RESOLUTION NO. 87-89

A RESOLUTION APPROVING THE ISSUANCE BY THE HOUSING FINANCING AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, OF ITS MULTIFAMILY HOUSING REFUNDING REVENUE BONDS (REMINGTON AT PONTE VEDRA PROJECT), IN THE AGGREGATE PRINCIPAL AMOUNT OF \$12,000,000 FOR THE PURPOSE OF RE-FUNDING THE AUTHORITY'S OUTSTANDING MULTI-FAMILY HOUSING REVENUE BONDS (REMINGTON AT PONTE VEDRA PROJECT) DATED AUGUST 1, 1985, AND ISSUED ON AUGUST 15, 1985, TO FINANCE A PART OF THE COST OF THE ACQUISITION, CONTRUCTION AND INSTALLATION OF A 344-UNIT MULTIFAMILY HOUSING DEVELOPMENT LOCATED IN ST. JOHNS COUNTY, FLORIDA; APPROVING THE AUTHORITY'S PROGRAM GUIDELINES WITH RESPECT TO THE QUALI-FICATIONS OF ELIGIBLE TENANTS OF THE DEVELOP-MENT; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA:

SECTION 1. Recitals. It is hereby found, ascertained, determined and declared that:

A. The Housing Finance Authority of St. Johns County, Florida (the "Issuer"), is a public body corporate and politic duly created and existing under and by virtue of Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), and is duly authorized and empowered by the Act (i) to provide for the issuance of and to issue and sell its multifamily housing revenue bonds for the purpose of making loans for the acquisition and construction of qualifying multifamily housing developments or portions thereof, and (ii) to provide for the issuance of and to issue and sell its refunding bonds for the purpose of refunding its previously issued and outstanding revenue bonds.

B. The Issuer was duly activated and authorized to act in St. Johns County, Florida (the "County"), pursuant to the provisions of the Act, by Ordinance No. 80-7 of the Board of County Commissioners of the County (the "Board of County Commissioners") adopted on February 26, 1980, as supplemented by Resolution No. 80-25 of the Board of County Commissioners adopted on March 11, 1980, which Ordinance and Resolution have not been altered, amended or rescinded, except to the extent supplemented for the purpose of apointing new members to the Issuer as vacancies have occurred, and remain in full force and effect.

- C. On April 20, 1987, the Issuer adopted Resolution No. 87-2 (the "Resolution"), authorizing the issuance of its Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) (the "Bonds"), in the aggregate principal amount of \$12,000,000, for the purpose of refunding of Issuer's outstanding \$12,000,000 Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project) dated as of August 1, 1985 (the "1985 Bonds"), which were issued for the purpose of financing a part of the cost of acquiring, constructing and installing a 344-unit multifamily housing development known as "The Remington at Ponte Vedra Lakes" (the "Project") located in the County at 611 Ponte Vedra Lakes Boulevard, Ponte Vedra Beach, Florida, on a site consisting of approximately 28.55 acres fronting on Ponte Vedra Lakes Boulevard northeast of the intersection of TPC Boulevard and Ponte Vedra Lakes Boulevard. The Project was initally owned and operated by Gene Branscome, an individual. Subsequent to the issuance of the 1985 Bonds title to the Project was transferred to Country View Property, Ltd., a Texas limited partnership the general partners of which are Daseke Property Corporation, a Texas corporation, and Daseke Associates, Ltd., a Texas limited partnership. Title to the Project has been or will be transferred prior to the issuance of the Bonds to Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact
- D. Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"), requires that the issuance of the Bonds be approved by an "applicable elected representative" after a public hearing following reasonable public notice, in order for the interest on the Bonds to be exempt from federal income taxation under applicable provisions of Section 103 of the Code; the Board of County Commissioners constitutes an "applicable elected representative" for purposes of Section 147(f) of the Code.
- E. On April 6, 1987, the Issuer published notice of the public meeting of the Issuer to be held and of the public hearing to be conducted by the Issuer on April 20, 1987, and pursuant to such notice the Issuer conducted a public hearing on April 20, 1987, upon reasonable public notice at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project and the issuance of the Bonds.
- F. The Issuer has requested that the Board of County Commissioners approve the issuance of the Bonds and the Resolution and the documentation attached as exhibits thereto, including the Program Guidelines of the Issuer establishing the qualifications of eligible tenants of the housing development, and the method of sale of the Bonds as provided in the Resolution, in order to satisfy the requirement of Section 147(f) of the Code for the interest on the Bonds to be exempt from federal income taxation under applicable provisions of Section 103 of the Code

and to satisfy the requirements of County Ordinance No. 80-7 creating and establishing the Issuer.

- G. Prior to the issuance of the 1985 Bonds, by Resolution No. 84-120 duly adopted by the Board of County Commissioners on October 9, 1984, the Board of County Commissioners approved the Program Guidelines of the Issuer establishing the qualifications of eligible tenants of the Project, which Program Guidelines have not been altered, amended or rescinded and remain in full force and effect and are attached to the Resolution as part of the documentation attached as exhibits thereto.
- H. The purposes of the Act will be effectively served if, and it is necessary and desirable and in the best interest of the County that, the issuance of the Bonds, the Resolution and the documentation attached as exhibits thereto, including the Program Guidelines of the Issuer establishing the qualifications of eligible tenants of the housing development, and the method of sale of the Bonds as provided in the Resolution, shall be approved by the Board of County Commissioners.
- SECTION 2. Approval of Issuance of Bonds. The issuance of the Bonds as contemplated by the Resolution, the Resolution and the documentation attached as exhibits thereto, including the Program Guidelines of the Issuer establishing the qualifications of eligible tenants of the housing development, and the method of sale of the Bonds as provided in the Resolution, are hereby approved.

SECTION 3. Repealing Clause. All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflict, are hereby superseded and repealed.

SECTION 4. Effective Date. This Resolution shall take effect immediately.

PASSED AND ADOPTED this 28th day of April, 1987.

Chairman of the Board of County Commissioners of

St. Johns County, Florida

(OFFICIAL SEAL)

Clerk of the Circuit Court, ex officio Clerk of the Board of County Commissioners of St. Johns County, Florida I, Carl "Bud" Markel, Clerk of the Circuit Court, ex officio Clerk of the Board of County Commissioners of St. Johns County, Florida, hereby certify that the foregoing is a true and correct copy of Resolution No. 87-89 of said Board passed and adopted on April 28, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Board this 28th day of April, 1987.

Clerk of the Circuit Court, ex officio Clerk of the Board of County Commissioners of St. Johns County, Florida

RESOLUTION NO. 87-2 of the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

A RESOLUTION PROVIDING FOR AND AUTHORIZING THE ISSUANCE BY THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, OF ITS MULTIFAMILY HOUSING REFUNDING REVENUE BONDS (REMINGTON AT PONTE VEDRA PROJECT), IN THE AGGREGATE PRINCI-PAL AMOUNT OF \$12,000,000 (THE "BONDS"), FOR THE PURPOSE OF REFUNDING THE AUTHORITY'S OUT-STANDING MULTIFAMILY HOUSING REVENUE BONDS (REMINGTON AT PONTE VEDRA PROJECT), DATED AS OF AUGUST 1, 1985, AND ISSUED ON AUGUST 15, 1985 TO FINANCE A PART OF THE COST OF THE ACOUISITION, CONSTRUCTION AND INSTALLATION OF A 344-UNIT MULTIFAMILY HOUSING DEVELOPMENT LOCATED IN ST. JOHNS COUNTY, FLORIDA; PROVID-ING FOR THE RIGHTS OF THE OWNERS OF THE BONDS; PROVIDING FOR THE PAYMENT OF THE BONDS; MAKING CERTAIN OTHER COVENANTS AND AGREEMENTS IN CON-NECTION WITH THE ISSUANCE OF THE BONDS; ALL PURSUANT TO CHAPTER 159, PART IV, FLORIDA STATUTES, AS AMENDED; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE MEMBERS OF THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA:

SECTION 1. AUTHORITY FOR THIS RESOLUTION. This Resolution is adopted pursuant to the provisions of Chapter 159, Part IV, Florida Statutes, as amended, and other applicable laws.

SECTION 2. DEFINITIONS. Unless the context otherwise requires, the terms defined in this section shall have the meanings specified in this section. Words importing the singular shall include the plural, words importing the plural shall include the singular, and words importing persons shall include corporations and other entities or associations.

"Act" means Chapter 159, Part IV, Florida Statutes, as amended from time to time.

"Amended and Restated Loan Agreement" means the Amended and Restated Loan Agreement, to be executed by and between the Issuer and the Developer, amending and restating the Original Loan Agreement, substantially in the form attached hereto as Exhibit I and incorporated herein by reference.

"Amended and Restated Mortgage" means the Amended and Restated Mortgage and Security Agreement to be executed from the Developer to the Issuer (and to be assigned without recourse by the Issuer to the Trustee), amending and restating the Original Mortgage for the purpose of providing mortgage, security interest or other collateral security for the payment of the Bonds and the performance of the Developer's obligations under the Loan Agreement, substantially in the form attached hereto as Exhibit III and incorporated herein by reference.

"Amended and Restated Note" means the Amended and Restated Developer Note to be made by the Developer, payable to the order of the Issuer (and to be assigned without recourse by the Issuer to the Trustee), in a principal amount equal to the principal amount of the Bonds, amending and restating the Original Note and evidencing the Developer's indebtedness and obligation to repay the Loan made by the Issuer pursuant to the Loan Agreement, in the amounts and at the times required for the payment of the principal of, premium, if any, and interest on the Bonds when and as the same become due and payable and evidencing the Developer's indebtedness and obligation to pay its related and additional obligations pursuant to Article III of the Loan Agreement.

"Bank" means Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York, its successors and assigns.

"Bonds" means the Issuer's Multifamily Housing Refunding Revenue Bonds to be issued under the Indenture.

"1985 Bonds" means the Issuer's Multifamily Housing Revenue Bonds dated as of August 1, 1985, issued on August 15, 1985 in the aggregate principal amount of \$12,000,000 under and pursuant to the 1985 Indenture.

"Branscome" means Gene Branscome, an individual.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"Collateral Agreement" means the Collateral Agreement, to be executed by and between the Bank and the Trustee, substantially in the form attached hereto as Exhibit VI and incorporated herein by reference.

"Country View" means Country View Property, Ltd., a Texas limited partnership the general partners of which are Daseke

Properties Corporation, a Texas corporation, and Daseke Associates Limited, a Texas limited partnership.

"County" means St. Johns County, a political subdivision of the State.

"Developer" means Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida, and any successor, surviving, resulting or transferee Person as provided in the Loan Agreement.

"Empire" means Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York as issuer of the Empire Letter of Credit.

"Empire Letter of Credit" means the irrevocable transferable letter of credit issued by Empire pursuant to the Empire Letter of Credit Agreement, securing the Refunded Bonds.

"Empire Letter of Credit Agreement" means the Letter of Credit and Reimbursement Agreement, dated as of August 1, 1985, between Empire and Branscome.

"Escrow Deposit Agreement" means the Escrow Deposit Agreement, to be executed by and among the Issuer, the Escrow Holder, the 1985 Trustee and the Developer, substantially in the form attached hereto Exhibit IV and incorporated herein by reference.

"Escrow Holder" means a banking corporation, banking association or trust company, as selected by subsequent resolution of the Issuer adopted prior to the delivery of the Bonds.

"Indenture" means the Indenture to be executed by the Issuer in favor of the Trustee, substantially in the form attached hereto as Exhibit II and incorporated herein by reference.

"1985 Indenture" means the Indenture by and between the Issuer and the 1985 Trustee dated as of August 1, 1985, under and pursuant to which the 1985 Bonds were issued.

"Issuer" means the Housing Finance Authority of St.
Johns County, Florida, a public body corporate and politic duly created and existing under and by virtue of the Act, its successors and assigns.

"Land Use Restrictions" means the Land Use Restrictions, dated as of August 1, 1985, by and among the Issuer, Branscome and the Trustee, recorded under Clerk's No. 85-17682 on August 15, 1985, in Official Records Book 681, pages 751-774, public records of St. Johns County, Florida.

"Letter of Credit" means the irrevocable transferrable Letter of Credit to be issued by the Bank and delivered to the Trustee, substantially in the form thereof attached to the Letter of Credit Agreement as Exhibit A.

"Letter of Credit Agreement" means the Letter of Credit and Reimbursement Agreement, to be executed by and between the Developer and the Bank, substantially in the form attached hereto as Exhibit V and incorporated herein by reference.

"Loan" means the loan made by the Issuer pursuant to the Original Loan Agreement, as assumed by the Developer pursuant to the Assumption Agreement executed or to be executed by and between the Developer and the Issuer, and the Amended and Restated Loan Agreement to finance a part of the cost of the acquisition, construction and installation of the Project.

"Loan Agreement" means the Original Loan Agreement, as amended and restated by the Amended and Restated Loan Agreement.

"Mortgage" means the Original Mortgage, as amended and restated by the Amended and Restated Mortgage.

"Note" means the Original Note, as amended and restated by the Amended and Restated Note.

"Original Loan Agreement" means the Loan Agreement dated as of August 1, 1985, by and between the Issuer and Branscome.

