to the City audited Financial Statements at the Developer's own expense.

c) Real Estate Taxes.

(i) Acknowledgment of Real Estate Taxes. The Developer agrees that (A) for the purpose of this Agreement, the total projected minimum assessed value of the Property ("Minimum Assessed Value") is shown on Exhibit K attached hereto and incorporated herein by reference for the years noted on Exhibit K; (B) Exhibit K sets forth the specific improvements which will generate the fair market values, assessments, equalized assessed values and taxes shown thereon; and (C) the real estate taxes anticipated to be generated and derived from the respective portions of the Property and the Project for the years shown are fairly and accurately indicated in Exhibit K.

(ii) Real Estate Tax Exemption. Except as otherwise provided in Section 8.19(c)(v) below, with respect to the Property or the Project, neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, seek, or authorize any exemption (as such term is used and defined in the Illinois Constitution, Article IX, Section 6 (1970)) for any year that the Redevelopment Plan is in effect.

(iii) No Reduction in Real Estate Taxes. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer shall, during the Term of this Agreement, directly or indirectly, initiate, seek or apply for proceedings in order to lower the assessed value of all or any portion of the Property or the

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Project below the amount of the Minimum Assessed Value as shown in Exhibit K for the applicable year; provided, however, (1) the Developer is permitted to apply for a Class 9 designation from Cook County even if such designation with respect to the Property would result in a Minimum Assessed Value below than shown in Exhibit K, and (2) the Property may be subject to 35 ILCS 200/10-235].

iv) No Objections. Neither the Developer nor any agent, representative, lessee, tenant, assignee, transferee or successor in interest to the Developer, shall object to or in any way seek to interfere with, on procedural or any other grounds, the filing of any Underassessment Complaint or subsequent proceedings related thereto with the Cook County Assessor or with the Cook County Board of Appeals, by either the City or any taxpayer. The term "Underassessment Complaint" as used

in this Agreement shall mean any complaint seeking to increase the assessed value of the Property up to (but not above) the Minimum Assessed Value as shown in Exhibit K.

v) Covenants Running with the Land. The parties agree that the restrictions contained in this Section 8.19(c) are covenants running with the land and this Agreement shall be recorded by the Developer as a memorandum thereof, at the Developer's expense, with the Cook County Recorder of Deeds on the Closing Date. These restrictions shall be binding upon the Developer and its agents, representatives, lessees, successors, assigns and transferees from and after the date hereof, provided however, that the covenants shall be released when the Redevelopment Area is no longer in effect. The Developer agrees that any sale, lease, conveyance, or transfer of title to all or any portion of the Property or Redevelopment Area from and after the date hereof shall be made explicitly subject to such covenants and restrictions. Notwithstanding anything contained in this Section 8.19(c) to the contrary: (1) the City, in its sole discretion and by its sole action, without the joinder or concurrence of the Developer, its successors or assigns, may waive and terminate the Developer's covenants and agreements set forth in this Section 8.19(c); and (2) the Developer may pursue any property tax assessment reduction or exemption the Developer is required to so pursue in writing by the Chicago Housing Authority.

(d) Notification to the Cook County Assessor of Change in Use and Ownership. Prior to the Closing Date, the Developer shall complete a letter of notification, in accordance with 35 ILCS 200/15-20, notifying the Cook County Assessor that there has been a change in use and ownership of the Property. On the Closing Date, the Developer shall pay to the Title Company the cost of sending the notification to the Cook County Assessor via certified mail, return receipt requested. After delivery of the notification, the Developer shall forward a copy of the return receipt to HED, with a copy to the City's Corporation Counsel's office.

8.20 Affordable Housing Covenant. The Developer agrees and covenants to the City that, prior to any foreclosure of the Property by a lender providing Lender Financing, the provisions of (1) the NSP Regulatory Agreement, (2) that certain Land Use Restriction Agreement executed by the Owner and the City as of the date hereof, (3) that certain Low-Income Housing Tax Credit Regulatory Agreement executed by the Owner and the City as of the date hereof, and (4) the DTC Regulatory Agreement shall all govern the terms of the Developer's obligation to provide affordable housing. Following foreclosure, if any, and from the date of such foreclosure through the thirtieth anniversary of the issuance of a certificate of occupancy for the Project by the City (as required by Section 2-45-110(f) of the Municipal Code), the following provisions shall govern the terms of the obligation to provide affordable housing under this Agreement:

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a) Except for the community service facility and the commercial and retail space located in the parcel described in Exhibit B hereof, the Facility shall be operated and maintained solely as residential rental housing;

b) Twenty percent of the units in the Facility shall be available for occupancy to and be occupied solely by one or more persons qualifying as Low Income Families (as defined below) upon initial occupancy; and

c) All of the Low Income Units in the Facility shall have monthly rents not in excess of thirty percent (30%) of the maximum allowable income for a Low Income Family (with the applicable Family size for such units determined in accordance with the rules specified in Section 42(g)(2) of the Internal Revenue Code of 1986, as amended); provided, however, that for any unit occupied by a Family (as defined below) that no longer qualifies as a Low Income Family due to an increase in such Family's income since the date of its initial occupancy of such unit, the maximum monthly rent for such unit shall not exceed thirty percent (30%) of such Family's monthly income.



d) As used in this Section 8.20, the following terms has the following meanings:

i) "Family" shall mean one or more individuals, whether or not related by blood or marriage;

ii) "Low Income Families" shall mean Families whose annual income does not exceed sixty percent (60%) of the Chicago-area median income, adjusted for Family size, as such annual income and Chicago-area median income are determined from time to time by the United States Department of Housing and Urban Development, and thereafter such income limits shall apply to this definition; and

iii) "Low Income Units" shall mean residential units reserved for Low Income Families pursuant hereto.

e) The covenants set forth in this Section 8.20 shall run with the land and be binding upon any transferee. [Such covenants shall be in addition to the covenants and restrictions set forth in the Chicago Housing Authority Regulatory and Operating Agreement with respect to public housing units in the Project.]

f) The City and the Developer may enter into a separate agreement to implement the provisions of this Section 8.20, including upon expiration of the Term of this Agreement.

21 [intentionally omitted]

22 [intentionally omitted]

23 Survival of Covenants. All warranties, representations, covenants and agreements of the Developer contained in this Section 8 and elsewhere in this Agreement shall be true, accurate and complete at the time of the Developer's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties hereto and (except as provided in Section 7.02 hereof upon the issuance of a Certificate) shall be in effect throughout the Term of the Agreement or longer as indicated with respect to Section 8.20 hereof.

8.24 Annual Compliance Report. Beginning with the issuance of the Certificate and continuing throughout the Term of the Agreement, the Developer shall submit to HED the Annual

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Compliance Report within 30 days after the end of the calendar year to which the Annual Compliance Report relates.

8.25 Delegation of Obligations to Tenant. If the Developer delegates the performance any of its obligations hereunder to the Master Tenant pursuant to the Master Lease such delegation shall not relieve the Developer of such obligations.

## SECTION 9. COVENANTS/REPRESENTATIONS/WARRANTIES OF CITY

1 General Covenants. The City represents that it has the authority as a home rule unit of local government to execute and deliver this Agreement and to perform its obligations hereunder.

2 Survival of Covenants. All warranties, representations, and covenants of the City contained in this Section 9 or elsewhere in this Agreement shall be true, accurate, and complete at the time of the City's execution of this Agreement, and shall survive the execution, delivery and acceptance hereof by the parties

hereto and be in effect throughout the Term of the Agreement.

## SECTION 10. DEVELOPER'S EMPLOYMENT OBLIGATIONS

10.01 Employment Opportunity. The Developer, on behalf of itself and its successors and assigns, hereby agrees, and shall contractually obligate its or their various contractors, subcontractors or any Affiliate of the Developer operating on the Property (collectively, with the Developer, the "Employers" and individually an "Employer") to agree, that for the Term of this Agreement with respect to Developer and during the period of any other party's provision of services in connection with the rehabilitation/construction of the Project or occupation of the Property:

a) No Employer shall discriminate against any employee or applicant for employment based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income as defined in the City of Chicago Human Rights Ordinance, Chapter 2-160, Section 2-160-010 et seq., Municipal Code, except as otherwise provided by said ordinance and as amended from time to time (the "Human Rights Ordinance"). Each Employer shall take affirmative action to ensure that applicants are hired and employed without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income and are treated in a non-discriminatory manner with regard to all job-related matters, including without limitation: employment, upgrading, demotion or transfer; recruitment or recruitment advertising; layoff or termination; rates of pay or other forms of compensation; and selection for training, including apprenticeship. Each Employer agrees to post in conspicuous places, available to employees and applicants for employment, notices to be provided by the City setting forth the provisions of this nondiscrimination clause. In addition, the Employers, in all solicitations or advertisements for employees, shall state that all qualified applicants shall receive consideration for employment without discrimination based upon race, religion, color, sex, national origin or ancestry, age, handicap or disability, sexual orientation, military discharge status, marital status, parental status or source of income.

b) To the greatest extent feasible, each Employer is required to present opportunities for training and employment of low- and moderate-income residents of the City and preferably of the Redevelopment Area; and to provide that contracts for work in connection with the construction of the Project be awarded to business concerns that are located in, or owned in substantial part by persons residing in, the City and preferably in the Redevelopment Area.

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c) Each Employer shall comply with all federal, state and local equal employment and affirmative action statutes, rules and regulations, including but not limited to the City's Human Rights Ordinance and the Illinois Human Rights Act, 775 ILCS 5/1-101 et seq. (1993), and any subsequent amendments and regulations promulgated thereto.

d) Each Employer, in order to demonstrate compliance with the terms of this Section, shall cooperate with and promptly and accurately respond to inquiries by the City, which has the responsibility to observe and report compliance with equal employment opportunity regulations of federal, state and municipal agencies.

e) Each Employer shall include the foregoing provisions of subparagraphs (a) through (d) in every contract entered into in connection with the Project, and shall require inclusion of these provisions in every subcontract entered into by any subcontractors, and every agreement with any Affiliate operating on the Property, so that each such provision shall be binding upon each contractor, subcontractor or Affiliate, as the case may be.

f) Failure to comply with the employment obligations described in this Section 10.01 shall be a basis for the City to pursue remedies under the provisions of Section 15.02 hereof.

2 City Resident Construction Worker Employment Requirement. The Developer shall comply with Section 19.2 of the NSP Redevelopment Agreement (wherein the Owner is known as the "Borrower"), which is hereby incorporated herein, regardless of whether the NSP Redevelopment Agreement is in effect. Although the Sponsor is not a party to the NSP Redevelopment Agreement the Sponsor hereby confirms the foregoing obligation.