"Original Mortgage" means the Mortgage and Security Agreement dated as of August 1, 1985, from Branscome, as Mortgager, to the Issuer, as Mortgagee (and assigned without recourse by the Issuer to the 1985 Trustee), recorded under Clerk's No. 85-17683 on August 15, 1985, in Official Records Book 681, pages 775-808, public records of St. Johns County, Florida.

"Original Note" means the Developer Note dated as of August 1, 1985, made by Branscome, payable to the order of the Issuer (and assigned without recourse by the Issuer to the 1985 Trustee), in the principal amount of \$12,000,000.

"Project" means the project described in subsection P(1) of Section 3 of this Resolution and in Exhibit A to the Amended and Restated Loan Agreement which has been or is to be acquired, constructed and installed in the County.

"Remarketing Agent" means Wertheim Schroder & Co. Incorporated, its successors and assigns.

"Remarketing Agreement" means the Remarketing Agreement to be executed by and among the Issuer, the Remarketing Agent,

the Trustee and the Developer, substantially in the form attached hereto as Exhibit VII and incorporated herein by reference.

"State" means the State of Florida.

"Trustee" means Sun Bank, National Association, a national banking association, with its principal corporate trust office presently located in Orlando, Florida, as trustee under the Indenture, or any other trust company or commercial bank qualified to serve as trustee under the Indenture as may be appointed pursuant to the terms of the Indenture, and any successor trust company or commercial bank at the time serving as corporate trustee under the provisions of the Indenture.

"1985 Trustee" means Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under the 1985 Indenture.

Section 3. FINDINGS. It is hereby ascertained, determined and declared as follows:

- A. The Issuer is a public body corporate and politic duly created and existing under and by virtue of the Act and is duly authorized and empowered by the Act (i) to provide for the issuance of and to issue and sell its multifamily housing revenue bonds for the purpose of making loans for the acquisition and construction of qualifying housing developments or portions thereof, and (ii) to provide for the issuance of and to issue and sell its refunding bonds for the purpose of refunding its previously issued and outstanding revenue bonds.
- B. There is a shortage of housing available at prices or rentals which many persons and families can afford and a shortage of capital for investment in such housing. This shortage constitutes a threat to the health, safety, morals and welfare of the residents of the County and the State and deprives the County and the State of an adequate tax base.
- C. This shortage of housing cannot be relieved except through the encouragement of investment by private enterprise and the stimulation of construction and rehabilitation of housing through the use of public financing.
- D. The financing, acquisition, construction, reconstruction and rehabilitation of housing and of the real and personal property and other facilities necessary, incidental and appurtenant thereto are public purposes and governmental functions of public concern.

- E. By resolution duly adopted by the Issuer on October 3, 1984, as amended and supplemented, the Issuer authorized the issuance and sale of the 1985 Bonds in the original principal amount of \$12,000,000. On November 9, 1984, the 1985 Bonds were validated by final judgment of the Circuit Court of the Seventh Judicial Circuit, in and for St. Johns County, Florida. On August 15, 1985, in furtherance of the purposes for which the Issuer was created, the Issuer issued the 1985 Bonds under and pursuant to the 1985 Indenture for the purpose of financing a part of the cost of acquiring and constructing the Project.
- F. The proceeds derived from the sale of the 1985 Bonds were loaned to Branscome under the Original Loan Agreement, pursuant to which Branscome agreed to acquire, construct and install the Project and to make Loan payments sufficient to pay the principal of, premium, if any, and interest on the 1985 Bonds. As evidence of the Loan, Branscome executed and delivered the Original Note in the principal amount of \$12,000,000.
- G. The Loan is secured by the Original Mortgage which encumbers the Project and is recorded in the current public records of St. Johns County, Florida. The Issuer pledged and assigned the Original Loan Agreement (except for the right to enforce certain limited provisions of the Original Loan Agreement), the Original Note and the Original Mortgage to the 1985 Trustee as security for the 1985 Bonds. The use of the Project is governed and restricted by the Land Use Restrictions, which are recorded in the current public records of St. Johns County, Florida.
- H. Payment of the principal of and interest on the Refunded Bonds is secured by the Empire Letter of Credit, pursuant to the Empire Letter of Credit Agreement, in favor of the 1985 Trustee.
- I. Subsequent to the issuance of the 1985 Bonds, and with the prior written consent of the Issuer, Empire and the 1985 Trustee, Branscome sold the Project to Country View. Under and pursuant to an Assumption Agreement dated August 15, 1985, by and between Country View and the Issuer, Country View assumed the obligations of Branscome under the Land Use Restrictions, the Original Loan Agreement, the Original Note and the Original Mortgage (the "Project Loan Documents").
- J. On April 8, 1987, the Issuer approved, subject to certain conditions, the sale of the Project by Country View to the Developer. Under and pursuant to an Assumption Agreement by and between the Developer and the Issuer, executed or to be executed simultaneously with the transfer of the Project by

Country View to the Developer, the Developer assumed or will assume the obligations of Branscome and Country View under the Project Loan Documents.

- K. Pursuant to the 1985 Indenture the 1985 Bonds are subject to mandatory redemption by the Issuer in whole on the earliest practicable date, at a redemption price of par plus accrued interest to the redemption date, upon receipt of written notice by the 1985 Trustee from Empire of a default under the Empire Letter of Credit Agreement. Empire has advised the Issuer that a default under the Empire Letter of Credit Agreement has occurred and is continuing and that Empire intends to deliver written notice of such default to the 1985 Trustee in the manner provided in the 1985 Indenture.
- L. The Developer has requested the Issuer to issue the Bonds in the aggregate principal amount of \$12,000,000 for the purpose of refunding the 1985 Bonds, and the Issuer has determined that the refunding of the 1985 Bonds in the manner provided in the Indenture, the Loan Agreement and the Escrow Deposit Agreement will advance the public purposes expressed in the Act.
- M. In connection with the issuance of the Bonds, the Issuer has determined that it is necessary and appropriate that the Original Loan Agreement, the Original Note and the Original Mortgage be amended and restated for the purpose of providing for the payment of the principal of, premium, if any, and interest on the Bonds.
- N. The 1985 Indenture permits the refunding of the 1985 Bonds on the terms set forth therein, and the Authority has been advised by its bond counsel that the Escrow Deposit Agreement will, when properly completed and when the redemption dates of the 1985 Bonds are established, accomplish the defeasance of the 1985 Indenture and provide for payment of the 1985 Bonds.
- A public hearing was held by the Issuer on April 20, 1987, upon public notice published in a newspaper of general circulation in the County no less than 14 days prior to the scheduled date of such public hearing, at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project and to the issuance of the Bonds. The public hearing provided a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of the Bonds and the location and nature of the Project, and was held in a location which, under the facts and circumstances, was convenient for residents of the County. The notice was reasonably designed to inform residents of the County of the proposed issue, stated that the Issuer would be the issuer of the Bonds, stated the time and place for the hearing and contained the information required by the Code. The 14-day period was adequate for notice to be

brought to the attention of all interested persons, exceeds the normal periods for notices of public hearings conducted by the Issuer and various agencies of the County and the State, and provided sufficient time for interested persons to prepare for and to express their views at such hearing.

- p. Upon consideration of the documents described herein and the information presented to the Issuer at or prior to the adoption of this Resolution, including the information and views presented at the aforesaid public hearing, the Issuer has made and does hereby make the following findings and determinations:
 - (1) The Project consists of a 344-unit multifamily housing development known as "The Remington at Ponte Vedra Lakes," qualified as a residential rental project under Section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended and in effect on the date of issuance of the 1985 Bonds (the "1954 Code"), located in the County at 611 Ponte Vedra Lakes Boulevard, Ponte Vedra Beach, Florida, on a site consisting of approximately 28.55 acres fronting on Ponte Vedra Lakes Boulevard northeast of the intersection of TPC Boulevard and Ponte Vedra Lakes Boulevard.
 - (2) Under the Land Use Restrictions, the Developer is obligated and will continue to be obligated to rent not less than 20% of the units in the Project at all times to persons or families who, at the time of their initial occupancy, are persons of low or moderate income within the meaning of Section 103(b)(4)(A) of the 1954 Code and to rent the balance of the units in the Project at all times to persons or families who, at the time of their initial occupancy, are eligible tenants of moderate, middle or lesser income according to criteria determined by the Issuer in its Program Guidelines for the Project, as approved by the Board of County Commissioners of the County.
 - (3) The Project will serve paramount and predominantly public purposes by alleviating the shortage of housing in the County, improving living conditions, and advancing and improving the economic prosperity and the general welfare of the State and its people. It is desirable and will further the public purposes of the Act, and it will most effectively serve the purposes of the Act, for the Issuer to issue the Bonds under the Indenture for the purpose of refunding the 1985 Bonds, all as provided in the Indenture, the Loan Agreement and the Escrow Deposit Agreement, which contain such provisions as are necessary or convenient to effectuate the purposes of the Act.
 - (4) The Project is appropriate to the needs and circumstances of the County and the State, shall make a

significant contribution to the alleviation of housing shortages in the County and the State and the shortgage of capital for housing purposes and shall serve a public purpose by advancing the economic prosperity, the public health and the general welfare of the State and its people.

- (5) The principal of, premium, if any, and interest on the Bonds and all other pecuniary obligations of the Issuer under the Loan Agreement, the Indenture or otherwise, in connection with the Project or the Bonds, shall be payable by the Issuer solely from the Loan payments and other revenues and proceeds pledged therefor as provided in the Indenture. Neither the faith and credit nor the taxing power of the Issuer, the County or of the State or of any other political subdivision thereof, is pledged to the payment of the Bonds issuable under the Indenture or of such other pecuniary obligations of the Issuer, and neither the Issuer, the County, the State nor any other political subdivision thereof shall ever be required or obligated to levy ad valorem taxes on any property within their territorial limits to pay the principal of, premium, if any, or interest on such Bonds or other pecuniary obligations or to pay the same from any funds thereof other than such revenues, receipts and proceeds so pledged, and the Bonds shall not constitute a lien upon any property owned by the Issuer, the County, the State or any other political subdivision thereof, other than the Issuer's interest in the Note, the Mortgage and the Loan Agreement and the property rights, receipts, revenues and proceeds derived under the financing agreements and pledged therefor under and as provided in the Indenture.
- (6) The payments to be made by the Developer under the Note and the Loan Agreement will be sufficient to pay all principal of, premium, if any, and interest on the Bonds, when and as the same shall become due, and all other costs incurred by the Issuer in connection with the refunding of the 1985 Bonds and the acquisition, construction, installation and administration of the Project, except as may be paid out of the proceeds of sale of the Bonds or otherwise, and to make all other payments required by the Indenture.
- (7) Payment of the Bonds will be secured initially by the Letter of Credit to be issued by the Bank in favor of the Trustee pursuant to the Letter of Credit Agreement by and between the Developer and the Bank. Pursuant to the Collateral Agreement between the Bank and the Trustee, the Bank will pledge to the Trustee, as security for its obligations under the Letter of Credit, certain property in the manner, forms and amounts set forth in the Collateral Agreement (the "Collateral"). Under the Collateral Agreement, the Bank will be required to deliver the Collateral to Irving Trust Company,

New York, New York, as Administrator, or such other Administrator as the Bank and the Trustee shall designate prior to the issuance of the Bonds, for the benefit of the Trustee. In the event the Bank fails to honor a draw upon the Letter of Credit, the Trustee will be authorized to liquidate the Collateral and to apply the proceeds of such liquidation to pay any amounts the Bank has failed to pay under the Letter of Credit.

- (8) Upon the issuance of the Bonds, the interest thereon shall be excluded from gross income for federal income tax purposes under existing laws of the United States of America, in the opinion of Foley & Lardner, Bond Counsel, to be furnished at that time.
- (9) All requirements precedent to the adoption of this Resolution of the constitution and other laws of the State of Florida, including the Act, have been complied with.
- (10) The purposes of the Act will be most effectively served by the refunding of the 1985 Bonds in the manner provided in the Indenture, Loan Agreement and Escrow Deposit Agreement.

SECTION 4. REFUNDING AUTHORIZED. The refunding of the 1985 Bonds in the manner provided in the Indenture, the Loan Agreement and the Escrow Deposit Agreement is hereby authorized.

SECTION 5. AUTHORIZATION OF THE BONDS. The Bonds, issuable in substantially the form provided in the Indenture, in the aggregate principal amount of \$12,000,000, to be dated May 15, 1987, or such other date as shall be approved by the Issuer prior to the issue of the Bonds, having a final maturity date not exceeding 30 years from the date of issue thereof to be approved by the Issuer prior to the issue of the Bonds, payable all on the same maturity date or serially or in installments during the term of the issue, bearing interest from the date thereof to maturity payable periodically at such rate or rates, not to exceed the maximum nonusurious contract rate of interest allowed by law, nor the maximum bond interest rate allowed by Section 215.84(3), Florida Statutes, as amended, as shall be approved by the Issuer prior to the issue of the Bonds, being subject to redemption, being in the denominations and having such place or places of payment and other terms and provisions, all as shall be provided in the Indenture, are hereby approved and are hereby authorized for issuance in accordance with law and pursuant to the Indenture. The Issuer hereby authorizes and directs either its Chairman or Vice-Chairman to execute the Bonds, hereby authorizes and directs either its Secretary or Assistant Secretary to attest the Bonds and to affix thereon the official seal of the Issuer, any or all of the signatures for which execution and which sealing may be by facsimile, all in the manner as shall be provided in the Indenture, and hereby authorizes and directs the officer of the Issuer executing the Bonds to cause the Bonds to be authenticated by the Trustee and to be dated and delivered to the purchaser or purchasers thereof, as provided and upon the terms and conditions as shall be set forth in the Indenture, upon receipt by the Issuer, or by the Trustee for the account of the Issuer, of the purchase price thereof as hereinafter provided. All of the provisions of the Bonds, when so executed, authenticated, dated and delivered, shall be deemed to be part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 6. AUTHORIZATION OF EXECUTION AND DELIVERY OF AMENDED AND RESTATED LOAN AGREEMENT. The Amended and Restated Loan Agreement, substantially in the form thereof attached hereto as Exhibit I, with such changes, corrections, insertions and deletions as may be approved on behalf of the Issuer by the officer of the Issuer executing the same (such approval to be evidenced conclusively by such officer's execution thereof), is hereby approved and authorized. The Issuer hereby authorizes and directs its Chairman or Vice Chairman to execute the Amended and Restated Loan Agreement, hereby authorizes and directs its Secretary or Assistant Secretary to attest the Amended and Restated Loan Agreement and to affix thereon the official seal of the Issuer, and hereby authorizes and directs the officer of the Issuer executing the Amended and Restated Loan Agreement to cause the Amended and Restated Loan Agreement to be dated and delivered to the Developer. All of the provisions of the Amended and Restated Loan Agreement, when executed, dated and delivered by or on behalf of the Issuer as authorized herein and by or on behalf of the Developer, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 7. AUTHORIZATION OF EXECUTION AND DELIVERY OF INDENTURE. The Indenture, substantially in the form attached hereto as Exhibit II, with such changes, corrections, insertions and deletions as may be approved on behalf of the Issuer by the officer of the Issuer executing the same (such approval to be evidenced conclusively by such officer's execution thereof), is hereby approved and authorized. The Issuer hereby authorizes and directs its Chairman or Vice Chairman to execute the Indenture, hereby authorizes and directs its Secretary or Assistant Secretary to attest the Indenture and to affix thereon the official seal of the Issuer, and hereby authorizes and directs the officer of the Issuer executing the Indenture to cause the Indenture to be dated and delivered to the Trustee. All of the provisions of the Indenture, when executed, dated and delivered by or on behalf of the Issuer as authorized herein and by or on behalf of the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 8. AUTHORIZATION OF EXECUTION AND DELIVERY OF ASSIGNMENT OF AMENDED AND RESTATED NOTE AND AMENDED AND RESTATED MORTGAGE. The assignment of the Amended and Restated Note, substantially in the form thereof attached as Exhibit E to the Amended and Restated Loan Agreement, and the assignment of the Amended and Restated Mortgage, substantially in the form attached hereto as Exhibit III, each with such changes, corrections, insertions and deletions as may be approved on behalf of the Issuer by the officer of the Issuer executing said assignments (such approval to be evidenced conclusively by such officer's execution of said assignments), is hereby approved and authorized. Issuer hereby authorizes and directs its Chairman or Vice Chairman to execute said assignments and its Secretary or Assistant Secretary to attest said assignments and to affix thereon the official seal of the Issuer, upon proper execution of the Amended and Restated Note and the Amended and Restated Mortgage by the Developer and delivery to the Issuer, and hereby authorizes and directs the officer of the Issuer executing said assignments to cause the Amended and Restated Note and the Amended and Restated Mortgage to be dated and delivered to the Trustee, in the manner provided in the Amended and Restated Loan Agreement. All of the provisions of the Amended and Restated Note and the Amended and Restated Mortgage, when executed, dated and delivered by or on behalf of the Issuer as authorized herein and by or on behalf of the Developer, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 9. AUTHORIZATION OF EXECUTION AND DELIVERY OF ESCROW DEPOSIT AGREEMENT. The Escrow Deposit Agreement, substantially in the form attached hereto as Exhibit IV, with such changes, corrections, insertions and deletions as may be approved on behalf of the Issuer by the officer of the Issuer executing the same (such approval to be evidenced conclusively by such officer's execution thereof), is hereby approved and authorized. The Issuer hereby authorizes and directs its Chairman or Vice Chairman to execute the Escrow Deposit Agreement, hereby authorizes and directs its Secretary or Assistant Secretary to attest the Escrow Deposit Agreement and to affix thereon the official seal of the Issuer, and hereby authorizes and directs the officer of the Issuer executing the Escrow Deposit Agreement to cause the Escrow Deposit Agreement to be dated and delivered to the Escrow All of the provisions of the Escrow Deposit Agreement, when executed, dated and delivered by or on behalf of the Issuer as authorized herein and by or on behalf of the Escrow Holder, the 1985 Trustee and the Developer, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 10. APPROVAL OF LETTER OF CREDIT AGREEMENT. The Issuer hereby acknowledges that the Developer and the Bank will be entering into a Letter of Credit Agreement substantially in the form attached hereto as Exhibit V and pursuant thereto the

Bank will be issuing its Letter of Credit in favor of the Trustee in support of the Bonds. The Issuer does hereby acknowledge and approve the form of the Letter of Credit Agreement attached hereto, with such changes, corrections, insertions and deletions as may be approved by the Chairman or Vice Chairman of the Issuer and the Secretary or Assistant Secretary of the Issuer (such approval to be evidenced conclusively by such officers' execution of the Bonds), and does hereby acknowledge that the Bank will be receiving and obtaining, in accordance with and pursuant to the provisions of the Letter of Credit Agreement, a mortgage lien upon and security interest in the Project subordinate to the mortgage lien upon and security interest in the Project securing the Loan and the Bonds. All of the provisions of the Letter of Credit Agreement, when executed, dated and delivered by or on behalf of the Developer and the Bank, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 11. APPROVAL OF LETTER OF CREDIT AND COLLATERAL AGREEMENT. The Letter of Credit, substantially the form thereof attached as Exhibit A to the Letter of Credit Agreement, and the Collateral Agreement, substantially in the form attached hereto as Exhibit VI, each with such changes, corrections, insertions and deletions as may be approved by the Chairman or Vice Chairman of the Issuer and the Secretary or Assistant Secretary of the Issuer (such approval to be evidenced conclusively by such officers' execution of the Bonds), are hereby approved. All of the provisions of the Letter of Credit and the Collateral Agreement, when executed, dated and delivered by or on behalf of the Bank and the Trustee, shall be deemed to be a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 12. AUTHORIZATION OF EXECUTION AND DELIVERY OF The Bonds as authorized herein contain REMARKETING AGREEMENT. the right of the Bondholders to cause the Issuer to purchase or cause the purchase of the Bonds on certain dates upon the due or deemed tendering thereof pursuant to the terms of the Indenture. Accordingly, the Issuer hereby finds that it is necessary to appoint an exclusive Remarketing Agent to remarket the Bonds in the event of any such tender and to establish the interest rates on the Bonds in accordance with the directions set forth in the The Remarketing Agreement, substantially in the form Indenture. thereof attached hereto as Exhibit VII, with such changes, corrections, insertions and deletions as may be approved on behalf of the Issuer by the officer of the Issuer executing the same (such approval to be evidenced conclusively by such officer's execution thereof), is hereby approved and authorized. The Iss hereby authorizes and directs its Chairman or Vice Chairman to execute the Remarketing Agreement, hereby authorizes and directs its Secretary or Assistant Secretary to attest the Remarketing Agreement and to affix thereon the official seal of the Issuer,

and hereby authorizes and directs the officer of the Issuer executing the Remarketing Agreement to cause the Remarketing Agreement to be dated and delivered to the Remarketing Agent. All of the provisions of the Remarketing Agreement, when executed, dated and delivered by or on behalf of the Issuer as authorized herein and by or on behalf of the Remarketing Agent, the Trustee and the Developer, shall be deemed a part of this Resolution as fully and to the same extent as if incorporated verbatim herein.

SECTION 13. VALIDATION. James G. Sisco, Counsel for the Issuer, is hereby authorized, at the expense of the Developer, to prepare and file validation pleadings on behalf of the Issuer and to take any and all such action as he or Bond Counsel may reasonably deem necessary or desirable for the validation of the Bonds pursuant to Chapter 75, Florida Statutes, as amended.

SECTION 14. SALE OF THE BONDS. The Bonds shall be issued and sold in such manner, to such person or persons and at such price or prices consistent with the provisions of this Resolution, the Indenture, the Act and other applicable provisions of law, as shall be hereafter determined by resolution of the Issuer.

SECTION 15. AUTHORIZATION OF EXECUTION OF ISSUER'S AR-BITRAGE CERTIFICATE AND FILINGS UNDER SECTION 103 OF THE INTERNAL REVENUE CODE. The Issuer hereby authorizes and directs its Chairman or Vice-Chairman or either its Secretary or Assistant Secretary, being the persons hereby charged with the responsibility for issuing the Bonds, either alone or jointly, at the expense of the Developer (1) to execute and cause to be delivered to the purchaser(s) of the Bonds, the Developer and the Trustee the certification required by Sections 1.103-13, 1.103-14 and 1.103-15 of the Income Tax Regulations (relating to "arbitrage") promulgated under Section 148 of the Code, (2) to execute and cause to be filed with the Internal Revenue Service Internal Revenue Service Form 8038, as required by Section 149(e) of the Code, and (3) to execute and cause to be filed all such other filings as may be required under Section 103 of the Code. Such certification and other filings, when executed and delivered or filed by or on behalf of the Issuer as authorized herein shall be deemed to be a part of this Resolution as fully and to the same extent as if set forth verbatim herein. Such certification may be relied upon as the certification of the Issuer.

SECTION 16. AUTHORIZATION OF EXECUTION OF OTHER CERTIFICATES AND OTHER INSTRUMENTS. Either the Chairman or Vice Chairman of the Issuer or either the Secretary or Assistant Secretary of the Issuer are hereby authorized and directed, either alone or jointly, under the official seal of the Issuer, to execute and deliver certificates of the Issuer certifying such facts as counsel for the Issuer or Bond Counsel shall require in connection with the issuance, sale and delivery or the validation of the

Bonds, and to execute and deliver such other instruments, including but not limited to, deeds, assignments, bills of sale and financing statements, as shall be necessary or desirable to perform the Issuer's obligations under the Amended and Restated Loan Agreement, the Indenture, the Remarketing Agreement, the Escrow Deposit Agreement and the assignments of the Amended and Restated Note and the Amended and Restated Mortgage, and to consummate the transactions hereby authorized.

SECTION 17. NO PERSONAL LIABILITY. No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Bonds, the Amended and Restated Loan Agreement, the Indenture, the Amended and Restated Note, the Amended and Restated Mortgage or the assignments thereof, the Remarketing Agreement or the Escrow Deposit Agreement, or in any certificate or other instrument to be executed on behalf of the Issuer in connection with the issuance of the Bonds, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the Issuer in his or her individual capacity, and none of the foregoing persons nor any officer of the Issuer executing the Bonds, the Amended and Restated Loan Agreement, the Indenture, the assignments of the Amended and Restated Note and the Amended and Restated Mortgage, the Remarketing Agreement or the Escrow Deposit Agreement or any certificate or other instrument to be executed in connection with the issuance of the Bonds shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

SECTION 18. NO THIRD PARTY BENEFICIARIES. Except as otherwise expressly provided herein or in the documents herein mentioned, nothing in this Resolution or in such documents, express or implied, is intended or shall be construed to confer upon any person, firm, corporation or other organization, other than the Issuer, the Developer, the Trustee and the purchaser(s) of the Bonds (and subsequent owners from time to time of the Bonds) and the other parties executing such documents, any right, remedy or claim, legal or equitable, under and by reason of this Resolution or any provision hereof or of such documents, all provisions hereof and thereof being intended to be and being for the sole and exclusive benefit of the Issuer, the Developer, the Trustee and the purchaser(s) of the Bonds (and subsequent owners from time to time of the Bonds) and the other parties executing such documents. Further, the Issuer's approval of the Letter of Credit Agreement and the Collateral Agreement shall not confer any right, remedy or claim against the Issuer, legal or equitable, upon the parties thereto by reason of such approval.

SECTION 19. PREREQUISITES PERFORMED. All acts, conditions and things relating to the passage of this Resolution, to the issuance, sale and delivery of the Bonds, to the execution

and delivery of the Amended and Restated Loan Agreement, the Indenture, the Remarketing Agreement and the Escrow Deposit Agreement, and to the assignment and delivery of the Amended and Restated Note and the Amended and Restated Mortgage, required by the Constitution or other laws of the State, to happen, exist and be performed precedent to the passage hereof, and precedent to the issuance, sale and delivery of the Bonds, to the execution and delivery of the Amended and Restated Loan Agreement, the Indenture, the Remarketing Agreement and the Escrow Deposit Agreement, and to the assignment and delivery of the Amended and Restated Note and the Amended and Restated Mortgage, have either happened, exist and have been performed as so required or will have happened, will exist and will have been performed prior to such execution and delivery.