3 MBE/WBE Commitment. The Developer shall comply with Section 19.3 of the NSP Redevelopment Agreement (wherein the Owner is known as the "Borrower"), which is hereby incorporated herein, regardless of whether the NSP Redevelopment Agreement is in effect. Although the Sponsor is not a party to the NSP Redevelopment Agreement the Sponsor hereby confirms the foregoing obligation.

4 Project Labor Agreement. The Developer shall cause the General Contractor to comply with that certain Settlement Agreement dated November 3, 2011, by and among the City, Chicago Regional Council of Carpenters, the Metropolitan Pier and Exposition Authority, the Public Building Commission of the City of Chicago, and the State of Illinois, because the Project budget is in excess of \$25,000,000, and, therefore, is subject to the provisions of that certain City of Chicago Multi-Project Labor Agreement (the "MPLA") dated February 9, 2011, by and among the City and the labor organizations comprising the Chicago & Cook County Building & Construction Trades Council. The Developer shall cause the General Contractor to comply with the MPLA to the fullest extent legally permissible without violating other requirements applicable to the construction of the Project, including, without limitation, Sections 8.09, 10.02 and 10.03 hereof. At the direction of HED, affidavits and other supporting documentation shall be required of the Developer, the General Contractor and the subcontractors to verify or clarify compliance with the MPLA.

## SECTION 11. ENVIRONMENTAL MATTERS

11.01 Phase I and II Assessments. The Developer hereby represents and warrants to the City that the Developer has performed one or more Phase I environmental site assessments of the Property and follow-up Phase II testing sufficient to conclude that the Project may be constructed, completed and operated in accordance with all Environmental Laws and this Agreement and all Exhibits attached hereto, the Scope Drawings, Plans and Specifications and all amendments

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thereto, and the Redevelopment Plan. The Developer further represents and warrants that it has delivered to the City true and complete copies of all reports, surveys, field data, correspondence and analytical results prepared by or for the Developer (or otherwise obtained by the Developer) regarding the condition of the Property, including, without limitation, the SRP Documents (collectively, "Environmental Documents".) A list of all Environmental Documents delivered to the City as of the date hereof is attached hereto as Exhibit Q.

### 11.02 Environmental Remediation.

a) The Developer acknowledges and agrees that (i) the Environmental Documents identify several recognized environmental conditions ("RECs") on the Apartment Property, including the presence of underground storage tanks, asbestos containing material and lead-based paint, and (ii) 2FM's environmental compliance certification for the Project, attached hereto as Exhibit R. is conditioned upon the Developer taking certain actions to address the environmental and historical conditions present at the Property. In accordance with 2FM's certification, the Developer covenants and agrees to enroll the Apartment Property in the SRP and take all necessary and proper steps to obtain a Draft NFR Letter for the Apartment Property. The Developer acknowledges and agrees that it may not commence construction on the Apartment Property, and

that the City will not make any payments to the Developer of City Funds, until the IEPA issues, and 2FM approves, a Draft NFR Letter for the Apartment Property; provided, however, the Developer may perform demolition work with 2FM's prior written approval, which approval may be subject to conditions.

b) [The Developer acknowledges and agrees that it has started but not completed its environmental investigation of the Parking Property. To the extent not delivered to and approved by 2FM prior to the date hereof, the Developer agrees to perform a Phase I environmental site assessment of all parcels comprising the Parking Property in accordance with the requirements of the ASTM E1527-05 standard. 2FM shall have the right to review and approve the sufficiency of such Phase I report(s) and any other reports prepared for the Parking Property. Upon 2FM's request, the Developer shall perform additional studies and tests for the purpose of determining whether any environmental or health risks would be associated with the development of parking facilities on the Parking Property, including, without limitation, updating or expanding the Phase I report(s) and performing initial or additional Phase II testing. If the environmental reports for the Parking Property disclose the presence of contaminants exceeding commercial remediation objectives for areas to be paved or residential remediation objectives for areas to be landscaped, the Developer shall enroll the Parking Property (or the applicable portion thereof) in the IEPA's SRP Program and take all necessary and proper steps to obtain a Draft NFR Letter for the Parking Property. Unless DOE determines that it is not necessary to enroll the Parking Property in the SRP, the Developer acknowledges and agrees that it may not commence construction on the Parking Property, and that the City will not make any payments to the Developer of City Funds, until the IEPA issues, and 2FM approves, a Draft NFR Letter for the Parking Property.]

c) After 2FM approves the Draft NFR Letter for the Apartment Property (and the Parking Property to the extent required under Section 11.02(b) above), the Developer covenants and agrees to complete the Remediation Work and diligently pursue the Final NFR Letter for the Apartment Property (and the Parking Property to the extent required under Section 11.02(b) above) using all reasonable means. The City shall have the right to review in advance and approve all SRP Documents and any changes thereto, and the Developer's estimate of the cost to perform the Remediation Work. The Developer shall cooperate and consult with the City at all relevant times (and in all cases upon the City's request) with respect to environmental matters. The Developer shall bear sole responsibility for all aspects of the Remediation Work and any other investigative and cleanup costs associated with the Property and any improvements, facilities or operations located or

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formerly located thereon, including, without limitation, the removal and disposal of all Hazardous Materials, debris and other materials excavated during the performance of the Remediation Work. The Developer shall promptly transmit to the City copies of all Environmental Documents prepared or received after the date hereof, including, without limitation, any written communications delivered to or received from the IEPA or other regulatory agencies with respect to the Remediation Work. The Developer acknowledges and agrees that the City will not issue a Certificate until the IEPA has issued, and the City has approved, a Final NFR Letter for the Apartment Property (and the Parking Property to the extent required under Section 11.02(b) above), which approval shall not be unreasonably withheld.

## SECTION 12. INSURANCE

The Developer must provide and maintain, at Developer's own expense, or cause to be provided and maintained during the term of this Agreement, the insurance coverage and requirements specified below, insuring all operations related to the Agreement.

a) Prior to execution and delivery of this Agreement.

i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$100,000 each accident, illness or disease.

ii) Commercial General Liability (Primary and Umbrella)

Commercial General Liability Insurance or equivalent with limits of not less than \$1,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations independent contractors, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

iii) All Risk Property

All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

b) Construction. Prior to the construction of any portion of the Project, Developer will cause its architects, contractors, subcontractors, project managers and other parties constructing the Project to procure and maintain the following kinds and amounts of insurance:

i) Workers Compensation and Employers Liability

Workers Compensation Insurance, as prescribed by applicable law covering all employees who are to provide work under this Agreement and Employers Liability coverage with limits of not less than \$ 500,000 each accident, illness or disease.

ii) Commercial General Liability (Primary and Umbrella)

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Commercial General Liability Insurance or equivalent with limits of not less than \$2,000,000 per occurrence for bodily injury, personal injury, and property damage liability. Coverages must include the following: All premises and operations, products/completed operations (for a minimum of two (2) years following project completion), explosion, collapse, underground, separation of insureds, defense, and contractual liability (with no limitation endorsement). The City of Chicago is to be named as an additional insured on a primary, non-contributory basis for any liability arising directly or indirectly from the work.

iii) Automobile Liability (Primary and Umbrella)

When any motor vehicles (owned, non-owned and hired) are used in connection with work to be performed, the Automobile Liability Insurance with limits of not less than \$2,000,000 per occurrence for bodily injury and property damage. The City of Chicago is to be named as an additional insured on a primary, non-contributory basis.

iv) Railroad Protective Liability

When any work is to be done adjacent to or on railroad or transit property, Developer must provide cause to be provided with respect to the operations that Contractors perform, Railroad Protective Liability Insurance in the name of railroad or transit entity. The policy must have limits of not less than \$2,000,000 per occurrence and \$6,000,000 in the aggregate for losses arising out of injuries to or death of all persons, and for damage to or destruction of property, including the loss of

use thereof.

v) All Risk /Builders Risk

When Developer undertakes any construction, including improvements, betterments, and/or repairs, the Developer must provide or cause to be provided All Risk Builders Risk Insurance at replacement cost for materials, supplies, equipment, machinery and fixtures that are or will be part of the project. The City of Chicago is to be named as an additional insured and loss payee/mortgagee if applicable.

vi) Professional Liability

When any architects, engineers, construction managers or other professional consultants perform work in connection with this Agreement, Professional Liability Insurance covering acts, errors, or omissions must be maintained with limits of not less than \$ 1,000,000. Coverage must include contractual liability. When policies are renewed or replaced, the policy retroactive date must coincide with, or precede, start of work on the Contract. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years.

vii) Valuable Papers

When any plans, designs, drawings, specifications and documents are produced or used under this Agreement, Valuable Papers Insurance must be maintained in an amount to insure against any loss whatsoever, and must have limits sufficient to pay for the re-creation and reconstruction of such records.

viii) Contractors Pollution Liability

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When any remediation work is performed which may cause a pollution exposure, the Developer must cause remediation contractor to provide Contractor Pollution Liability covering bodily injury, property damage and other losses caused by pollution conditions that arise from the contract scope of work with limits of not less than \$1,000,000 per occurrence. Coverage must include completed operations, contractual liability, defense, excavation, environmental cleanup, remediation and disposal. When policies are renewed or replaced, the policy retroactive date must coincide with or precede, start of work on the Agreement. A claims-made policy which is not renewed or replaced must have an extended reporting period of two (2) years. The City of Chicago is to be named as an additional insured.

c) Post Construction:

(i) All Risk Property Insurance at replacement value of the property to protect against loss of, damage to, or destruction of the building/facility. The City is to be named as an additional insured and loss payee/mortgagee if applicable.

d) Other Requirements:

The Developer must furnish the City of Chicago, Department of Housing and Economic Development, City Hall, Room 1000, 121 North LaSalle Street 60602, original Certificates of Insurance, or such similar evidence, to be in force on the date of this Agreement, and Renewal Certificates of Insurance, or such similar evidence, if the coverages have an expiration or renewal date occurring during the term of this Agreement. The Developer must submit evidence of insurance on the City of Chicago Insurance Certificate Form (copy attached) or equivalent prior to closing. The receipt of any certificate does not constitute agreement by the City that the insurance requirements in the Agreement have been fully met or that the insurance policies indicated on the certificate are in compliance with all Agreement requirements. The failure of the City to obtain certificates or other insurance evidence from Developer is not a waiver by the City of any requirements for the Developer to obtain and maintain the specified coverages. The Developer shall advise all insurers of the

Agreement provisions regarding insurance. Non-conforming insurance does not relieve Developer of the obligation to provide insurance as specified herein. Nonfulfillment of the insurance conditions may constitute a violation of the Agreement, and the City retains the right to stop work and/or terminate agreement until proper evidence of insurance is provided.

The insurance must provide for 60 days prior written notice to be given to the City in the event coverage is substantially changed, canceled, or non-renewed.

Any deductibles or self insured retentions on referenced insurance coverages must be borne by Developer and Contractors.

The Developer hereby waives and agrees to require their insurers to waive their rights of subrogation against the City of Chicago, its employees, elected officials, agents, or representatives.

The coverages and limits furnished by Developer in no way limit the Developer's liabilities and responsibilities specified within the Agreement or by law.

Any insurance or self insurance programs maintained by the City of Chicago do not contribute with insurance provided by the Developer under the Agreement.

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The required insurance to be carried is not limited by any limitations expressed in the indemnification language in this Agreement or any limitation placed on the indemnity in this Agreement given as a matter of law.

If Developer is a joint venture or limited liability company, the insurance policies must name the joint venture or limited liability company as a named insured.

The Developer must require Contractor and subcontractors to provide the insurance required herein, or Developer may provide the coverages for Contractor and subcontractors. All Contractors and subcontractors are subject to the same insurance requirements of Developer unless otherwise specified in this Agreement.

If Developer, any Contractor or subcontractor desires additional coverages, the party desiring the additional coverages is responsible for the acquisition and cost.

The City of Chicago Risk Management Department maintains the right to modify, delete, alter or change these requirements.

## SECTION 13. INDEMNIFICATION

13.01 General Indemnity. The Developer shall comply with and be bound by Section 5.15 of the Borrower Loan Agreement (wherein the Owner is known as the "Borrower"), which is hereby incorporated herein, regardless of whether the Borrower Loan Agreement is in effect. Although the Sponsor is not a party to the Borrower Loan Agreement the Sponsor hereby confirms the foregoing obligation.

The provisions of the undertakings and indemnification set out in this Section 13.01 shall survive the termination of this Agreement.

## SECTION 14. MAINTAINING RECORDS/RIGHT TO INSPECT

14.01 Books and Records. The Developer shall keep and maintain separate, complete,

accurate and detailed books and records necessary to reflect and fully disclose the total actual cost of the Project and the disposition of all funds from whatever source allocated thereto, and to monitor the Project. All such books, records and other documents, including but not limited to the Developer's loan statements, if any, General Contractors' and contractors' sworn statements, general contracts, subcontracts, purchase orders, waivers of lien, paid receipts and invoices, shall be available at the Developer's offices for inspection, copying, audit and examination by an authorized representative of the City, at the Developer's expense. The Developer shall incorporate this right to inspect, copy, audit and examine all books and records into all contracts entered into by the Developer with respect to the Project.

14.02 Inspection Rights. Upon three (3) business days' notice, any authorized representative of the City has access to all portions of the Project and the Property during normal business hours for the Term of the Agreement.

## SECTION 15. DEFAULT AND REMEDIES

15.01 Events of Default. The occurrence of any one or more of the following events, subject to the provisions of Section 15.03, shall constitute an "Event of Default" by the Developer hereunder:

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a) the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under this Agreement or any related agreement;

b) the declaration of an event of default by a person or entity other than the City based upon the failure of the Developer to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of the Developer under any other agreement with any such person or entity, which is not cured after the expiration of all applicable notice and cure periods, if such failure may have a material adverse effect on the Developer's business, property, assets, operations or condition, financial or otherwise;

c) the making or furnishing by the Developer to the City of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or any related agreement which is untrue or misleading in any material respect;

d) except as otherwise permitted hereunder, the creation (whether voluntary or involuntary) of, or any attempt to create, any lien or other encumbrance upon the Property, including any fixtures now or hereafter attached thereto, other than the Permitted Liens, or the making or any attempt to make any levy, seizure or attachment thereof;

e) the commencement of any proceedings in bankruptcy by or against the Developer or for the liquidation or reorganization of the Developer, or alleging that the Developer is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of the Developer's debts, whether under the United States Bankruptcy Code or under any other state or federal law, now or hereafter existing for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving the Developer; provided, however, that if such commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within sixty (60) days after the commencement of such proceedings;

f) the appointment of a receiver or trustee for the Developer, for any substantial part of the Developer's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of the Developer; provided, however, that if such appointment or commencement of proceedings is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within sixty (60) days after the commencement thereof;



g) the entry of any judgment or order against the Developer which remains unsatisfied or undischarged and in effect for sixty (60) days after such entry without a stay of enforcement or execution;

h) the occurrence of an event of default under the Lender Financing, which default is not cured within any applicable cure period;

(i) the dissolution of the Developer;

(j) the institution in any court of a criminal proceeding (other than a misdemeanor) against the Developer or any natural person who owns a material interest in the Developer, which is not dismissed within thirty (30) days, or the indictment of the Developer or any natural person who owns a material interest in the Developer, for any crime (other than a misdemeanor); or

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(k) prior to the issuance of the Certificate, the sale or transfer of a majority of the ownership interests of the Developer (other than a transfer, pursuant to the Owner's limited partnership agreement, of some or all of the limited partnership interest in the Owner from the Limited Partner of the Owner to an affiliate(s) thereof, so long as such transferee is bound by the terms of the Owner's limited partnership agreement, including but not limited to any obligations to contribute Equity) without the prior written consent of the City.

For purposes of Sections 15.01 (i) and 15.01 (j) hereof, a person with a material interest in the Developer shall be one owning in excess of 10% of the Developer's membership or partnership interests.

Until such time as all principal payments on the TIF Note are made, but not more often than once per calendar quarter, Citibank may request in writing that the City state in writing for the benefit of Citibank whether the City knows of any defaults hereunder by the Owner, General Partner and/or Managing Member and the nature of such defaults, if any; the City shall use good faith efforts to reply to such requests within 45 days.

2 Remedies. Subject to Section 15.04, upon the occurrence of an Event of Default, which is not cured after the expiration of all applicable notice and cure periods, the City may terminate this Agreement and any other agreements to which the City and the Developer are or shall be parties, suspend disbursement of City Funds, place a lien on the Project in the amount of City Funds paid and the value of the City Parking Property write-down, and/or seek reimbursement of any City Funds paid. Any Incremental Taxes that would have been used to make payments hereunder during any such notice and cure period shall, however, be reserved by the City pending the possible cure of such default. If such default is cured, any reserved payments of Incremental Taxes shall be released by the City and used to make payments as contemplated hereunder. The City may, in any court of competent jurisdiction by any action or proceeding at law or in equity, pursue and secure any available remedy, including but not limited to damages, injunctive relief or the specific performance of the agreements contained herein.

3 Curative Period. In the event the Developer shall fail to perform a monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to perform such monetary covenant within ten (10) days of its receipt of a written notice from the City specifying that it has failed to perform such monetary covenant. In the event the Developer shall fail to perform a non-monetary covenant which the Developer is required to perform under this Agreement, notwithstanding any other provision of this Agreement to the contrary, an Event of Default shall not be deemed to have occurred unless the Developer has failed to cure such default within thirty (30) days of its receipt of a written notice from the City specifying the nature of the default; provided, however, with respect to those non-monetary defaults

which are not capable of being cured within such thirty (30) day period, the Developer shall not be deemed to have committed an Event of Default under this Agreement if it has commenced to cure the alleged default within such thirty (30) day period and thereafter diligently and continuously prosecutes the cure of such default until the same has been cured.

Upon the expiration of the cure periods specified in this Section 15.03, without the default being cured, then the cure periods specified under Section 15.04 shall apply.

4 Right to Cure by the Limited Partner and/or Citibank. If a default occurs under this Agreement and as a result thereof, the City intends to exercise any right or remedy available to it

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that could result in termination of this Agreement and all related agreements, or the suspension, cancellation, reduction or reimbursement of City Funds disbursed hereunder, or any other remedy under this Agreement, the City shall prior to exercising such right or remedy, send notice of such intended exercise to the Limited Partner and Citibank, and the Limited Partner (including, without limitation, by exercise of management take over rights of the Owner under its partnership agreement) and Citibank shall have the right (but not the obligation) to cure such Event of Default as follows:

a) if a monetary default exists, the Limited Partner may cause to be cured such monetary default within 90 days after the later of (and [Citibank, except as provided in Section 15.04(h) below, and] the City shall take no action during such 90 day period): (i) the expiration of the cure period, if any, granted under Section 15.03 to Developer with respect to such monetary default; or (ii) receipt by the Limited Partner and Citibank of notice of default from the City. If the Limited Partner does not cause such monetary default to be cured within such 90-day time period set forth in the preceding sentence, then Citibank may cure such monetary default in the manner set forth in Section 15.04(c); and

b) if a non-monetary default exists (except for a Personal Developer Default, as later defined), the Limited Partner may cause to be cured such non-monetary default within 90 days after the later of (and [Citibank, except as provided in Section 15.04(h) below, and] the City shall take no action during such 90 day period): (i) the expiration of the cure period, if any, granted under Section 15.03 to Developer with respect to such non-monetary default; or (ii) receipt by the Limited Partner and Citibank of notice of default from the City. If the Limited Partner does not cause such nonmonetary default to be cured within such 90-day time period set forth in the preceding sentence, then Citibank may cure such monetary default in the manner set forth in Section 15.04(d); and

c) if a monetary default exists, Citibank may cure such monetary default within 60 days after the later of (and the non-electing party and the City shall take no action during such 60-day period): (i) the expiration of the Limited Partner's 90-day cure period; or (ii) receipt by Citibank of notice from the City that the Limited Partner has failed to cure the default within the timeframe set forth in Section 15.04(a) above; and

d) if a non-monetary default exists (except for a Personal Developer Default), Citibank may cure such non-monetary default within 90 days after the later of (and the non-electing party and the City shall take no action during such 90-day period): (i) the expiration of the Limited Partner's 90-day cure period; or (ii) receipt by Citibank of notice from the City that the Limited Partner has failed to cure the default within the timeframe set forth in Section 15.04(b) above; provided, however, if such non-monetary default is of a nature that is not subject to cure in 90 days, the cure period will be extended for the time period needed to cure such default (including any time period required by Citibank to take control of the Project by initiating foreclosure of its mortgage and/or appointing a receiver) and the City shall forbear from exercising its remedies hereunder so long as diligent and continuous efforts are being pursued to cure such default; and

(e) (1) If such non-monetary default would be an Event of Default set forth in Section

15.01(e), (f), (g), (i) or \_ hereof (each such default being a "Personal Developer Default"), the Limited Partner or Citibank (as applicable and in that strict order as more fully provided in this Section 15.04(e) below and not otherwise, the "Electing Party"), shall provide written notice (the "Assumption Notice") to the City and the Limited Partner or Citibank (as applicable, the "Non-Electing Parties") within 30 days of receipt of notice from the City of such Personal Developer Default, as more fully provided in Section 15.04(e)(2) below. If notice is delivered within said 30-day period, the Electing Party shall, in accordance with Section 15.04(e)(2) below, either cure or cause

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to be cured such Personal Developer Default by the assignment pursuant to Section 18.15 hereof of all of the Owner's rights, obligations and interests in this Agreement to the Electing Party or any other party agreed to in writing by Citibank and the City, which assumption shall be deemed to cure the Personal Developer Default.