SECTION 20. COMPLIANCE WITH CHAPTER 218, PART III, FLORIDA STATUTES. The Issuer hereby approves and authorizes the completion, execution and filing with the Division of Bond Finance, Department of General Services of the State of Florida, at the expense of the Developer, of advance notice of the impending sale of the Bonds, of Bond Information Forms BF 2003 and BF 2004 and of a copy of Internal Revenue Service Form 8038, and any other acts as may be necessary to comply with Chapter 218, Part III, Florida Statutes, as amended.

SECTION 21. GENERAL AUTHORITY. The members, officials, attorneys, engineers or other agents or employees of the Issuer are hereby authorized to do all acts and things required of them by this Resolution, the Bonds, the Amended and Restated Loan Agreement, the Indenture, the Remarketing Agreement and the Escrow Deposit Agreement, and the assignments of the Amended and Restated Note and the Amended and Restated Mortgage, and to do all acts and things which are desirable and consistent with the requirements hereof or of the Bonds, the Amended and Restated Loan Agreement, the Indenture, the Remarketing Agreement and the Escrow Deposit Agreement, and the assignments of the Amended and Restated Note and the Amended and Restated Mortgage, for the full, punctual and complete performance of all the terms, covenants and agreements contained herein or in the Bonds, the Amended and Restated Loan Agreement, the Indenture, the Remarketing Agreement and the Escrow Deposit Agreement, and the assignments of the Amended and Restated Note and the Amended and Restated Mortgage.

SECTION 22. THIS RESOLUTION CONSTITUTES A CONTRACT. The Issuer covenants and agrees that this Resolution shall constitute a contract between the Issuer and the purchaser(s) of the Bonds, and all subsequent owners from time to time of the Bonds, and that all covenants and agreements set forth herein and in the Bonds, the Amended and Restated Loan Agreement, the Indenture, the assignments of the Amended and Restated Note and the Amended and Restated Mortgage, the Remarketing Agreement and the Escrow Deposit Agreement, to be performed by the Issuer shall be for the

equal and ratable benefit and security of the purchaser(s) of the Bonds and all subsequent owners from time to time of the Bonds, without privilege, priority or distinction as to lien or otherwise of any of the Bonds over any other of the Bonds.

SECTION 23. SEVERABILITY OF INVALID PROVISIONS. If any one or more of the covenants, agreements or provisions herein contained shall be held contrary to any express provisions of law or contrary to the policy of express law, though not expressly prohibited, or against public policy, or shall for any reason whatsoever be held invalid, then such covenants, agreements or provisions shall be null and void and shall be deemed separable from the remaining covenants, agreements or provisions, and shall in no way affect the validity of any of the other provisions hereof or of the Bonds issued under the Indenture.

SECTION 24. REPEALING CLAUSE. All resolutions or parts thereof in conflict with the provisions herein contained are, to the extent of such conflict, hereby superseded and repealed.

SECTION 25. APPROVAL BY BOARD OF COUNTY COMMISSIONERS. The Secretary of the Issuer is hereby authorized and directed to forward a certified copy of this Resolution to the Board of County Commissioners of the County, and the Chairman, the Vice Chairman, the Secretary or any Assistant Secretary of the Issuer is hereby authorized to take any other action, at the expense of the Developer, as may appear necessary and proper in satisfying the requirements of Section 147 of the Code.

SECTION 26. EFFECTIVE DATE. This Resolution shall become effective immediately upon its passage.

PASSED AND ADOPTED this 20th day of April, 1987.

(OFFICIAL SEAL)

Chairman, Housing Finance Authority of St. Johns County,

Florida

Secretary, Housing Finance Authority of St. Johns County, Florida I, F. Mark Gillis, Secretary of the Housing Finance Authority of St. Johns County, Florida, hereby certify that the foregoing is a true and correct copy of Resolution No. 87-2 of said Authority passed and adopted on April 20, 1987.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the official seal of said Authority this 20th day of April, 1987.

Secretary, Housing Finance Authority of St. Johns County, Florida

AC7SRPRS1

AMENDED AND RESTATED LOAN AGREEMENT

BETWEEN

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

AND

JACKSONVILLE VENTURES, INC.

Dated as of May 15, 1987

\$12,000,000 Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project)

The interest of the Housing Finance Authority of St. Johns County, Florida, in this Amended and Restated Loan Agreement has been assigned to Sun Bank, National Association, as Trustee under the Indenture dated as of the date hereof, between the Housing Finance Authority of St. Johns County, Florida, and Sun Bank, National Association.

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

LOAN AGREEMENT

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AMENDED AND RESTATED LOAN AGREEMENT

This AMENDED AND RESTATED LOAN AGREEMENT dated as of May 15, 1987 by and between the HOUSING FINANCE AUTHORITY OF ST.
JOHNS COUNTY, FLORIDA, a public body corporate and politic of the State of Florida (the "Authority"), and JACKSONVILLE VENTURES INC., a Delaware corporation duly authorized to transact business in the State of Florida (the "Developer"), amending and restating that certain Loan Agreement dated as of August 1, 1985, by and between Gene Branscome, an individual, and the Authority (the capitalized terms used in the recitals below having the meanings set forth in Article I below);

WITNESSETH:

WHEREAS, the Authority is a public body corporate and politic duly created and existing under and by virtue of the Act and is duly authorized and empowered by the Act (i) to provide for the issuance of and to issue and sell its multifamily housing revenue bonds for the purpose of making loans for the acquisition and construction of qualifying housing developments or portions thereof, and (ii) to provide for the issuance of and to issue and sell its refunding bonds for the purpose of refunding its previously issued and outstanding revenue bonds; and

WHEREAS, by resolution duly adopted by the Authority on October 3, 1984, as amended and supplemented, the Authority authorized the issuance and sale of the Refunded Bonds in the original principal amount of \$12,000,000; on November 9, 1984, the Refunded Bonds were validated by final judgment of the Circuit Court of the Seventh Judicial Circuit, in and for St. Johns County, Florida; and on August 15, 1985, in furtherance of the purposes for which the Authority was created, the Authority issued the Refunded Bonds under and pursuant to the Refunded Bonds Indenture for the purpose of financing a part of the cost of acquiring and constructing the Project; and

WHEREAS, the proceeds derived from the sale of the Refunded Bonds were loaned to Branscome under the Original Loan Agreement, pursuant to which Branscome agreed to acquire, construct and install the Project and to make Loan payments sufficient to pay the principal of, premium, if any, and interest on the Refunded Bonds; and as evidence of the Loan, Branscome executed and delivered the Original Note in the principal amount of \$12,000,000; and

WHEREAS, the Loan is secured by the Original Mortgage which encumbers the Project and is recorded in the current public records of St. Johns County, Florida; the Authority pledged and assigned the Original Loan Agreement (except for the right to enforce certain limited provisions of the Original Loan Agreement), the Original Note and the Original Mortgage to the Refunded Bonds Trustee as security for the Refunded Bonds; and the use of the Project is governed and restricted by the Land Use Restrictions, which are recorded in the current public records of St. Johns County, Florida; and

WHEREAS, payment of the principal of and interest on the Refunded Bonds is secured by the Empire Letter of Credit, pursuant to the Empire Letter of Credit Agreement, in favor of the Refunded Bonds Trustee; and

WHEREAS, subsequent to the issuance of the Refunded Bonds, and with the prior written consent of the Authority, Empire and the Refunded Bonds Trustee, Branscome sold the Project to Country View; and under and pursuant to an Assumption Agreement dated August 15, 1985, by and between Country View and the Authority, Country View assumed the obligations of Branscome under the Land Use Restrictions, the Original Loan Agreement, the Original Note and the Original Mortgage; and

WHEREAS, on April ___, 1987, with the prior written consent of the Authority, Empire and the Refunded Bonds Trustee, Country View sold the Project to the Developer; and under and pursuant to an Assumption Agreement dated April ___, 1987, by and between the Developer and the Authority, the Developer assumed the obligations of Branscome and Country View under the Land Use Restrictions, the Original Loan Agreement, the Original Note and the Original Mortgage; and

WHEREAS, pursuant to Section 4.01(b)(3) of the Refunded Bonds Indenture the Refunded Bonds are subject to mandatory redemption by the Authority in whole at the earliest practicable date, at a redemption price of par plus accrued interest to the redemption date, upon receipt of written notice by the Refunded Bonds Trustee from Empire of a default under the Empire Letter of Credit Agreement, and Empire has advised the Refunded Bonds Trustee that pursuant to said Section of the Refunded Bonds Indenture Empire shall deliver on the Delivery Date such written notice to the Refunded Bonds Trustee of such a default under the Empire Letter of Credit Agreement; and

WHEREAS, the Developer has requested the Authority to issue the Bonds in the aggregate principal amount of \$12,000,000

for the purpose of refunding the Refunded Bonds; and the Authority has determined that the refunding of the Refunded Bonds in the manner provided in the Indenture, the Loan Agreement and the Escrow Deposit Agreement will advance the public purposes expressed in the Act; and

WHEREAS, in connection with the issuance of the Bonds, the Authority has determined that it is necessary and appropriate that the Original Loan Agreement, the Original Note and the Original Mortgage be amended and restated for the purpose of providing for the payment of the principal of, premium, if any, and interest on the Bonds; and

WHEREAS, the Refunded Bonds Indenture permits the refunding of the Refunded Bonds on the terms set forth therein; and the Escrow Deposit Agreement will, when properly completed and when the redemption dates of the Refunded Bonds are established, accomplish the defeasance of the Refunded Bonds Indenture and provide for payment of the Refunded Bonds.

WHEREAS, a public hearing was held by the Authority on April 20, 1987, upon public notice published in a newspaper of general circulation in the County no less than 14 days prior to the scheduled date of such public hearing, at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project and to the issuance of the Bonds. The public hearing provided a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of the Bonds and the location and nature of the Project, and was held in a location which, under the facts and circumstances, was convenient for residents of the County. The notice was reasonably designed to inform residents of the County of the proposed issue, stated that the Authority would be the issuer of the Bonds, stated the time and place for the hearing and contained the information required by the Code. The 14-day period was adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notices of public hearings conducted by the Authority and various agencies of the County and the State, and provided sufficient time for interested persons to prepare for and to express their views at such hearing.

WHEREAS, the Authority, by resolution duly adopted on April 20, 1987, as amended and supplemented on ______, 1987, in accordance with all requirements of law, and after the above-mentioned public hearing duly held at such meeting, has duly authorized the execution and delivery of the Amended and Restated Loan Agreement, the Indenture and the Escrow Deposit

Agreement and the issuance of the Bonds in the the manner provided in the Indenture; and

whereas, on April ___, 1987, after the above-mentioned public hearing the issuance of the Bonds was approved by the Board of County Commissioners of the County, which is the governing body of the County and consists of elected public officials, from which the Authority derives its authority to issue revenue bonds such as the Bonds, and which is deemed to be the applicable elected representative of the Authority;

NOW, THEREFORE, in consideration of the premises and of the covenants and undertakings herein expressed, the Authority and the Developer agree as follows:

[The next page is One-1]

ARTICLE I

DEFINITIONS

Section 1.1 <u>Definitions</u>. As used in this Loan Agreement, the following terms and phrases shall have the following meanings:

"Act" means Chapter 159, Part IV, Florida Statutes, as amended, and other applicable laws.

"Administration Expenses" means the reasonable expenses and costs incurred by the Trustee, the Authority and the Fiduciaries in connection with the issuance of the Bonds and the implementation of the Agreement.

"Agreement" or "Loan Agreement" means the Original Loan Agreement, as amended and restated by the Amended and Restated Loan Agreement, and as amended and supplemented from time to time in accordance with Article VIII of the Indenture.

"Alternate Credit Facility" means any letter of credit, guaranty, standby loan commitment, insurance policy, surety bond, or any combination thereof, including any extension or renewals of the Letter of Credit or credit enhancement then in effect, or any other instrument or arrangement sufficient to enable the Bonds to maintain or improve the credit rating they enjoyed immediately prior to the furnishing of the Alternate Credit Facility if other than in connection with a Reset Date (as defined in the Indenture), and which will provide, without limitation, for the payment of the purchase price of all Bonds tendered pursuant to Section 3.10 of the Indenture or at the maturity thereof.

"Amended and Restated Loan Agreement" means this Amended and Restated Loan Agreement dated as of the date hereof, by and between the Authority and the Developer, amending and restating the Original Loan Agreement.

"Amended and Restated Mortgage" means the Amended and Restated Mortgage and Security Agreement dated as of the date hereof, from the Developer to the Authority (and to be assigned without recourse by the Authority to the Trustee), amending and restating the Original Mortgage for the purpose of providing mortgage, security interest or other collateral security for the payment of the Bonds and the performance of the Developer's obligations under the Loan Agreement.

"Amended and Restated Note" means the Amended and Restated Developer Note dated as of the date hereof, made by the Developer, payable to the order of the Authority (and to be assigned without recourse by the Authority to the Trustee), in the form attached hereto as Exhibit E, in a principal amount equal to the principal amount of the Bonds, amending and restating the Original Note and evidencing the Developer's indebtedness and obligation to repay the Project Loan made by the Authority pursuant to the Loan Agreement, in the amounts and at the times required for the payment of the principal of, premium, if any, and interest on the Bonds when and as the same become due and payable and evidencing the Developer's indebtedness and obligation to pay its related and additional obligations pursuant to Article III hereof.

"Authority" means the Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic duly created and existing under and by virtue of the Act, and its successors and assigns.

"Bank" means Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York, as issuer of the Letter of Credit, its successors and assigns, and any issuer of any Alternate Credit Facility.

"Bonds" means the Authority's Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) issued under the Indenture in the aggregate principal amount of \$12,000,000.

"Branscome" means Gene Branscome, an individual.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"1954 Code" means the Internal Revenue Code of 1954, as amended and in effect on the date of issuance of the Refunded Bonds, and the regulations thereunder as of the date of issuance of the Refunded Bonds, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"Collateral" has the meaning assigned to such term in Article I of the Indenture.

"Compliance Certificate" means a Certificate of Continuing Program Compliance substantially in the form of Schedule III to Exhibit B hereto, as such form may be revised by the Authority from time to time upon advice of Bond Counsel.

"Costs of Issuance Fund" means the fund created pursuant to Section 5.06 of the Indenture.

"Country View" means Country View Property, Ltd., a Texas limited partnership the general partners of which are Daseke Properties Corporation, a Texas corporation, and Daseke Associates Limited, a Texas limited partnership.

"County" means St. Johns County, a political subdivision of the State.

"Delivery Date" means the date of the original delivery of the Bonds to the Original Purchaser.

"Developer" means Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida, and any successor, surviving, resulting or transferee Person as provided in the Loan Agreement.

"Developer Note" means the Original Note, as amended and restated by the Amended and Restated Note.

"Eligible Persons" means persons and families of moderate, middle and lesser income with total annual income equal to or less than 150% of the medium income for the area as determined from time to time by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, medium income for the area determined under the method used by said Secretary prior to the termination.

"Empire" means Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York as issuer of the Empire Letter of Credit.

"Empire Letter of Credit" means the irrevocable transferable letter of credit issued by Empire pursuant to the Empire Letter of Credit Agreement, securing the Refunded Bonds.

"Empire Letter of Credit Agreement" means the Letter of Credit and Reimbursement Agreement, dated as of August 1, 1985, between Empire and Branscome.

"Escrow Account" shall have the meaning assigned to such term in the Escrow Deposit Agreement.

"Escrow Deposit Agreement" means the Escrow Deposit Agreement, dated as of the date hereof, by and among the Authority, the

Escrow Holder, the Refunded Bonds Trustee and the Developer.

"Escrow Holder" means _______, a national banking association with its principal offices presently located in _______, Florida, and its successors and assigns.

"Event of Default" as used in this Agreement means any of the events described as an event of default in Section 7.1 hereof.

"Income Certification" means an Income Computation and Certification substantially in the form of Schedule I to Exhibit B hereto, as such form may be revised by the Authority from time to time upon advice of Bond Counsel.

"Indenture" means the Indenture dated as of the date hereof, by and between the Authority and the Trustee relating to the issuance of the Bonds, as amended and supplemented from time to time.

"Insurance and Condemnation Proceeds Fund" means the fund created pursuant to Section 5.06 of the Indenture.

"Land Use Restrictions" means the Land Use Restrictions, dated as of August 1, 1985, by and among the Authority, Branscome and the Refunded Bonds Trustee, recorded under Clerk's No. 85-17682 on August 15, 1985, in Official Records Book 681, pages 751-774, public records of St. Johns County, Florida.

"Late Payment Rate" means the rate of interest to be paid on the Developer Note by the Developer pursuant to Section 5.6 hereof, which shall be the rate of interest then borne by the Bonds.

"Letter of Credit" means the irrevocable Letter of Credit, dated as of the Delivery Date of the Bonds issued by the Bank and delivered to the Trustee, together with any Alternate Credit Facility.

"Letter of Credit Agreement" means the Letter of Credit and Reimbursement Agreement dated as of the date hereof, by and between the Developer and the Bank.

"Loan Amount" means \$12,000,000, which is both the principal amount of the Bond issue and the amount of the Project Loan.

"Loan Payment" means the payment to be made by the Developer in respect of the Project Loan pursuant to the Developer Note and Article V hereof.

"Lower-Income Tenants" shall have the meaning set forth in the Land Use Restrictions.

"Moody's" means Moody's Investors Service, Inc., its successors and assigns.

"Mortgage" means the Original Mortgage, as amended and restated by the Amended and Restated Mortgage, and as amended and supplemented from time to time in accordance with Article VIII of the Indenture.

"Mortgaged Property" shall have the meaning set forth in the Mortgage.

"Original Loan Agreement" means the Loan Agreement dated as of August 1, 1985, by and between the Authority and Branscome.

"Original Mortgage" means the Mortgage and Security
Agreement dated as of August 1, 1985, from Branscome, as Mortgagor,
to the Authority, as Mortgagee (and assigned without recourse by
the Authority to the Refunded Bonds Trustee), recorded under
Clerk's No. 85-17683 on August 15, 1985, in Official Records Book
681, pages 775-808, public records of St. Johns County, Florida.

"Original Note" means the Developer Note dated as of August 1, 1985, made by Branscome, payable to the order of the Authority (and assigned without recourse by the Authority to the Refunded Bonds Trustee), in the principal amount of \$12,000,000.

"Original Purchaser" means Wertheim Schroder & Co. Incorporated, its successors and assigns.

"Program Guidelines" means the guidelines approved by the Board of County Commissioners of the County in connection with the Project and which are attached to the Agreement as Exhibit B.

"Project" means the multifamily rental housing development with respect to which the Project Loan is to be made, which Project will be operated and maintained in compliance with the Land Use Restrictions and the Program Guidelines on the real property which is more fully described in Parcel I of Exhibit D to this Agreement.

"Project Loan" means the loan made by the Authority pursuant to the Original Loan Agreement, as assumed by the Developer pursuant to the Assumption Agreement dated April ___, 1987, by and between the Developer and the Authority, and this Amended and Restated Loan Agreement to finance a part of the cost of the acquisition, construction and installation of the Project.

"Project Loan Documents" means the Mortgage, the Agreement, the Land Use Restrictions, the Program Guidelines, the Indenture, the Letter of Credit and the Developer Note together with all other documents or instruments executed by the Developer which evidence or secure the Developer's indebtedness under the Developer Note.

"Qualified Project Period" shall have the meaning provided in the Land Use Restrictions.

"Refunded Bonds" means the Authority's Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project) dated as of August 1, 1985, issued on August 15, 1985 in the aggregate principal amount of \$12,000,000 under and pursuant to the Refunded Bonds Indenture.

"Refunded Bonds Indenture" means the Indenture dated as of August 1, 1985, by and between the Authority and the Trustee, under and pursuant to which the Refunded Bonds were issued.

"Refunded Bonds Trustee" means Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under the Refunded Bonds Indenture.

"Refunding" means the issuance of the Bonds for the purpose of refunding and redeeming the outstanding Refunded Bonds in the manner provided in the Indenture, the Agreement and the Escrow Deposit Agreement.

"Rental Housing" means housing units made available for rental by Eligible Tenants, in the manner set forth in the Land Use Restrictions and the Program Guidelines, who are members of the general public, each of which units shall contain complete living facilities which are to be used other than on a transient basis and facilities which are functionally related and subordinate to the living facilities. The housing units shall at all times be constructed and maintained in substantial accordance with applicable building code standards within the County.

"Required Insurance" shall mean the requirements for insurance with respect to the Project set forth in the Mortgage.

"S&P" means Standard & Poor's Corporation, its successors or assigns.

"State" means the State of Florida.

"Term of the Agreement" means the term as determined pursuant to Section 8.10 hereof.

"Trustee" means Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under the Indenture, and its successors, and any successor trust company or commercial bank at the time serving as corporate trustee under the provisions of the Indenture.

All capitalized, undefined terms used herein shall have the meanings assigned to such terms in Article I of the Indenture.

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ARTICLE II

REPRESENTATIONS

Section 2.1 Representations by the Authority. The Authority represents and warrants that:

- (a) The Authority is a public body corporate and politic duly organized and validly existing under the laws of the State, including, particularly, the Act. Pursuant to a resolution dated April 20, 1987, as amended and supplemented on 1987, the Authority has authorized the execution and delivery of this Agreement, the Indenture and the Escrow Deposit Agreement, and the assignment of certain of the Authority's right, title and interest in the Agreement, the Developer Note and the Mortgage to the Trustee, and the performance by the Authority of certain of its obligations hereunder and under the Indenture.
- (b) The Authority has found and determined that the making of the Project Loan to the Developer under the terms of the Agreement will further the purposes of the Act and will serve paramount and predominantly public purposes by increasing the maintenance of safe and sanitary rental housing units for persons of low, moderate and middle income thereby alleviating a shortage of rental housing and the shortage of capital for housing purposes, and shall serve the public purpose by advancing the economic prosperity, the public health and the general welfare of the State and its people.
- (c) The Authority has complied with all of the provisions of the Constitution and laws of the State, including the Act, and has full power and authority to consummate all transactions contemplated by the Agreement, the Bonds, the Mortgage, the Indenture and the Escrow Deposit Agreement and any and all other agreements executed by it and relating thereto, and to perform all of its obligations hereunder and thereunder.
- (d) To accomplish the foregoing, the Authority adopted a resolution on April 20, 1987, as amended and supplemented on _____, 1987, authorizing the issuance and sale of the Bonds on the terms and basis set forth in the Indenture and to use the proceeds thereof as specified therein and herein.
- Section 2.2 Representations by Developer. The Developer represents and warrants that:
- (a) It is a Delaware corporation duly authorized to transact business in the State.

- (b) It has full right, power and authority to enter into, execute and deliver the Project Loan Documents, to enter into the transactions contemplated by the Project Loan Documents, and has duly authorized the execution, delivery and performance of each of the Project Loan Documents.
- (c) Neither the execution and delivery of the Project Loan Documents and the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with the terms and conditions of any of the Project Loan Documents, will conflict with or result in a breach of or default under the Developer's Articles of Incorporation or Bylaws, or any indenture, agreement or other instrument to which Developer is a party or by which it is bound or to which any of its material assets or properties is subject.

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ARTICLE III

ISSUANCE OF BONDS; PROJECT LOAN TO DEVELOPER; RELATED OBLIGATIONS

Section 3.1 <u>Issuance of Bonds; Deposit of Proceeds</u>. To provide funds for the payment of costs of the Refunding, the Authority, concurrently with the execution and delivery of this Agreement by the Authority, and upon satisfaction of the conditions to the delivery of the Bonds set forth in Section 2.03 of the Indenture, shall issue, sell and deliver the Bonds and the Authority will deposit the proceeds thereof with the Trustee in accordance with the Indenture.

Section 3.2 <u>Issuance of Other Obligations</u>. The Authority expressly reserves the right to enter into, to the extent permitted by law, an agreement other than this Agreement with respect to the issuance of bonds or notes by the Authority under an indenture or indentures other than the Indenture to provide additional funds for the making of a mortgage loan, to the Developer or any other party acceptable to the Authority and the Bank, directly or through an eligible lending institution, to complete the Project, or to refund all or any principal amount of the Bonds, or any combination of the foregoing.

Project Loan to Developer. Pursuant to Section 3.3 the Original Loan Agreement, the Authority made the Project Loan for the purpose of financing a part of the cost of the acquisition, construction and installation of the Project. The Developer was obligated under the Original Loan Agreement to make loan payments in amounts sufficient to pay the principal of, premium, if any, and interest on the Refunded Bonds as the same shall become due and payable. The Developer requested the Authority to issue the Bonds for the purpose of refunding the Refunded Bonds in the manner provided in the Indenture and the Escrow Deposit Agreement, and the Authority agreed upon the condition that the Developer enter into this Amended and Restated Loan Agreement, the Amended and Restated Note and the Amended and Restated Mortgage for the purpose of modifying the Original Loan Agreement, the Orginal Note and the Original Mortgage to provide, among other things, for the payment of the principal of, premium, if any and interest on the Bonds. The Developer is desirous that the Authority issue the Bonds and apply the proceeds as aforesaid and is willing to enter into this Amended and Restated Loan Agreement, the Amended and Restated Note and the Amended and Restated Mortgage to achieve cost savings and other financial benefits to the Developer and as an inducement to the issuance of the Bonds by the Authority and to the purchase of the Bonds by all who shall at any time become holders of the Bonds. Concurrently with the first delivery of fully executed and authenticated Bonds to the

Original Purchaser, the Developer shall execute and deliver this Amended and Restated Loan Agreement, the Amended and Restated Note in a face amount equal to the Loan Amount of the Project Loan, and the Amended and Restated Mortgage.

The Developer hereby agrees to deposit with the Trustee, simultaneously with the issuance of the Bonds, \$_____, for deposit into the Costs of Issuance Fund pursuant to Section 5.01 of the Indenture.

Section 3.4 <u>Disbursements</u>. The Escrow Holder shall establish the Escrow Account in accordance with the Escrow Deposit Agreement. Amounts in the Escrow Account shall be invested as provided in the Escrow Deposit Agreement and shall be disbursed by the Escrow Holder as provided in the Escrow Deposit Agreement, and applied to the current refunding of the Refunded Bonds. Until moneys in the Escrow Account are applied by the Escrow Holder as provided in the Escrow Deposit Agreement, such moneys shall be held in trust by the Escrow Holder for the benefit of the holders of the Refunded Bonds and the Developer shall have no right, title or interest therein.