(2) Upon receipt by the City and Citibank of an Assumption Notice from the Limited Partner pursuant to subsection (e)(1) above, the cure period shall be extended for such reasonable period of time as may be necessary to complete such assignment and assumption of the Owner's rights, obligations and interests in this Agreement (but in no event longer than 90 days without the written consent of the City and Citibank). If the Limited Partner does not (i) provide such Assumption Notice within the 30-day period specified in subsection (e)(1), or (ii) identify to the City and the Non-Electing Parties any other party (which may be an affiliate of the Limited Partner other than the Owner) to assume the Owner's rights, obligations and interests in this Agreement within 30 days from the date of the Assumption Notice, then Citibank shall have 30 days to cure such Personal Developer Default by the assignment, in accordance with the provisions of Section 18.15 hereof, of all of the Owner's rights, obligations and interests in this Agreement to Citibank, or an affiliate thereof, or any other party agreed to in writing by Citibank and the City.

f) If such Personal Developer Default is not cured by the Limited Partner or Citibank within the timeframes set forth in Section 15.04(e), then the City shall have available all remedies set forth in this Agreement, including those in Sections 15.02.

g) During all such times as a Personal Developer Default exists and remains uncured after the expiration of all cure periods, no payments of City Funds shall occur until such time as such Personal Developer Default is thereafter cured.

h) The City agrees that at any time during which an Event of Default has occurred under the Lender Financing Documents, during the period that Citibank is diligently and continuously pursuing actions or remedies under the Lender Financing, with or without the Owner, which are intended to cause substantial completion of the Project, and, as part of such actions or remedies, continues to fund or make advances to pay Project costs, the City shall likewise forbear from exercising its remedies under Section 15.02.

(i) Notwithstanding anything to the contrary contained in this Agreement, including, without limitation, the continuation of any cure periods under Section 15.03 and Section 15.04, in the event Citibank initiates a foreclosure proceeding, or the Limited Partner and Citibank provide a joint notice of discontinuance of actions or remedies intending to achieve substantial completion, the City may immediately commence to exercise any and all of the remedies specified in Section 15.02 above.

## SECTION 16. MORTGAGING OF THE PROJECT

All mortgages or deeds of trust in place as of the date hereof with respect to the Property or any portion thereof are listed on Exhibit G hereto (including but not limited to mortgages made prior to or on the date hereof in connection with Lender Financing) and are referred to herein as the "Existing Mortgages." Any

mortgage or deed of trust that the Owner may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof is referred to herein as a "New Mortgage." Any New Mortgage that the Owner may hereafter elect to execute and record or permit to be recorded against the Property or any portion thereof with the prior written consent of the City is referred to herein as a "Permitted Mortgage." It is hereby agreed by and between the City and the Developer as follows:

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a) Subject to Section 16(b) hereof, In the event that a mortgagee or any other party shall succeed to the Owner's interest in the Property or any portion thereof pursuant to the exercise of remedies under a New Mortgage (other than a Permitted Mortgage), whether by foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City may, but shall not be obligated to, attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement and, unless so recognized by the City as the successor in interest, such party shall be entitled to no rights or benefits under this Agreement, but such party shall be bound by those provisions of this Agreement that are covenants expressly running with the land.

b) In the event that any mortgagee or an affiliate thereof shall succeed to the Owner's interest in the Property or any portion thereof pursuant to the exercise of remedies under an Existing Mortgage or a Permitted Mortgage, whether by whether by foreclosure or deed in lieu of foreclosure, or as a result of any transfer to an affiliate of a mortgagee as aforesaid which occurs within twelve (12) months following any such foreclosure or deed in lieu of foreclosure, and in conjunction therewith accepts an assignment of the Developer's interest hereunder in accordance with Section 18.15 hereof, the City hereby agrees to attorn to and recognize such party as the successor in interest to the Developer for all purposes under this Agreement so long as such party accepts all of the obligations and liabilities of "the Developer" hereunder; provided, however, that, notwithstanding any other provision of this Agreement to the contrary, it is understood and agreed that if such party accepts an assignment of the Developer's interest under this Agreement, such party has no liability under this Agreement for any Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, nor shall the City have the right to record a lien against or otherwise enforce any remedies hereunder against the Project, in which case the Developer shall be solely responsible. If the City placed a lien on the Project pursuant to Section 15.02 hereof in connection with an Event of Default of the Developer which accrued prior to the time such party succeeded to the interest of the Developer under this Agreement, the City shall release such lien upon written request to do so by such succeeding mortgagee. However, if such mortgagee under a Permitted Mortgage or an Existing Mortgage or an affiliate thereof does not expressly accept an assignment of the Developer's interest hereunder, such party shall be entitled to no rights and benefits under this Agreement, and such party shall be bound only by those provisions of this Agreement, if any, which are covenants expressly running with the land.

c) Prior to the issuance by the City to the Developer of a Certificate pursuant to Section 7.01 hereof, no New Mortgage shall be executed with respect to the Property or any portion thereof without the prior written consent of the Commissioner of HED.

#### SECTION 17. NOTICE

Unless otherwise specified, any notice, demand or request required hereunder shall be given in writing at the addresses set forth below, by any of the following means: (a) personal service; (b) telecopy or facsimile; (c) overnight courier, or (d) registered or certified mail, return receipt requested.

If to the City:

City of Chicago  
Department of Housing and Economic Development 121 North  
LaSalle Street, Room 1000 Chicago, Illinois 60602 Attention:

Commissioner

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With Copies To: City of Chicago  
Department of Law  
121 North LaSalle Street, Room 600  
Chicago, Illinois 60602  
Attention: Finance and Economic Development Division

If to the Developer: Rosenwald Courts Apartments, LP  
20 Sandstone Court Le Claire, Iowa 52753-9250  
Attention: James N. Bergman

With Copies to: DLA Piper LLP (US)  
203 North LaSalle Street Suite 1900  
Chicago, Illinois 60601 Attention: Elizabeth Friedgut

and

Citibank, NA. c/o Citi Community Capital Transaction  
Management Group 390 Greenwich Street, 2nd Floor New  
York, New York 10013 Attention: Desk Head  
Loan/Transaction/File #  
Facsimile: (212)723-8939

and

325 East Hillcrest Drive, Suite 160 Thousand Oaks, California 91360  
Attention: Operations Manager/Asset Manager  
Loan/Transaction/File #1, / ]  
Facsimile: (805) 557 0924

and

[Account Specialist][Consult Citi to obtain the Account Specialist's notice  
information] [Insert Account Specialist Address]  
Attention: [ ]  
Loan/Transaction/File #1, / ]  
Facsimile: [Insert Account Specialist Facsimile Number]

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and

Citibank, N.A.  
Municipal Securities Division 388 Greenwich Street

New York, New York 10013 Attention: General  
Counsel's Office  
Loan/Transaction/File #  
Facsimile: (212)723-8939

and

USA Rosenwald Courts LLC  
c/o The Richman Group Capital Corporation  
340 Pemberwick Road  
Greenwich, CT 06831  
Attention: Joanne D. Flanagan, Esq.

Such addresses may be changed by notice to the other parties given in the same manner provided above. Any notice, demand, or request sent pursuant to either clause (a) or (b) hereof shall be deemed received upon such personal service or upon dispatch. Any notice, demand or request sent pursuant to clause (c) shall be deemed received on the day immediately following deposit with the overnight courier and any notices, demands or requests sent pursuant to subsection (d) shall be deemed received two (2) business days following deposit in the mail.

#### SECTION 18. MISCELLANEOUS

1 Amendment. This Agreement and the Exhibits attached hereto may not be amended or modified without the prior written consent of the parties hereto. It is agreed that no material amendment or change to this Agreement shall be made or be effective unless ratified or authorized by an ordinance duly adopted by the City Council. The term "material" for the purpose of this Section 18.01 shall be defined as any deviation from the terms of the Agreement which operates to cancel or otherwise reduce any developmental, construction or job-creating obligations of Developer (including those set forth in Sections 10.02, 10.03 and 10.04 hereof) by more than five percent (5%) or materially changes the Project site or character of the Project or any activities undertaken by Developer affecting the Project site, the Project, or both, or increases any time agreed for performance by the Developer by more than 90 days, except as may otherwise be permitted pursuant to Section 15.04 hereof.

2 Entire Agreement. This Agreement (including each Exhibit attached hereto, which is hereby incorporated herein by reference) constitutes the entire Agreement between the parties hereto and it supersedes all prior agreements, negotiations and discussions between the parties relative to the subject matter hereof.

3 Limitation of Liability. No member, official or employee of the City shall be personally liable to the Developer or any successor in interest in the event of any default or breach by the City or for any amount which may become due to the Developer from the City or any successor in interest or on any obligation under the terms of this Agreement.

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4 Further Assurances. The Developer agrees to take such actions, including the execution and delivery of such documents, instruments, petitions and certifications as may become necessary or appropriate to carry out the terms, provisions and intent of this Agreement.

5 Waiver. Waiver by the City or the Developer with respect to any breach of this Agreement shall not be considered or treated as a waiver of the rights of the respective party with respect to any other default

or with respect to any particular default, except to the extent specifically waived by the City or the Developer in writing. No delay or omission on the part of a party in exercising any right shall operate as a waiver of such right or any other right unless pursuant to the specific terms hereof. A waiver by a party of a provision of this Agreement shall not prejudice or constitute a waiver of such party's right otherwise to demand strict compliance with that provision or any other provision of this Agreement. No prior waiver by a party, nor any course of dealing between the parties hereto, shall constitute a waiver of any such parties' rights or of any obligations of any other party hereto as to any future transactions.

6 Remedies Cumulative. The remedies of a party hereunder are cumulative and the exercise of any one or more of the remedies provided for herein shall not be construed as a waiver of any other remedies of such party unless specifically so provided herein.