The Authority shall establish the Bond Fund, the Costs of Issuance Fund and the Insurance and Condemnation Proceeds Fund in accordance with the Indenture. Amounts in each Fund shall be invested as provided in the Indenture and shall be disbursed by the Trustee as provided in the Indenture and the Agreement. Until moneys in each Fund are applied by the Trustee as provided in the Indenture, such moneys shall be and remain the property of the Authority, subject to the lien of the Indenture as a part of the Trust Estate and held in trust by the Trustee for the benefit of the Bondholders and the Developer shall have no right, title or interest therein; provided, however, that the Developer shall direct the investment of moneys in such Funds as set forth in the Indenture.

Section 3.5 Repayment of Project Loan; Additional Obligations; Obligations Absolute; Credit for Certain Payments.

- (a) The Developer agrees to pay to the Trustee for the account of the Authority the principal of, premium, if any, and interest on the Project Loan, at the times, in the manner, in the amounts and at the rate of interest provided in the Developer Note.
- (b) The Developer agrees to pay, in addition to the amounts payable under the Developer Note, (i) to the Bank or its successor the agreed upon fees pursuant to the Letter of Credit Agreement, (ii) to the Remarketing Agent the agreed upon

fee for remarketing the Bonds pursuant to the Indenture, and (iii) to the other Fiduciaries their agreed upon fees for services rendered in connection with the Bonds and the Refunding.

- (c) The Developer agrees to pay the Administrative Expenses and all sums, fees and costs required to be paid by the Developer under the Agreement, the Indenture, the Escrow Deposit Agreement and the Mortgage and to timely pay all sums necessary to purchase, pay or redeem the Bonds in accordance with their terms and the terms of the Indenture.
- (d) The obligation of the Developer to make the Loan Payments required to be made hereunder (including payments due by reason of acceleration of the maturity of the Developer Note pursuant to Article V hereof), under the Developer Note and under subparagraphs (b) and (c) hereof, shall be absolute and unconditional, and shall not be subject to abatement, diminution, postponment or deduction, or to any defense other than payment or to any right of setoff, counterclaim or recoupment arising out of any breach under the Agreement, the Indenture, the Letter of Credit, the Project Loan Documents or otherwise by the Authority, the Bank, the Trustee, the Remarketing Agent, the Paying Agent, any Bondholder or any other person, or out of any obligation or liability at any time owing to the Developer by any of the foregoing. Nothing herein contained or any payment hereunder, however, shall be interpreted to abridge, waive or estop the right of the Developer to seek judicial remedy for any breach of covenant or contract in a separate legal proceeding.
- (e) The obligation of the Developer to repay the principal amount of the Project Loan shall be reduced (i) to the extent of any payment (other than payments that are not applied toward payment of the principal of the Bonds) made by the Developer to the Trustee under the Developer Note, other than for the purchase of Bonds as provided in Section 3.10 of the Indenture and (ii) by any credit given under the Developer Note in respect of the redemption of Bonds from moneys transferred from the Insurance and Condemnation Proceeds Fund to the Bond Fund pursuant to Section 5.08 of the Indenture. Additionally, the Developer shall be entitled to a credit on the Developer Note, and a corresponding reduction of its obligation to repay the Project Loan, to the extent of any payments made by the Bank under the Letter of Credit to redeem Bonds or to pay the principal of and interest on the Bonds, but no credit shall be extended for payments made by the Bank to purchase Bonds for the account of the Developer.

Section 3.6 The Letter of Credit and Alternate Credit Facility.

- (a) From the date of issuance of the Bonds to and including June 1, 1994, the Developer shall provide additional security for payment of the principal of and interest on the Bonds by causing the Bank to deliver the Letter of Credit simultaneously with the issuance of the Bonds. The Developer hereby authorizes and directs the Trustee to demand payment under the Letter of Credit in accordance with and subject to the terms thereof and of the Indenture in an amount sufficient to pay the principal of and interest on the Bonds. The Developer may, at its election and with the consent of the issuer of the Letter of Credit then in effect, provide for one or more extensions of the Letter of Credit beyond its then-stated date of expiration.
- (b) The Developer may provide for the delivery of Alternate Credit Facility to provide security for payment of the principal of and interest on the Bonds; provided that any such Alternate Credit Facility shall not expire earlier than the fifteenth day following the next succeeding Reset Date; and provided, further, that the Developer must furnish to the Trustee (a) if such Alternate Credit Facility has not been delivered by the Developer in connection with a Reset Date, as defined in the Indenture, written evidence from S&P, if the Bonds are rated by S&P, or Moody's, if the Bonds are rated by Moody's, to the effect that it has reviewed such Alternate Credit Facility and that its substitution for the Letter of Credit then in effect will not, of itself, result in a reduction of its ratings of the Bonds from those which then prevail, and (b) an opinion of Bond Counsel that the delivery of such Alternate Credit Facility is permitted under the Indenture and the Agreement and will not adversely affect the exemption from federal income taxation of interest of the Bonds.

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ARTICLE IV

OPERATION OF THE PROJECT

Section 4.1 Residential Rental Project. The Authority and the Developer hereby declare their understanding and intent that, during the term of the Agreement, the Project is to be owned, managed and operated, as a "project for residential rental property" as such phrase is utilized in Section 103(b)(4)(A) of the 1954 Code. To that end, the Developer hereby represents, covenants and agrees as follows:

- (a) that the Developer shall own, manage and operate the Project as multifamily rental housing, all in accordance with Section 103(b)(4)(A) of the 1954 Code, as the same may be amended from time to time, the Land Use Restrictions and the Program Guidelines;
- (b) that all of the dwelling units in the Project have been similarly constructed and each such dwelling unit shall contain complete facilities for living, sleeping, eating, cooking and sanitation for a single person or a family;
- (c) that during the Term of the Agreement (i) none of the dwelling units in the Project shall at any time be utilized on a transient basis; (ii) none of the dwelling units in the Project shall ever be leased or rented for a period of less than sixty days; and (iii) neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, trailer court or park;
- (d) that during the Term of the Agreement (i) the dwelling units in the Project shall be leased and rented or made available for rental on a continuous basis to members of the general public, (ii) all dwelling units in the Project shall be leased and rented or made available for rental on a continuous basis to Eligible Persons; and (iii) the Developer shall not give preference in renting dwelling units in the Project to any particular class or group of persons, other than Eligible Persons and Lower-Income Tenants as provided herein; provided, however, that an insubstantial number of dwelling units in the Project, not to exceed five units, may be occupied by maintenance, security or managerial employees of the Developer or its property manager, which employees must be reasonably necessary for the operation of the Project;

- (e) that during the Term of the Agreement no part of the Project will at any time be owned or used by a cooperative housing corporation;
- (f) that the Project will consist of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be (i) owned by the same person for federal tax purposes, (ii) located on a common tract of land or two or more tracts of land which are contiguous except for being separated only by a road, street, stream or similar property, and (iii) financed by the Project Loan or otherwise pursuant to a common plan of financing, and which will consist entirely of:
- (aa) Units which are similar in quality and type of construction and amenities; and
- ordinate in purpose and size to property described in (aa) above, e.g., parking areas, laundries, swimming pools, tennis courts and other recreational facilities (none of which may be unavailable to any person because such person is a Lower-Income Tenant) and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment or units for residential managers or maintenance personnel;
- (g) that during the Term of the Agreement the Project will not include a unit in a building where all units in such building are not also included in the Project;
- (h) the during the Term of the Agreement the Developer will not convert the Project to condominium ownership;
- (i) that during the Term of the Agreement no dwelling unit in the Project shall be occupied by the Developer at any time unless the Developer resides in a dwelling unit in a building or structure which contains at least five dwelling units and unless the resident of such dwelling unit is a resident manager or other necessary employee (e.g., maintenance and security personnel);
- (j) that within thirty days after the date on which at least 10% of the dwelling units in the Project are first occupied, the Developer shall prepare and submit to the Authority, the Bank and the Trustee a certificate in recordable form identifying such date (unless such date is prior to the date of issuance of the Bonds) to evidence the commencement of the Qualified Project Period and shall cause such certificate to be recorded in the public records of the County;

- (k) that with thirty days after the date on which at least 50% of the dwelling units in the Project are first occupied, the Developer shall prepare and submit to the Authority, the Bank and the Trustee a certificate in recordable form identifying such date (unless such date is prior to the date of issuance of the Bonds) for purposes of the calculation of the termination of the Qualified Project Period and shall cause such certificate to be recorded in the public records of the County;
- (1) that all of the proceeds of the Bonds will be used to refund and redeem the Refunded Bonds as provided in the Indenture and the Escrow Deposit Agreement and thereby will continue the previous financing of the acquisition of land and equipment and the construction of buildings that qualify as residential rental housing or facilities related and subordinate thereto;
- (m) that the Developer shall not discriminate on the basis of race, creed, religion, color, age, sex, marital status or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project; and
- (n) the Developer specifically agrees that the Developer will not refuse or deny rental occupancy in the Project to persons whose family includes minor dependents who will occupy such unit, unless such refusal is based upon factors not related to the presence of such minors in the family; provided, however, that the Developer may limit to two (2) the number of occupants of a studio apartment unit or a one-bedroom apartment unit and limit to four (4) the number of occupants of a two-bedroom apartment unit.

Unless the provisions of this Section 4.1 are amended as permitted under Section 4.3 hereof and under the Land Use Restrictions, the provisions of this Section shall remain in effect during the Term of the Agreement; provided, however, the Developer may be discharged from its obligations under this Section 4.1 and Section 4.2 hereof to the extent that the same are assumed by any successor in interest to the Developer.

- Section 4.2 <u>Lower-Income Tenants and Eligible Persons</u>. In order to satisfy the requirements of the Act and Section 103(b)(4)(A) of the 1954 Code, the Developer hereby represents, covenants and agrees that, during the Qualified Project Period:
- (a) commencing with the date on which at least 10% of the units in the Project are occupied, (i) at least 20% of the completed dwelling units (or, if approved by a written opinion of Bond Counsel at least 20% of the occupied dwelling units) in the

Project shall be occupied by Lower-Income Tenants, prior to the satisfaction of which no additional units shall be rented or leased to Eligible Persons and (ii) after initial rental occupancy of such dwelling units by Lower-Income Tenants, at least 20% of the completed dwelling units in the Project at all times shall be rented to and occupied (or held available for rent if previously rented to and occupied by a Lower-Income Tenant) by Lower-Income Tenants as required by Section 103(b)(4)(A) of the 1954 Code, and all remaining units will be occupied by or held available for rental only to Eligible Persons. For the purpose of complying with this requirement, a unit ocupied by an individual or family who at the commencement of the occupancy qualifies as a Lower-Income Tenant is treated as occupied by a Lower-Income Tenant during their tenancy in such unit, even though they subsequently cease to qualify as a Lower-Income Tenant. Similarly, for the purposes of complying with this requirement, a unit occupied by an individual or family who at the commencement of the occupancy qualifies as an Eligible Person is treated as occupied by an Eligible Person during their tenancy in such unit, even though they subsequently cease to qualify as an Eligible Person. Moreover, if a unit is vacated by an individual or family who qualified as Lower-Income Tenants or as Eligible Persons, such unit shall be treated as occupied by Lower-Income Tenants or Eligible Persons, as applicable, until reoccupied (other than for a temporary period of not more than 31 days) at which time the character of the unit shall be redetermined.

The Developer shall obtain and maintain on file sworn and notarized Income Certifications from each Lower-Income Tenant and Eligible Person dated not more than five (5) days prior to the initial occupancy of such tenant in the Project, in the form and containing such information as may be required by Section 103(b)(12)(C) of the 1954 Code and the Program Guidelines, as the same may be from time to time amended by the Authority on the advice of Bond Counsel, or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 103(b)(4)(A) of the 1954 Code. Photocopies of each such Income Certification shall be submitted to the Trustee (i) within 10 days following the end of the calendar month during which the first unit in the Project is first occupied, (ii) within 10 days following the end of each calendar month thereafter, together with the Certificate of Continuing Program Compliance required under subsection (e) below, and (iii) as requested by the Authority or the Trustee, which may be as often as may be necessary, in the opinion of Bond Counsel, to comply with the provisions of Section 103(b)(4)(A) of the 1954 Code.

- (c) The Developer shall maintain complete and accurate records pertaining to the dwelling units occupied or to be occupied by Lower-Income Tenants and Eligible Persons, and to permit any duly authorized representative of the Trustee, the Authority, the Bank, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Developer pertaining to the Income Certifications of Lower-Income Tenants and Eligible Persons residing in the Project.
- (d) The Developer shall permit any duly authorized representative of the Authority, the Bank, the Trustee, the Department of the Treasury or the Internal Revenue Service to inspect the books and records of the Developer pertaining to the incomes of Lower-Income Tenants and Eligible Persons residing in the Project upon reasonable notice and at reasonable times.
- (e) The Developer shall immediately notify the Authority, the Bank and the Trustee if at any time the dwelling units in the Project are not occupied or available for occupancy as provided in (a) above, and the Developer shall prepare and submit to the Bank and the Trustee, not later than the tenth (10th) day of each month following the initial occupancy of any of the units in the Project, a Certificate of Continuing Program Compliance executed by the Developer, stating among other matters, the number of dwelling units of the Project which, as of the first day of such month, in each case, were occupied by Lower-Income Tenants, were occupied by Eligible Persons, were deemed to be occupied by Lower-Income Tenants or were deemed to be occupied by Eligible Persons as provided in subparagraph (a) above, and stating that all units in the Project are occupied by or held available for rental to only Eligible Persons (including Lower-Income Tenants).
- (f) Upon the Authority's request, the Developer shall submit Income Certifications and Certificates of Continuing Program Compliance to the Authority or its agents.