7 Disclaimer. Nothing contained in this Agreement nor any act of the City shall be deemed or construed by any of the parties, or by any third person, to create or imply any relationship of third-party beneficiary, principal or agent, limited or general partnership or joint venture, or to create or imply any association or relationship involving the City.

18.08 Headings. The paragraph and section headings contained herein are for

convenience only and are not intended to limit, vary, define or expand the content thereof.

9 Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original and all of which shall constitute one and the same agreement.

10 Severability. If any provision in this Agreement, or any paragraph, sentence, clause, phrase, word or the application thereof, in any circumstance, is held invalid, this Agreement shall be construed as if such invalid part were never included herein and the remainder of this Agreement shall be and remain valid and enforceable to the fullest extent permitted by law.

11 Conflict. In the event of a conflict between any provisions of this Agreement and the provisions of the TIF Ordinances, such ordinances shall prevail and control.

12 Governing Law. This Agreement shall be governed by and construed in accordance with the internal laws of the State of Illinois, without regard to its conflicts of law principles.

13 Form of Documents. All documents required by this Agreement to be submitted, delivered or furnished to the City shall be in form and content satisfactory to the City.

14 Approval. Wherever this Agreement provides for the approval or consent of the City, HED or the Commissioner, or any matter is to be to the City's, HED's or the Commissioner's satisfaction, unless specifically stated to the contrary, such approval, consent or satisfaction shall be made, given or determined by the City, HED or the Commissioner in writing and in the reasonable discretion thereof. The Commissioner or other person designated by the Mayor of the City shall act for the City or HED in making all approvals, consents and determinations of satisfaction, granting the Certificate or otherwise administering this Agreement for the City.

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15 Assignment. Except as otherwise provided in Sections 15.04 and 16 hereof, the Developer may not sell, assign or otherwise transfer its interest in this Agreement in whole or in part without the written consent of the City. Notwithstanding the foregoing, the Developer may collaterally assign its interest in this Agreement to (a) Citibank as security for the repayment of the Lender Financing provided thereby, and/or (b) the Limited Partner pursuant to the Owner's limited partnership agreement, but the City must review and approve the written form of any such collateral assignment prior to the execution thereof. Any successor in

interest to the Developer under this Agreement shall certify in writing to the City its agreement to abide by all remaining executory terms of this Agreement, including but not limited to Sections 8.19 (Real Estate Provisions) and 8.23 (Survival of Covenants) hereof, for the Term of the Agreement. The Developer consents to the City's sale, transfer, assignment or other disposal of this Agreement at any time in whole or in part.

16 Binding Effect. This Agreement shall be binding upon the Developer, the City and their respective successors and permitted assigns (as provided herein) and shall inure to the benefit of the Developer, the City and their respective successors and permitted assigns (as provided herein). Except as otherwise provided herein, this Agreement shall not run to the benefit of, or be enforceable by, any person or entity other than a party to this Agreement and its successors and permitted assigns. This Agreement should not be deemed to confer upon third parties any remedy, claim, right of reimbursement or other right.

17 Force Majeure. Neither the City nor the Developer nor any successor in interest to either of them shall be considered in breach of or in default of its obligations under this Agreement in the event of any delay caused by damage or destruction by fire or other casualty, strike, shortage of material, unusually adverse weather conditions such as, by way of illustration and not limitation, severe rain storms or below freezing temperatures of abnormal degree or for an abnormal duration, tornadoes or cyclones, and other events or conditions beyond the reasonable control of the party affected which in fact interferes with the ability of such party to discharge its obligations hereunder. The individual or entity relying on this section with respect to any such delay shall, upon the occurrence of the event causing such delay, immediately give written notice to the other parties to this Agreement. The individual or entity relying on this section with respect to any such delay may rely on this section only to the extent of the actual number of days of delay effected by any such events described above.

18 Exhibits. All of the exhibits attached hereto are incorporated herein by reference.

19 Business Economic Support Act. Pursuant to the Business Economic Support Act (30 ILCS 760/1 et seq.), if the Developer is required to provide notice under the WARN Act, the Developer shall, in addition to the notice required under the WARN Act, provide at the same time a copy of the WARN Act notice to the Governor of the State, the Speaker and Minority Leader of the House of Representatives of the State, the President and minority Leader of the Senate of State, and the Mayor of each municipality where the Developer has locations in the State. Failure by the Developer to provide such notice as described above may result in the termination of all or a part of the payment or reimbursement obligations of the City set forth herein.

20 Venue and Consent to Jurisdiction. If there is a lawsuit under this Agreement, each party may hereto agrees to submit to the jurisdiction of the courts of Cook County, the State of Illinois and the United States District Court for the Northern District of Illinois.

21 Costs and Expenses. In addition to and not in limitation of the other provisions of this Agreement, Developer agrees to pay upon demand the City's out-of-pocket expenses, including

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attorney's fees, incurred in connection with the enforcement of the provisions of this Agreement. This includes, subject to any limits under applicable law, attorney's fees and legal expenses, whether or not there is a lawsuit, including attorney's fees for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals and any anticipated post-judgment collection services. Developer also will pay any court costs, in addition to all other sums provided by law.

22 Business Relationships. The Developer acknowledges (A) receipt of a copy of Section 2-156-030 (b) of the Municipal Code of Chicago, (B) that Developer has read such provision and understands that pursuant to such Section 2-156-030 (b), it is illegal for any elected official of the City, or any person acting at the direction of such official, to contact, either orally or in writing, any other City official or employee with



respect to any matter involving any person with whom the elected City official or employee has a business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving any person with whom the elected City official or employee has a business relationship that creates a "Financial Interest" (as defined in Section 2-156-010 of the Municipal Code of Chicago), or to participate in any discussion in any City Council committee hearing or in any City Council meeting or to vote on any matter involving the person with whom an elected official has a business relationship that creates a financial interest, and (C) that a violation of Section 2-156-030 (b) by an elected official, or any person acting at the direction of such official, with respect to any transaction contemplated by this Agreement shall be grounds for termination of this Agreement and the transactions contemplated hereby. The Developer hereby represents and warrants that, to the best of its knowledge after due inquiry, no violation of Section 2-156-030 (b) has occurred with respect to this Agreement or the transactions contemplated hereby.

23 Prohibition On Certain Contributions - Mayoral Executive Order No. 2011-4. Consistent with the intent of Mayoral Executive Order No. 2011 -4, compliance with the substance of which is intended by this Section 18.23, the Developer hereby agrees that the Developer, any person or entity who directly or indirectly has an ownership or beneficial interest in the Developer of more than 7.5 percent (collectively, "Controlling Owners"), spouses and domestic partners of such Controlling Owners, (collectively, all the preceding classes of persons and entities are hereinafter referred to as the "Ownership Parties") shall not make a contribution of any amount to the Mayor of the City ("Mayor") or to his political fundraising committee during (i) the bid or other solicitation process for this Agreement or Other Contract, including while this Agreement or any Other Contract is executory, (ii) the term of this Agreement or any Other Contract between the Developer and the City, and/or (iii) any period in which an extension of this Agreement or any Other Contract is being sought or negotiated.

The Developer hereby agrees to require that the General Contractor, any person or entity who directly or indirectly has an ownership or beneficial interest in the General Contractor of more than 7.5 percent, any subcontractor, any person or entity who directly or indirectly has an ownership or beneficial interest in any subcontractor of more than 7.5 percent (collectively, "Interested Parties"), and spouses and domestic partners of such Interested Parties (collectively, all the preceding classes of persons and entities are hereinafter referred to, together with the Ownership Parties, as the "Identified Parties") shall not make a contribution of any amount to the Mayor or to his political fundraising committee during (i) the bid or other solicitation process for this Agreement or Other Contract, including while this Agreement or any Other Contract is executory, (ii) the term of

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this Agreement or any Other Contract between the Developer and the City, and/or (iii) any period in which an extension of this Agreement or any Other Contract is being sought or negotiated.

The Developer represents and warrants that as of the later of (i) the Closing Date, or (ii) the date that the City approached the Developer, or the Developer approached the City, as applicable, regarding the formulation of this Agreement, no Identified Parties have made a contribution of any amount to the Mayor or to his political fundraising committee.

The Developer agrees that it shall not and it shall require all other Identified Parties to not: (a) coerce, compel or intimidate its employees to make a contribution of any amount to the Mayor or to the Mayor's political fundraising committee; (b) reimburse its employees for a contribution of any amount made to the

Mayor or to the Mayor's political fundraising committee; or (c) bundle or solicit others to bundle contributions to the Mayor or to his political fundraising committee.

The Developer agrees that it must not and it shall require all other Identified Parties to not engage in any conduct whatsoever designed to intentionally violate this provision or Mayoral Executive Order No. 2011 - 4 or to entice, direct or solicit others to intentionally violate this provision or Mayoral Executive Order No. 2011 -4. The Developer shall impose the restrictions of this Section 18.23 in the Construction Contract and shall specifically require the General Contractor to impose the restrictions of this Section 18.23 in all subcontracts.

The Developer agrees that a violation of, non-compliance with, misrepresentation with respect to, or breach of any covenant or warranty under this provision or violation of Mayoral Executive Order No. 2011-4 constitutes a breach and default under this Agreement, and under any Other Contract for which no opportunity to cure will be granted. Such breach and default entitles the City to all remedies (including without limitation termination for default) under this Agreement, and under any Other Contract, at law and in equity. This provision amends any Other Contract and supersedes any inconsistent provision contained therein.

For purposes of this provision:

"Other Contract" means any agreement entered into between the Developer and the City that is (i) formed under the authority of Chapter 2-92 of the Municipal Code of Chicago; (ii) for the purchase or lease of real or personal property; or (iii) for materials, supplies, equipment or services which are approved or authorized by the City Council.

"Contribution" means a "political contribution" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

"Political fundraising committee" means a "political fundraising committee" as defined in Chapter 2-156 of the Municipal Code of Chicago, as amended.

#### 18.24 Inspector General and Legislative Inspector General.

It is the duty of any subgrantee, bidder, proposer, contractor, subcontractor, and every

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applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-56 of the Municipal Code. The Developer represents that it understands and will abide by all provisions of Chapter 2 -56 of the Municipal Code and that the Developer will inform subcontractors of this provision and require their compliance.

It is the duty of any subgrantee, bidder, proposer, contractor, subcontractor, and every applicant for certification of eligibility for a City contract or program, and all officers, directors, agents, partners, and employees of any such subgrantee, bidder, proposer, contractor, subcontractor or such applicant to cooperate with the Legislative Inspector General in any investigation undertaken pursuant to Chapter 2-55 of the Municipal Code. The Developer represents that it understands and will abide by all provisions of Chapter 2-55 of the Municipal Code and that the Developer will inform subcontractors of this provision and require their compliance.