The provisions of this Section 4.2 relating to Lower-Income Tenants shall terminate upon the expiration of the Qualified Project Period, and the provisions relating to Eligible Persons shall terminate upon the later to occur of the expiration of the Qualified Project Period or the first day when no Bonds remain Outstanding under the Indenture.

Section 4.3 Tax Exemption; Land Use Restrictions. The Developer hereby covenants, represents and agrees as follows:

- (a) not to take or omit to take any action with respect to the proceeds of the Project Loan or the Project that would adversely affect the exemption from federal income taxation of the interest on the Bonds;
- (b) to take such action or actions, including amendment of the Land Use Restrictions, as may be necessary in the opinion of Bond Counsel, to preserve or perfect any exemption of interest on any Bond from federal income taxes under the Code;
- (c) to file or record such documents and take such other steps as are necessary in order to insure that the requirements and restrictions of the Land Use Restrictions will be binding upon all owners of the Project.
- (d) to include the requirements and restrictions contained in the Land Use Restrictions in any deed or other documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by such restrictions, and to obtain the agreement from any transferee so to abide; and
- that to the extent the 1954 Code and the regulations promulgated thereunder, or any amendments thereto, shall impose requirements upon the ownership or operation of the Project more restrictive than those imposed by the Land Use Restrictions, the Developer agrees that the Land Use Restrictions and the Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements to the extent necessary to preserve the tax exempt status of interest on the Bonds; and the Developer and the Authority shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effectuate the intent of this subsection (e), and the Developer and the Authority hereby appoint the Trustee as their true and lawful attorney-in-fact to execute, deliver, and, if applicable, file of record on behalf of the Developer or the Authority, as is applicable, any such document or instrument if either the Developer or the Authority defaults in the performance of its obligation under this subsection (e); provided, however, that the Trustee shall take no action under this subsection (e) without first notifying the Developer, the Bank and the Authority of its intention to take such action and without first providing the Developer or the Authority, or both of them, as is applicable, an opportunity to comply with the requirements of this subsection (e); and provided further, that the Trustee shall take no action under this subsection (e) which will have a substantially detrimental effect upon the Developer or upon the operation of the Project, without the consent of the Developer and the Bank.

Section 4.4 Substitution of Developer and Assumption of Project Loan. The Developer may be relieved of its obligations under the Project Loan Documents only upon the assumption of the obligations of the Developer by another entity and compliance with the requirements of Section 4.7 hereof.

Insurance; Damage, Destruction or Condemna-Section 4.5 The Developer shall cause the Project to be tion of the Project. insured to the extent required by the Mortgage. All insurance policies shall name the Developer, the Trustee and the Authority as insureds. In the event that the Project is damaged or destroyed, or title to the Project or any part thereof is taken by any governmental body through the exercise or the threat of the exercise of the power of eminent domain, any condemnation or insurance proceeds shall be deposited with the Trustee as provided in the Mortgage and the Developer shall promptly commence to rebuild, replace, repair or restore the Project in such manner as is consistent with the Project Loan Documents or may elect to apply such moneys to the redemption of Bonds (accompanied by the written consent of the Bank). In the event that the Developer elects not to apply such moneys to the redemption of Bonds and fails, after notice from the Trustee and as provided in the Indenture, to commence or to complete the rebuilding, repair, replacement or restoration of the Project, the Bank shall have the right on behalf of the Authority, in addition to any other remedies granted in the Project Loan Documents or the Letter of Credit Agreement, or at law or in equity, to repair, restore, rebuild or replace the Project so as to prevent the occurrence of a default under the Land Use Restrictions.

Section 4.6 Enforcement of Land Use Restrictions and Program Guidelines. If (i) the Developer defaults in the performance of its obligations under the Land Use Restrictions or Program Guidelines or breaches any covenant, agreement or warranty of the Developer set forth in the Land Use Restrictions or Program Guidelines, and if such default remains uncured for a period of 60 days after notice thereof shall have been given by the Trustee, the Authority and the Bank to the Developer (or for an extended period approved in writing by the Authority and the Trustee if such default stated in such notice can be corrected, but not within such 60-day period, and if the Developer commences such correction within such 60-day period, and thereafter diligently pursues the same to completion within such extended period), or (ii) an Event of Default described in paragraph 7.1(\bar{b}) hereof shall occur, then the Authority or the Trustee may terminate all rights of the Developer under the Land Use Restrictions and may take whatever other action at law or in equity or otherwise, whether for specific performance of any current covenant in the Land Use Restrictions or such other remedy as may be deemed most effective by the Authority or the Bank to enforce the obligations

of the Developer with respect to the Project. If a default by the Developer under the Land Use Restrictions or Program Guidelines is not cured within a reasonable time the Authority may, and the Trustee shall institute foreclosure proceedings against the Project, but only as provided in the Mortgage, and shall use its best efforts to find a willing purchaser of the Project who will assume the obligations of the Developer under the Land Use Restrictions and abide by the terms of the Program Guidelines. reasonable time shall be at least 60 days (30 days for any default not caused by a violation of Section 2 or 3 of the Land Use Restrictions) after such default is first discovered or would have been discovered by the exercise of reasonable diligence. of foreclosure of the Project, the Bank shall have the right hereunder, and is specifically authorized by the Authority and the Developer, to assume on behalf of the Authority the management of the Project as an independent contractor and take all actions necessary, in the judgment of the Bank to cure any default by the Developer under the Land Use Restrictions or Program Guidelines, and shall be paid by the Developer, from the rents, revenues, profits and income from the Project, a management fee equal to the greater of (i) any management fee being paid to or paid by the Developer at the time prior to the assumption of the management of the Project or (ii) the prevailing management fee paid to managers of similar housing projects in the State.

Under the Indenture, the Trustee has the right, without the consent, approval or knowledge of the Authority, to exercise any or all of the Authority's rights or remedies hereunder and under the Land Use Restrictions to enforce the terms of the Land Use Restrictions.

The Authority and the Trustee and the Bank, acting on behalf of the Authority, shall have the right, either jointly or severally, to enforce the Land Use Restrictions and require curing of defaults in such shorter periods than specified above as they may deem necessary to insure compliance with Section 103(b)(4)(A) of the 1954 Code.

Section 4.7 Sale, Lease or Transfer of Project.

(a) The restrictions contained in remaining provisions of this Section 4.7 shall not be applicable to any of the following exceptions, and, so long as the Developer is not relieved of its obligations to the Authority, the prior consent of the Authority shall not be required as to such exceptions: (i) any transfer pursuant to or in lieu of a foreclosure under the Mortgage, (ii) grants of utility related easements and service related leases or easements, including without limitation, laundry service leases or television cable easements, over portions of the Project, provided the same are granted in the ordinary course

of business in connection with the operation of the Project as contemplated by this Agreement, (iii) leases of apartment units to Lower-Income Tenants and Eligible Persons in accordance with the requirements of the Agreement, or (iv) any sale or conveyance to a condemning governmental authority as a direct result of a condemnation or a governmental taking or a threat thereof.

(b) Except as permitted in Section 4.4, subsection (a) above or this subsection (b), the Developer shall not enter into a sale, lease, exchange, assignment, conveyance, transfer or other disposition (collectively called a "Disposition") of all or substantially all of the Project without the prior written consent of the Authority and Bank which consent shall not be unreasonably withheld. It is expressly agreed that in connection with determining whether to grant or withhold such consent, the Authority and Bank may (but is not obligated to), among other things, (i) consider the creditworthiness of the party to whom such Disposition will be made and its management ability with respect to the Project; (ii) consider whether or not the security for repayment of the Developer Note and the performance of the obligations thereunder, or the Authority's ability to enforce its rights, remedies and recourses with respect to such security, will be impaired in any way by the proposed Disposition, (iii) require that the Bank and the Authority be reimbursed for all reasonable costs and expenses incurred by them in connection with investigating the creditworthiness and management ability of the party to whom such Disposition will be made and determining whether the Authority's security will be impaired by the proposed Disposition, (iv) require the payment to the Authority and the Bank of a transfer fee equal to the cost of documenting the Disposition in its records, (v) require the payment of their reasonable attorney's fees and expenses in connection with such Disposition, (vi) require the express unconditional assumption of all performance obligations under the Agreement, the Land Use Restrictions and the Mortgage and an agreement to abide by all terms imposed by the Program Guidelines by the party to whom such Disposition will be made (with or without the release of the transferor Developer from liability for such obligations), which assumption shall be in form and substance reasonably satisfactory to the Authority and Bank, and require the recording of such assumption document, (vii) require the execution of modification agreements, supplemental mortgage documents and financing statements, where appropriate to document said Disposition, satisfactory in form and substance to the Authority and Bank but without material change in terms or imposition of fees other than those set forth herein, (viii) require endorsements to any existing Authority title insurance policies or require new title insurance policies, if reasonably necessary (to the extent available under applicable law), insuring the Authority's liens and security interests covering the Project and (ix) require an opinion of Bond Counsel that such

Disposition will not adversely affect the legality, validity or tax-exempt status of the Bonds.

The Project shall not be transferred by the Developer to the entity from which it was acquired or to any affiliated party of such entity before five years from the date of this Amended and Restated Loan Agreement. It is hereby expressly stipulated and agreed that any Disposition of the Project by the Developer in violation of this Section 4.7 shall be ineffective to relieve the Developer of its obligations under the Agreement, the Mortgage and the Land Use Restrictions. The Developer shall include, vertain or by incorporation by reference all requirements and restrictions contained in the Agreement in any deed, or other documents transferring any interest in the Project to another person, to the end that such transferee has notice of and is bound by such restrictions, and shall obtain the express written assumption from any transferee so to abide.

Section 4.8 Encumbrances. Unless the requisite consent of Bondholders shall have been obtained, the Developer shall not create or suffer to exist any liens or encumbrances upon the Project or any part thereof, other than Permitted Encumbrances (as defined in the Mortgage).

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ARTICLE V

PREPAYMENT AND ACCELERATION OF PROJECT LOAN; PAST DUE PAYMENTS

Section 5.1 Mandatory Prepayment from Amounts Remaining in Insurance and Condemnation Proceeds Fund. The Developer shall repay amounts payable under the Developer Note to the extent that moneys remain following any rebuilding of the Project from insurance or condemnation proceeds or the Developer elects to apply such moneys to the redemption of Bonds pursuant to the Section 4.5 hereof, which moneys are transferred from the Insurance and Condemnation Proceeds Fund to the Bond Fund pursuant to Section 5.08 of the Indentute.

Section 5.2 Developer Note to Accelerate in the Event of Default Under Land Use Restrictions. The Developer Note shall be due and payable in the event of the occurrence of an Event of Default under Section 7.1(b) hereof as a result of a violation of Section 2 or Section 3 of the Land Use Restrictions, following the expiration of any applicable cure period, unless the Developer submits to the Authority, the Trustee and the Bank within fifteen Business Days after the Developer becomes aware of such violation an opinion of Bond Counsel acceptable to the Authority, the Trustee and the Bank stating that such violation will not adversely affect the tax-exempt status of the Bonds or the validity of the authorization and issuance of the Bonds under the Act. Notwithstanding the foregoing, the Authority and the Bank shall have the right hereunder and under the Mortgage to jointly or separately take such actions as are necessary to cure such violation or to find a purchaser of the Project who will assume the obligations of the Developer under the Project Loan Documents, and in either case, shall deliver to the Trustee an opinion of Bond Counsel to the effect that such action will not adversely affect the exemption of interest on the Bonds from federal income taxation or the validity of the authorization and issuance of the Bonds under the Act.

Section 5.3 Mandatory Prepayments in Event of Occurrence of Certain Events. The Developer shall make mandatory prepayment under the Developer Note under the following circumstances:

(a) The Developer shall prepay amounts payable under the Developer Note in whole or in part to the extent of any mandatory redemption of Bonds pursuant to Section 4.01(b)(l) of the Indenture.