[18.25 Developer Adherence to Building Court Case. Notwithstanding anything herein to the contrary, nothing in this Agreement shall allow the Developer to violate the terms of the Building Court Case.]

[THE REMAINDER OF THIS PAGE IS INTENTIONALLY LEFT BLANK.]

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IN WITNESS WHEREOF, the parties hereto have caused this Redevelopment Agreement to be executed on or as of the day and year first above written.

ROSENWALD                      COURTS                      APARTMENTS,                      LP,                      an                      Illinois  
limited partnership

By: Rosenwald Courts GP, LLC,  
an Illinois limited liability company Its: General  
Partner

By: GB Rosenwald, LLC,  
an Illinois limited liability company Its: Managing  
Member

By: James N. Bergman Managing  
Member

BURTON ROSENWALD GP, LLC, an Illinois  
limited liability company

By: The Burton Foundation,  
an Illinois not-for-profit corporation Its: Sole  
Member

By:  
Name: Tracey L. Manning Its:  
President

CITY OF CHICAGO,  
an Illinois municipal corporation,  
acting by and through its  
Department of Housing and Economic Development

By: Andrew J. Mooney  
Commissioner

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STATE OF ILLINOIS COUNTY OF COOK

)  
) SS.  
)

I, ■, a Notary Public in and for said County, in the State  
aforesaid, do hereby certify that Andrew J. Mooney, personally known to me to be the Commissioner of the  
Department of Housing and Economic Development of the City of Chicago, 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, being first duly sworn by me, acknowledged that, as the Commissioner, he signed and delivered  
the foregoing instrument pursuant to authority given by the City of Chicago as his free and voluntary act and  
as the free and voluntary act and deed of the corporation, for the uses and purposes therein set forth.

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STATE OF ILLINOIS )  
COUNTY OF COOK ) ) SS.

I, \_\_\_\_\_, a Notary Public in and for said County, in the State of \_\_\_\_\_, do hereby certify that James N. Bergman, personally known to me to be the Managing Member of GB Rosenwald, LLC, an Illinois limited liability company, the Managing Member of Rosenwald Courts GP, LLC, an Illinois limited liability company, the General Partner of Rosenwald Courts Apartments, LP, an Illinois limited partnership, 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, being first duly sworn by me, acknowledged that he signed and delivered the foregoing instrument pursuant to authority given by said limited partnership, as his free and voluntary act and as the free and voluntary act and deed of said limited partnership, for the uses and

purposes therein set forth.

GIVEN under my notarial seal this       day of       , 2013.

NOTARY PUBLIC

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STATE OF ILLINOIS )

) SS.

COUNTY OF COOK )

I, \_\_\_\_\_, a Notary Public in and for said County, in the State  
aforesaid, do hereby certify that Tracey L. Manning, personally known to me to be the President of The Burton  
Foundation, an Illinois not-for-profit corporation, the Sole Member of Burton Rosenwald GP, LLC, an Illinois  
limited liability 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, being first duly sworn by me, acknowledged  
that she signed and delivered the foregoing instrument pursuant to authority given by said limited liability  
company, as her free and voluntary act and as the free and voluntary act and deed of said limited liability  
company, for the uses and purposes therein set forth.

GIVEN under my notarial seal this      day of      , 2013.

NOTARY PUBLIC

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EXHIBIT A REDEVELOPMENT AREA [NOT ATTACHED FOR PURPOSES OF ORDINANCE]

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EXHIBIT B

PROPERTY

EXHIBIT B-1

APARTMENT PROPERTY

[Subject to Survey and Title Insurance]

20-03-319-007 - Rosenwald Building at 4600 S. Michigan 20-03-319-008 - Rosenwald Building at  
4600 S. Michigan



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EXHIBIT B-2

CITY PARKING PROPERTY

[Subject to Survey and Title Insurance]

LOT 19 IN BLOCK 4 IN WINSTON'S SUBDIVISION OF THE SOUTH 34 ACRES OF THE WEST  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4648 SOUTH WABASH AVENUE  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-03-318-026-0000

LOTS 15, 16 AND 17 IN BLOCK 4 IN WINSTON'S SUBDIVISION OF THE SOUTH 34 ACRES OF THE WEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4638 SOUTH WABASH AVENUE  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-03-318-033-0000

LOTS 42, 43, 44, 45 AND 46 IN BLOCK 6 IN WINSTON'S SUBDIVISION OF THE SOUTH 34 ACRES OF THE WEST 1/4 OF THE SOUTHWEST 1/4 OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4601, 4609 AND 4611 SOUTH WABASH  
AVENUE  
CHICAGO, ILLINOIS 60605

PERMANENT INDEX NOS. 20-03-320-001-0000 (AFFECTS LOTS  
44, 45 & 46)

20-03-320-002-0000 (AFFECTS LOT  
43) 20-03-320-003-0000 (AFFECTS  
LOT 42)

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EXHIBIT B-3 PRIVATE PARKING PROPERTY

EXHIBIT C TIF-FUNDED IMPROVEMENTS [NOT ATTACHED FOR PURPOSES OF ORDINANCE]

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EXHIBITS D-F [intentionally omitted]

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EXHIBIT G

PERMITTED LIENS

1. Liens or encumbrances against the Property:

Those matters set forth as Schedule B title exceptions in the owner's title insurance policy issued by the Title Company as of the date hereof, but only so long as applicable title endorsements issued in conjunction therewith on the date hereof, if any, continue to remain in full force and effect.

2. Liens or encumbrances against the Developer or the Project, other than liens against the Property, if any:

[To be completed by Developer's counsel, subject to City approval.]

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EXHIBIT H-1 [DRAFT] PROJECT BUDGET [see attached]

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Line Item

Building Cost 11,205,152

Land Cost 200,000

Carrying Costs 194,641

Transfer Stamps 120,733

Acquisition Costs Subtotal 11,720,526

Net Construction Costs 36,308,946

Surface Parking 752,356

Other Hard Costs 5,359,788

General Conditions 2,428,009

Overhead 617,347

Profit 2,400,000

Construction Costs Subtotal 47,866,446

Furniture, Fixtures, & Equip't 410,000 Building Permits 257,014 Bond Premium/ LOC Fees 313,262 Site Preparation 2,480,529

Other Construction

Contingency 5,082,813

Other Construction Subtotal 8,543,618

Electrical & Gas 785,000 Public Parks & Landscaping 735,000 Other Infrastructure 140,000

<u>Contingency</u>	<u>166,000</u>
<u>Infrastructure Subtotal</u>	<u>1,826,000</u>
Land Remediation 1,750,000	
<u>Contingency</u>	<u>175,000</u>
<u>Environmental Subtotal</u>	<u>1,925,000</u>

Construction	8,833,148
Contingency	885,054
Legal	113,500
Accounting	30,000
Reserves	850,148
Consultants	87,433

<u>Other Commercial</u>	<u>4,745,142</u>
<u>Commercial Subtotal</u>	<u>15,544,425</u>
Architect - Design	988,670
Architect - Supervision	300,899
Engineering Fees	64,478
PNA Report	2,500
Permit Expediter	50,000
As-Is Plats & Surveys	29,250
Accountant - Tax Preparation	25,000

Accountant - General

Legal - Organizational	751,500
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Legal - Syndication 270,000 Consultant - Historic 90,250

Consultant - Financial 164,975 Consultant - TIF 75,000 Appraisal 67,500 Market Study 27,500 Phase I Environ. Report 50,000

<u>Title &amp; Recording Fees</u>	<u>71,250</u>
<u>Professional Fees Subtotal</u>	<u>3,123,772</u>

Tax Credit Issuer Fees 94,050 Application Fees 8,750 Construction Points 557,250 Construction Inspection 47,500 Lender Legal Fees 247,000

Bond -- Rating Agency	866,511
Bond-Trustee 10,000 Bond - Bond Counsel 70,000	

<u>Construction Interest</u>	<u>5,123,300</u>
<u>Lender Fees Subtotal</u>	<u>7,024,361</u>
Hazard Insurance 608,000	
<u>Real Estate Taxes</u>	<u>114,000</u>
<u>Construction Period Subtotal</u>	<u>722,000</u>
<u>Other Marketing &amp; Leasing</u>	<u>191,200</u>
<u>Marketing &amp; Leasing Subtotal</u>	<u>191,200</u>
Tenant Relocation Subtotal	:
<u>Developer Fee</u>	<u>7,280,590</u>
<u>Developer Fee Subtotal</u>	<u>7,280,590</u>

Lease-Up Reserve 624,506 ACC Reserve 396,000 Insurance Reserve 140,759

Operating Reserve	1,875,000
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Replacement Reserve 83,650	
<u>Other Reserves</u>	<u>126,000</u>
<u>Reserves Subtotal</u>	<u>3,245,915</u>
Tenant Services Subtotal	:
Grand Total Dev Costs 109,013,853	

EXHIBIT H-2 PROJECT CONSTRUCTION BUDGET [NOT ATTACHED FOR PURPOSES OF ORDINANCE]

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EXHIBIT I APPROVED PRIOR EXPENDITURES [NOT ATTACHED FOR PURPOSES OF  
ORDINANCE]

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EXHIBIT J OPINION OF DEVELOPER'S COUNSEL [To be retyped  
on the Developer's Counsel's letterhead]

City of Chicago  
121 North LaSalle Street  
Chicago, IL 60602

ATTENTION: Corporation Counsel

Ladies and Gentlemen:

We have acted as counsel to \_\_\_\_\_, an [Illinois]  
(the "Developer"), in connection with the purchase of certain land and the construction of certain  
facilities thereon located in the \_\_\_\_\_ Redevelopment Project  
Area (the "Project"). In that capacity, we have examined, among other things, the following agreements,  
instruments and documents of even date herewith, hereinafter referred to as the "Documents":

- (a) \_\_\_\_\_ Redevelopment Agreement (the "Agreement") of even  
date herewith, executed by the Developer and the City of Chicago (the "City");
- [(b) the Escrow Agreement of even date herewith executed by the Developer and the City;]
- c) [insert other documents including but not limited to documents related to purchase and financing of  
the Property and all lender financing related to the Project]; and
- d) all other agreements, instruments and documents executed in connection with the foregoing.

In addition to the foregoing, we have examined

- a) the original or certified, conformed or photostatic copies of the Developer's (i) Articles of  
Incorporation, as amended to date, (ii) qualifications to do business and certificates of good standing in  
all states in which the Developer is qualified to do business, (iii) By-Laws, as amended to date, and (iv)  
records of all corporate proceedings relating to the Project [revise if the Developer is not a  
corporation]; and
- b) such other documents, records and legal matters as we have deemed necessary or relevant for

purposes of issuing the opinions hereinafter expressed.

In all such examinations, we have assumed the genuineness of all signatures (other than those of the Developer), the authenticity of documents submitted to us as originals and conformity to the originals of all documents submitted to us as certified, conformed or photostatic copies.

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Based on the foregoing, it is our opinion that:

1. The Developer is a corporation duly organized, validly existing and in good standing under the laws of its state of [incorporation] [organization], has full power and authority to own and lease its properties and to carry on its business as presently conducted, and is in good standing and duly qualified to do business as a foreign [corporation] [entity] under the laws of every state in which the conduct of its affairs or the ownership of its assets requires such qualification, except for those states in which its failure to qualify to do business would not have a material adverse effect on it or its business.

2. The Developer has full right, power and authority to execute and deliver the Documents to which it is a party and to perform its obligations thereunder. Such execution, delivery and performance will not conflict with, or result in a breach of, the Developer's [Articles of Incorporation or By-Laws] [describe any formation documents if the Developer is not a corporation] or result in a breach or other violation of any of the terms, conditions or provisions of any law or regulation, order, writ, injunction or decree of any court, government or regulatory authority, or, to the best of our knowledge after diligent inquiry, any of the terms, conditions or provisions of any agreement, instrument or document to which the Developer is a party or by which the Developer or its properties is bound. To the best of our knowledge after diligent inquiry, such execution, delivery and performance will not constitute grounds for acceleration of the maturity of any agreement, indenture, undertaking or other instrument to which the Developer is a party or by which it or any of its property may be bound, or result in the creation or imposition of (or the obligation to create or impose) any lien, charge or encumbrance on, or security interest in, any of its property pursuant to the provisions of any of the foregoing, other than liens or security interests in favor of the lender providing Lender Financing (as defined in the Agreement).

3. The execution and delivery of each Document and the performance of the transactions contemplated thereby have been duly authorized and approved by all requisite action on the part of the Developer.

4. Each of the Documents to which the Developer is a party has been duly executed and delivered by a duly authorized officer of the Developer, and each such Document constitutes the legal, valid and binding obligation of the Developer, enforceable in accordance with its terms, except as limited by applicable bankruptcy, reorganization, insolvency or similar laws affecting the enforcement of creditors' rights generally.

5. Exhibit A attached hereto (a) identifies each class of capital stock of the Developer, (b) sets forth the number of issued and authorized shares of each such class, and (c) identifies the record owners of shares of each class of capital stock of the Developer and the number of shares held of record by each such holder. To the best of our knowledge after diligent inquiry, except as set forth on Exhibit A, there are no warrants, options, rights or commitments of purchase, conversion, call or exchange or other rights or restrictions with respect to any of the capital stock of the Developer. Each outstanding share of the capital stock of the Developer is duly authorized, validly issued, fully paid and nonassessable.

6. To the best of our knowledge after diligent inquiry, no judgments are outstanding against the Developer, nor is there now pending or threatened, any litigation, contested claim or governmental proceeding by or against the Developer or affecting the Developer or its property, or seeking to restrain or

enjoin the performance by the Developer of the Agreement or the transactions contemplated by the Agreement, or contesting the validity thereof. To the best of our knowledge after diligent inquiry, the Developer is not in default with respect to any order, writ,

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injunction or decree of any court, government or regulatory authority or in default in any respect under any law, order, regulation or demand of any governmental agency or instrumentality, a default under which would have a material adverse effect on the Developer or its business.

7. To the best of our knowledge after diligent inquiry, there is no default by the Developer or any other party under any material contract, lease, agreement, instrument or commitment to which the Developer is a party or by which the company or its properties is bound.

8. To the best of our knowledge after diligent inquiry, all of the assets of the Developer are free and clear of mortgages, liens, pledges, security interests and encumbrances except for those specifically set forth in the Documents.

9. The execution, delivery and performance of the Documents by the Developer have not and will not require the consent of any person or the giving of notice to, any exemption by, any registration, declaration or filing with or any taking of any other actions in respect of, any person, including without limitation any court, government or regulatory authority.

10. To the best of our knowledge after diligent inquiry, the Developer owns or possesses or is licensed or otherwise has the right to use all licenses, permits and other governmental approvals and authorizations, operating authorities, certificates of public convenience, goods carriers permits, authorizations and other rights that are necessary for the operation of its business.

11. A federal or state court sitting in the State of Illinois and applying the choice of law provisions of the State of Illinois would enforce the choice of law contained in the Documents and apply the law of the State of Illinois to the transactions evidenced thereby.

We are attorneys admitted to practice in the State of Illinois and we express no opinion as to any laws other than federal laws of the United States of America and the laws of the State of Illinois.

[Note: include a reference to the laws of the state of incorporation/organization of the Developer, if other than Illinois.]

This opinion is issued at the Developer's request for the benefit of the City and its counsel, and may not be disclosed to or relied upon by any other person.

Very truly yours,

By:  
Name:

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EXHIBIT K

PRELIMINARY TIF PROJECTION - REAL ESTATE TAXES [NOT ATTACHED FOR PURPOSES OF  
ORDINANCE]

All capitalized terms which are not defined herein has the meanings given such terms in the Agreement.

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[Developer]

By:  
Name:  
Title:

Subscribed and sworn before me this      day of

My commission expires: \_ Agreed and accepted:

Name: Title:

City of Chicago  
Department of Housing and Economic Development



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EXHIBIT M  
FORM OF NOTE

REGISTERED NO. R-1  
MAXIMUM AMOUNT \$25,000,000

UNITED STATES OF AMERICA STATE OF ILLINOIS COUNTY OF COOK CITY OF  
CHICAGO TAX INCREMENT ALLOCATION REVENUE NOTE (47<sup>th</sup> AND KING DRIVE  
REDEVELOPMENT PROJECT), TAXABLE SERIES A

Registered Owner: Burton Rosenwald GP, LLC, an Illinois limited liability company

Interest Rate: Zero percent per annum

Maturity Date: [Not later than December 31, 2026]

" KNOW ALL PERSONS BY THESE PRESENTS, that the City of Chicago, Cook County, Illinois (the "City"), hereby acknowledges itself to owe and for value received promises to pay to the Registered Owner identified above, or registered assigns as hereinafter provided, on or before the Maturity Date identified above, but solely from the sources hereinafter identified, the principal amount of this Note from time to time advanced by the Registered Owner to pay costs of the Project (as hereafter defined) in accordance with the ordinance hereinafter referred to up to the principal amount of \$25,000,000.

Principal of this Note from the Incremental Taxes (as defined in the hereinafter defined Redevelopment Agreement) shall be paid at such times and in such amounts as set forth in Section 4.03(b) of the Redevelopment Agreement. The principal of this Note is payable in lawful money of the United States of America, and shall be made to the Registered Owner hereof as shown on the registration books of the City maintained by the Comptroller of the City, as registrar and paying agent (the "Registrar"), at the close of business on the fifteenth day of the month immediately prior to the applicable payment, maturity or redemption date, and shall be paid by check or draft of the Registrar, payable in lawful money of the United States of America, mailed to the address of such

Registered Owner as it appears on such registration books or at such other address furnished in writing by such Registered Owner to the Registrar; provided, that the final installment of principal will be payable solely upon presentation of this Note at the principal office of the Registrar in Chicago, Illinois or as otherwise directed by the City. The Registered Owner of this Note shall note on the Payment Record attached hereto the amount and the date of any payment of the principal of this Note promptly upon receipt of such payment.

This Note is issued by the City in the principal amount of advances made from time to time by the Registered Owner up to \$25,000,000 for the purpose of paying the costs of certain eligible redevelopment project costs incurred by Burton Rosenwald GP, LLC, an Illinois limited liability company (the "Project"), which were [acquired], [constructed] and [installed] in connection with the development of a site in the 47<sup>th</sup> and King Drive Redevelopment Project Area (the "Project Area") in the City, all in accordance with the Constitution and the laws of the State of Illinois, and particularly the Tax Increment Allocation Redevelopment Act (65 ILCS 5/11-74.4-1 et seq.) (the "TIF Act"), the Local Government Debt Reform Act (30 ILCS 350/1 et seq.) and an Ordinance adopted by the City Council of the City on , 2013 (the "Ordinance"), in all respects as by law required.

The City has assigned and pledged certain rights, title and interest of the City in and to certain incremental ad valorem tax revenues from the Project Area which the City is entitled to receive pursuant to the TIF Act and the Ordinance, in order to pay the principal of this Note. Reference is hereby made to the aforesaid Ordinance and the Redevelopment Agreement for a description, among others, with respect to the determination, custody and application of said revenues, the nature and extent of such security with respect to this Note and the terms and conditions under which this Note is issued and secured. THIS NOTE IS A SPECIAL LIMITED OBLIGATION OF THE CITY, AND^ IS PAYABLE SOLELY FROM AVAILABLE EXCESS INCREMENTAL TAXES, AND SHALL BE A VALID CLAIM OF THE REGISTERED OWNER HEREOF ONLY AGAINST SAID SOURCES. THIS NOTE SHALL NOT BE DEEMED TO CONSTITUTE AN INDEBTEDNESS OR A LOAN AGAINST THE GENERAL TAXING POWERS

OR CREDIT OF THE CITY, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY

PROVISION. THE REGISTERED OWNER OF THIS NOTE SHALL NOT HAVE THE RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE CITY, THE STATE OF ILLINOIS OR ANY POLITICAL SUBDIVISION THEREOF TO PAY THE PRINCIPAL OF THIS NOTE. The principal of this Note is subject to redemption on any date, as a whole or in part, at a redemption price of 100% of the principal amount thereof being redeemed. There shall be no prepayment penalty. Notice of any such redemption shall be sent by registered or certified mail not less than five (5) days nor more than sixty (60) days prior to the date fixed for redemption to the registered owner of this Note at the address shown on the registration books of the City maintained by the Registrar or at such other address as is furnished in writing by such Registered Owner to the Registrar.

This Note is issued in fully registered form in the denomination of its outstanding principal amount. This Note may not be exchanged for a like aggregate principal amount of notes or other denominations.

This Note is transferable by the Registered Owner hereof in person or by its attorney duly authorized in writing at the principal office of the Registrar in Chicago, Illinois, but only in the manner and subject to the limitations provided in the Ordinance, and upon surrender and cancellation of this Note. Upon such transfer, a new Note of authorized denomination of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor. The Registrar shall not be required to transfer this Note during the period beginning at the close of business on the fifteenth day of the month immediately prior to the maturity date of this Note nor to transfer this Note after notice calling this Note or a portion hereof for redemption has been mailed, nor during a period of five (5) days next preceding mailing of a notice of redemption of this Note. Such transfer shall be in accordance with the form at the end of this Note.

This Note hereby authorized shall be executed and delivered as the Ordinance and the Redevelopment Agreement provide.

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Pursuant to the Rosenwald Courts Redevelopment Agreement dated as of \_\_\_\_\_, 2013 among the City, Burton Rosenwald GP, LLC, an Illinois limited liability company, and Rosenwald Courts Apartments, LP, an Illinois limited partnership (the "Redevelopment Agreement"), the Registered Owner has

agreed to construct the Project and to advance funds for the construction of certain facilities related to the Project on behalf of the City. The cost of such construction in the amount of \$25,000,000 shall be deemed to be a disbursement of the proceeds of this Note.

Pursuant to Section 15.02 of the Redevelopment Agreement, the City has reserved the right to suspend or terminate payments of principal on this Note upon the occurrence of certain conditions. The City shall not be obligated to make payments under this Note if an Event of Default (as defined in the Redevelopment Agreement), or condition or event that with notice or the passage of time or both would constitute an Event of Default, has occurred. Such rights shall survive any transfer of this Note.

The City and the Registrar may deem and treat the Registered Owner hereof as the absolute owner hereof for the purpose of receiving payment of or on account of principal hereof and for all other purposes and neither the City nor the Registrar shall be affected by any notice to the contrary, unless transferred in accordance with the provisions hereof.

It is hereby certified and recited that all conditions, acts and things required by law to exist, to happen, or to be done or performed precedent to and in the issuance of this Note did exist, have happened, have been done and have been performed in regular and due form and time as required by law; that the issuance of this Note, together with all other obligations of the City, does not exceed or violate any constitutional or statutory limitation applicable to the City.

This Note shall not be valid or become obligatory for any purpose until the certificate of authentication hereon shall have been signed by the Registrar.

(THE REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK)

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IN WITNESS WHEREOF, the City of Chicago, Cook County, Illinois, by its City Council, has caused its official seal to be imprinted by facsimile hereon or hereunto affixed, and has caused this Note to be signed by the duly authorized signature of the Mayor and attested by the duly authorized

signature of the City Clerk of the City, all as of , 2013.

Mayor

(SEAL) Attest:

City Clerk

CERTIFICATE OF  
AUTHENTICATION

This Note is described in the within mentioned Ordinance and is the Tax Increment Allocation Revenue Note (47<sup>th</sup> and King Drive Redevelopment Project), Taxable Series 2013A, of the City of Chicago, Cook County, Illinois.

Registrar and Paying Agent Comptroller of the City of Chicago, Cook County, Illinois

Comptroller Date:

PRINCIPAL PAYMENT RECORD DATE OF PAYMENT PRINCIPAL PAYMENT

PRINCIPAL BALANCE DUE

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(ASSIGNMENT)

FOR VALUE RECEIVED, the undersigned sells, assigns and transfers unto the within Note and does hereby irrevocably constitute and appoint attorney to transfer the said Note on the books kept for registration thereof with full power of substitution in the premises.

Dated:

Registered Owner

NOTICE: The signature to this assignment must correspond with the name of the Registered Owner as it appears upon the face of the Note in every particular, without alteration or enlargement or any change whatever.

Signature Guaranteed:

Notice: Signature(s) must be guaranteed by a member of the New York Stock Exchange or a commercial bank or trust company.

Consented to by:

CITY OF CHICAGO

DEPARTMENT OF HOUSING AND ECONOMIC DEVELOPMENT

BY:

ITS:

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CERTIFICATE OF EXPENDITURE

(Closing Date)

To: Registered Owner

Re: City of Chicago, Cook County, Illinois (the "City")  
\$25,000,000 Tax Increment Allocation Revenue Note  
(47<sup>th</sup> and King Drive Redevelopment Project, Taxable Series 2013A)  
(the "TIFNote")

This Certificate is submitted to you, Registered Owner of the TIF Note, pursuant to the Ordinance of the City authorizing the execution of the TIF Note adopted by the City Council of the City on \_\_\_\_\_, 2013 (the "Ordinance"). All terms used herein shall have the same meaning as when used in the Ordinance.

The City hereby certifies that \_\_\_\_\_ is advanced as principal under the TIF Note as of the date hereof. Such amount has been properly incurred, is a proper charge made or to be made in connection with the redevelopment project costs defined in the Ordinance and has not been the basis of any previous principal advance. As of the date hereof, the outstanding principal balance under the TIF Note is \$ \_\_\_\_\_, including the amount of this Certificate and

less payment made on the TIF Note.

IN WITNESS WHEREOF, the City has caused this Certificate to be signed on its behalf as  
of .

CITY OF CHICAGO

By:

Commissioner  
Department of Housing and Economic Development

AUTHENTICATED BY:

REGISTRAR

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EXHIBIT N [intentionally omitted]



79

EXHIBIT O [intentionally omitted]

80

EXHIBIT P FORM OF PAYMENT BOND [NOT ATTACHED FOR PURPOSES OF ORDINANCE]

**81**

EXHIBIT Q ENVIRONMENTAL DOCUMENTS [NOT ATTACHED FOR PURPOSES OF ORDINANCE]

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EXHIBIT R

2FM ENVIRONMENTAL COMPLIANCE CERTIFICATION [NOT ATTACHED FOR PURPOSES OF  
ORDINANCE]

**Ordinance Exhibit E**

**Additional Financing**

**1. Chicago Housing Authority ("CHA") Capital Funds Loan (the "CHA Loan")**

Amount: \$17,370,000 or such amount as may be acceptable to the Authorized HED Officer

Term: Not to exceed 40 years plus construction period

Source: CHA or another entity acceptable to the Authorized HED Officer

Interest: 1.00% per annum during construction; 0.25% per annum during term or such interest rate as may be acceptable to the Authorized HED Officer

Security: Mortgage on the Property junior to the Senior Mortgage

**2. Sponsor Loans**

Amount: \$35,443,572 or such amount as may be acceptable to the Authorized HED Officer

Term: Not to exceed 40 years plus construction period

Source: Seller Financing, Incremental Taxes and IAHTC Donation Proceeds

Interest: 2.4% per annum on Seller Financing or such other interest rate acceptable to the Authorized HED Officer and 0% per annum on Incremental Taxes and IAHTC Proceeds (see item 5 below)

Security: Mortgage on the Property junior to the Senior Mortgage

### **3. Illinois Department of Commerce and Economic Opportunity Grant**

Amount: \$893,800 or such amount as may be acceptable to the Authorized HED Officer; such grant may be received by the General Partner or Managing Member and then loaned, subgranted or otherwise contributed to the Owner

### **4. Federal Home Loan Bank Grant**

Amount: \$700,000 or such amount as may be acceptable to the Authorized HED Officer; such grant may be received by the General Partner or Managing Member and then loaned, subgranted or otherwise contributed to the Owner

### **5. Low-Income Housing Tax Credit ("LIHTC"), Illinois Affordable Housing Tax Credit ("IAHTC") and Historic Tax Credit ("HTC") Proceeds**

Amount: LIHTC Proceeds: Approximately \$32,659,718 or such amount as may be acceptable to the Authorized HED Officer

IAHTC Proceeds: Approximately \$2,805,000 or such amount as may be

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acceptable to the Authorized HED Officer (see item 2 above)

HTC Proceeds: Approximately \$14,600,000 or such amount as may be acceptable to the Authorized HED Officer

Source: To be derived from the syndication of the LIHTCs, IAHTCs and HTCs allocated to the Residential Project

All or a portion of the LIHTC, IAHTC and/or HTC Proceeds may (1) be paid in on a delayed basis, and (2) used to repay all or a portion of the Borrower Loan and/or the CHA Loan

### **6. AMA Loan**

Amount: Such amount as may be acceptable to the Authorized HED Officer

Term: Such term as may be acceptable to the Authorized HED Officer

Source: AMA Realty Group of Illinois, LLC, an Illinois limited liability company, or another entity acceptable to the Authorized HED Officer

Interest: Such rate as may be acceptable to the Authorized HED Officer

Security: Mortgage on the Property junior to the Senior Mortgage and the NSP Mortgage

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**Ordinance Exhibit F Legal Description of City**

**Property**

[Subject to Final Title and Survey]

LOT 19 IN BLOCK 4 IN WINSTON'S SUBDIVISION OF THE SOUTH 34 ACRES OF THE WEST  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4648 SOUTH WABASH AVENUE  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-03-318-026-0000

LOTS 15, 16 AND 17 IN BLOCK 4 IN WINSTON'S SUBDIVISION OF THE SOUTH 34 ACRES OF THE WEST  $\frac{1}{2}$  OF THE SOUTHWEST  $\frac{1}{4}$  OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4638 SOUTH WABASH AVENUE  
CHICAGO, ILLINOIS 60653

PERMANENT INDEX NO. 20-03-318-033-0000

LOTS 42, 43, 44, 45 AND 46 IN BLOCK 6 IN WINSTON'S SUBDIVISION OF THE SOUTH 34 ACRES OF

THE WEST 7<sub>2</sub> OF THE SOUTHWEST % OF SECTION 3, TOWNSHIP 38 NORTH, RANGE 14, EAST OF THE THIRD PRINCIPAL MERIDIAN, IN COOK COUNTY, ILLINOIS.

COMMONLY KNOWN AS: 4601, 4609 AND 4611 SOUTH WABASH AVENUE  
CHICAGO, ILLINOIS 60605

PERMANENT INDEX NOS. 20-03-320-001-0000 (AFFECTS LOTS 44, 45 & 46)  
20-03-320-002-0000 (AFFECTS LOT 43) 20-03-320-  
003-0000 (AFFECTS LOT 42)

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of the original principal amount of the Note. Such fee shall be used by the City to pay legal costs or other expenses in connection with the Project, the Note, or other City issuances.

Section 17. 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, the Tax Agreement, or the Redevelopment Agreement (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.

Section 18. No Impairment. To the extent that any ordinance, resolution, rule, order or provision of 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 of the Municipal Code. Section 2-45-110 of the Municipal Code shall not apply to the Project.



Section 19. Effective Date. This Ordinance shall be in full force and effect immediately upon its passage and approval.

Section 20. Correction of Redevelopment Plan. Section V(G) of the Redevelopment Plan, as published on page 81270 of the Journal of March 27, 2002, is hereby corrected by changing the reference to "December 31, 2025" to "December 31, 2026."

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