- (b) The Developer shall prepay amounts payable under the Developer Note in whole or in part to the extent of any redemption of Bonds pursuant to Section 4.02 of the Indenture.
- (c) The Developer shall prepay amounts payable under the Developer Note, in whole or in part to the extent of any redemption of Bonds pursuant to Section 4.01(b)(3) of the Indenture.
- (d) The Developer shall prepay or cause to be prepaid in Available Moneys, the Developer Note in the event of a Determination of Taxability on the first succeeding Interest Payment Date following such Determination of Taxability, as provided in Section 4.01(b)(6) of the Indenture.
- Section 5.4 Mandatory Prepayment from Sinking Fund Installments. If a sinking fund shall have been established with respect to the Bonds pursuant to Section 4.02 of the Indenture, the Developer shall prepay the Developer Note in sinking fund installments, such payments to be at the times and in amounts sufficient to pay principal of and accrued interest on the Bonds to be redeemed pursuant to Section 4.01(b)(4) of the Indenture.
- Section 5.5 Optional Prepayments. The Developer may prepay amounts payable under the Developer Note, in whole or in part, on May 15 of each of the years 1993, 1996, 2000 and 2004, by giving 30 days' written notice to the Trustee, accompanied by written evidence of the Bank's consent, and by depositing or causing to be deposited with the Trustee an amount of Available Moneys equal in amount to the principal amount of Bonds to be redeemed plus accrued interest, if any, to the redemption date as provided in Section 4.01(a) of the Indenture.
- Section 5.6 Past Due Payments. In the event the Developer shall fail to pay any amounts required to be paid hereunder or under the Developer Note, any such past due amounts shall bear interest at a rate, to the extent permitted by law, equal to the Late Payment Rate from the date such payment was originally due to and including the date such payment is made.
- Section 5.7 Adjustment of Interest Rate. On each Reset Date, the rate of interest on the Developer Note shall be adjusted upward or downward to the extent necessary to provide sufficient revenues to pay principal and interest on the Bonds when due as well as all Administration Expenses.

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ARTICLE VI

OTHER AGREEMENTS

Section 6.1 Successor to the Authority. The Authority will do all things in its power to maintain its existence or assure the assumption of its obligations hereunder and under the Indenture by any corporation or political subdivision succeeding to its powers under the Act.

Section 6.2 Developer to Maintain its Existence; Conditions Under Which Exceptions Permitted. The Developer agrees that during the term of the Agreement it will maintain its existence, will continue to be a foreign corporation duly qualified to transact business in the State, and will not dispose of all or substantially all of its assets nor consolidate with nor merge into another entity unless the acquirer of its assets or the entity with which it shall consolidate or into which it shall merge shall be organized and existing under the laws of the United States of America or one of the states of the United States of America, shall be qualified to transact business in the State, and shall assume in writing all of the obligations of the Developer under the Project Loan Documents as provided in Section 4.4 and Section 4.7 hereof.

Section 6.3 No Arbitrage. Neither the Developer nor the Authority shall take any action whereby the proceeds of the Bonds or any other moneys shall be invested or used in such manner that any of the Bonds would be "arbitrage bonds" within the meaning of Section 148 of the Code as in effect on the date hereof.

Section 6.4 Annual Operating Reports. Within 120 days after the end of each fiscal year of the Developer, the Developer shall furnish to the Authority, the Bank and the Trustee a copy of its annual operating report.

Section 6.5 Consent to Assignment by Authority. The Authority has, with the consent of the Developer, made an assignment to the Trustee under the Indenture, in the manner described therein, of certain rights and interests of the Authority in and to the Project Loan Documents.

Appoint Agent. The Developer will remain duly qualified to transact business in the State and will maintain an agent in the State on whom service of process may be made in connection with any actions against the Developer arising out of or in connection with the Project Loan Documents.

Section 6.7 Indemnifications. The Developer releases the Authority, the Trustee and the Bank from, agrees that the Authority, the Trustee and the Bank shall not be liable for, and agrees to indemnify and hold the authority, the Trustee and the Bank free and harmless from, any liability for any loss or damage to property or any injury to or death of any person that may be occasioned by any cause whatsoever pertaining to the Project, except as to the Authority or the Trustee as a result of the gross negligence or willful misconduct of the Authority or the Trustee, and as a result of the negligence or misconduct of the Bank.

The Developer will indemnify and hold each of the Authority, the Trustee, the Registrar, the Paying Agent and the Remarketing Agent (hereinafter individually referred to as an "Indemnified Party") free and harmless from any loss, claim, damage, tax, penalty, liability, disbursement, litigation expense, reasonable attorneys' fee and expense or court cost arising out of, or in any way relating to, the enforcement of this Agreement, actions taken under the Indenture or any other cause whatsoever pertaining to the Project and, with respect solely to the Authority, the issuance and sale of the Bonds; provided that the indemnity hereby granted shall not extend to any Indemnified Party to the extent that the event giving rise to indemnity is a result of the willful misconduct or negligence of such Indemnified Party. fied party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof, and the Developer shall pay the reasonable fees and expenses thereof. For purposes of this section, "Authority" means the Housing Finance Authority of St. Johns County or the County, as the case may be.

Section 6.8 Payment of Fees and Expenses. The Developer shall pay, or cause to be paid, the reasonable fees, advances and costs, including reasonable attorney fees, of the Trustee, the Paying Agent, the Registrar, the Remarketing Agent and the Escrow Holder under the Indenture, the Remarketing Agreement and the Escrow Deposit Agreement.

Section 6.9 Financing Statement. The Developer shall file or cause to be filed all financing statements and continuation statements necessary to perfect the security interests of the Trustee, the Authority and the Bank in the Project Loan Documents.

Section 6.10 Nonrecourse Liability of the Developer. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, (i) from and after the date of the Original Loan Agreement the liability of the Developer shall be limited to the interest in the Mortgaged Property and insurance thereon and the Authority shall look exclusively thereto, or to such other security as may from time to time be given for payment of the obligations hereunder, and any judgment rendered against

the Developer under the Agreement shall be limited to the Mortgaged Property and insurance thereon and any other security so given for satisfaction thereof; and (ii) from and after the date of the Original Loan Agreement no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Developer, its successors, transferees or assigns, in any action or proceeding arising out of the Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding; provided, however, that nothing herein shall limit the Authority's ability to exercise any right or remedy that it may have with respect to any property pledged or granted to the Authority or any trustee under the Project Loan Documents, or both of them, or to exercise any right against the Developer or any other person or entity on account of any claim for fraud and deceit. Furthermore, the Developer shall be fully liable for the misapplication of (i) proceeds paid prior to any foreclosure under any and all insurance policies, under which the Issuer is named as insured, by reason of damage, loss or destruction to any portion of the Mortgaged Property and the Collateral, to the full extent of such proceeds, (ii) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of any portion of the Mortgaged Property and the Collateral, to the full extent of such proceeds and awards, (iii) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under any of the Project Loan Documents but prior to foreclosure, and (iv) proceeds from the sale of all or any part of the Mortgaged Property and the Collateral. The limit on the Developer's liability set forth in this Section shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the indebtedness evidenced by the Agreement and the Developer Note or a release, in whole or in part, or an impairment of the lien and security interest of the Project Loan Documents upon the properties described therein, or to preclude the Authority from foreclosing the Project Loan Documents in case of any default or enforcing any other right of the Authority or to alter, limit or affect the liability of any person or party who may now or hereafter guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Developer under any of the Project Loan Documents.

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ARTICLE VII

EVENTS OF DEFAULT AND REMEDIES

- Section 7.1 <u>Events of Default</u>. Each of the following shall be an "Event of Default" hereunder:
- (a) Failure by the Developer to make, or cause to be made, any payment under the Developer Note on or before the date such payment is due thereunder.
- any of its covenants or agreements contained in the Agreement, the Land Use Restrictions, the Program Guidelines, the Mortgage or in the Developer Note other than as specified in paragraph (a) above, and such failure shall continue for the period and after the notice specified in Section 7.2 hereof.
- (c) The dissolution or liquidation of Developer or the filing by Developer of a voluntary petition in bankruptcy, or adjudication of Developer as a bankrupt, or assignment by Developer for the benefit of its creditors or the entry by Developer into an agreement of composition with its creditors, or the approval by a court of competent jurisdiction of a petition applicable to Developer in any proceeding instituted under the provisions of state law or the federal bankruptcy statute, as amended, or under any similar act which may hereafter be enacted. The term "dissolution or liquidation of Developer," as used in this Section 7.1(c), shall not be construed to include the cessation of the existence of Developer resulting either from a merger or consolidation of Developer into or with another entity or a dissolution or liquidation of Developer following a transfer of all or substantially all of its assets as an entirety, under the conditions permitting such actions contained in Section 6.2 hereof.
- (d) The occurrence of an "Event of Default" within the meaning of the Indenture or the Mortgage.
- Section 7.2 Notice of Default; Opportunity to Cure. Except as provided below no default under Section 7.1(b) hereof shall constitute an "Event of Default" hereunder until:
- (a) The Trustee or the Authority, by registered or certified mail, shall give notice to the Developer and the Bank of such default specifying the same and stating that such notice is a "Notice of Default"; and
- (b) The Developer shall have had 60 days (30 days in the case of defaults that do not result from violations of Section 2 or 3 of the Land Use Restrictions) after receipt of

such notice to correct the default and shall not have corrected it or, if such default cannot be corrected within 60 days (or 30 days), shall have failed to initiate and diligently pursue (in the judgment of the Authority or the Trustee) appropriate corrective action; and

(c) The Bank shall have had 30 days after receipt of notice from the Trustee of failure by the Developer to correct the default.

Notwithstanding the foregoing, a notice of and opportunity to cure any default arising from a default under the Land Use Restrictions, the Program Guidelines, the Letter of Credit Agreement or the Mortgage shall be governed by the terms of such agreements, and no additional notices of or opportunity to cure any default under such agreements shall be required hereunder.

Section 7.3 Remedies. Whenever any Event of Default under Section 7.1 hereof shall have happened and be continuing, any or all of the following remedial steps shall be available:

- (a) Upon the occurrence of an Event of Default as set forth in Section 7.1 hereof, the Trustee may, in accordance with the terms of Sections 7.01 and 7.10 of the Indenture, declare the Developer Note and all payments required to be made by the Developer under Section 3.5 hereof for the remainder of the term of the Agreement to be immediately due and payable, whereupon the same shall become immediately due and payable; provided that upon the occurrence of an Event of Default set forth in Section 7.1(d) hereof the Trustee shall declare the Developer Note to be due and payable, whereupon the same shall become due and payable.
- (b) The Trustee may, for and on behalf of the Authority and in accordance with the terms of Sections 7.01 and 7.10 of the Indenture, take whatever action at law or in equity may appear necessary or desirable to collect the payments required to be made by Developer under Section 3.5 hereof then due and thereafter to become due, including, without limitation, pursuing remedies under the Developer Note as provided therein, or to enforce performance and observance of any obligation or agreement of the Developer under the Agreement or under the Mortgage, the Land Use Restrictions, the Program Guidelines or the Developer Note.

Notwithstanding the foregoing, in no event shall the Authority be obligated to take any step which in its opinion will or might cause it to expend time or money or otherwise incur liability unless and until a satisfactory indemnity bond has been furnished to it. Any moneys collected as payments made on the Developer Note and pursuant to Section 3.5 hereof or applicable

to such payments and any other moneys which would be applicable to payment of principal of, premium, if any, and interest on the Bonds collected pursuant to action taken under this Section, shall, after reimbursement of the Trustee, the Bank or the Authority from such moneys (excluding for purposes of such reimbursement, any moneys received pursuant to the Letter of Credit) for costs incurred by the Trustee, the Bank or the Authority in pursuing any remedies hereunder or under the Project Loan Documents shall be paid into the Bond Fund under the Indenture and applied in accordance with the provisions of the Indenture or, if the outstanding Bonds have been deemed paid in accordance with the provisions of the Indenture, shall be paid as provided in the Indenture for amounts remaining in the Bond Fund.

The provisions of this Section are subject to the further limitation that following expiration of the term of the Letter of Credit, the annulment of a declaration that all the Bonds Outstanding under the Indenture are immediately due and payable shall also constitute an annulment of any corresponding declaration made pursuant to paragraph (a) of this Section and a waiver and rescission of the consequences of such declaration and of the Event of Default with respect to which such declaration has been made, provided that no such waiver or rescission shall extend to or affect any subsequent or other default or impair any right consequent thereon.

(c) The Authority shall have the express right to enforce the Land Use Restrictions and Program Guidelines. No remedy conferred herein or reserved to the Authority or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute.

Section 7.4 Delay or Omission Not Waiver. No delay or omission of the Authority or the Trustee to exercise any right or remedy provided hereunder upon an event of default hereunder shall impair any such right to remedy or constitute a waiver of any such event of default or acquiescence therein. Every right and remedy given by this Article or by law to the Authority or the Trustee may be exercised from time to time, and as often as may be deemed expedient, by the Authority or the Trustee, as the case may be.

Section 7.5 Attorneys' Fees and Expenses. If a default or Event of Default hereunder occurs and if the Authority or the

Trustee, or their respective representative or agent, should employ attorneys or incur expenses for the enforcement of any obligation or agreement of the Developer contained herein or the Developer Note or Mortgage, the Developer on demand will pay to the Authority or the Trustee the reasonable fees of such attorneys and the reasonable expenses so incurred, including all costs of any court appeals.

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ARTICLE VIII

MISCELLANEOUS

Section 8.1 Confidential Information. The Developer shall not be required to disclose, or to permit the Authority, the Trustee or others to acquire access to, any trade secrets of the Developer or any other processes, techniques or information deemed by the Developer to be proprietary or confidential, except as may be appropriate under State law for the prosecution or defense of any legal or equitable action arising hereunder or for the collection of a judgment. This provision shall not be construed as prohibiting the rights to inspect, during business hours, the Project or the Developer's records to assure conformity with applicable building standards, the Land Use Restrictions, the Program Guidelines or the tax-exempt status of the Bonds.

Section 8.2 Entire Agreement. The Project Loan Documents, together with the Indenture, and the documents delivered at the date of delivery of the Bonds constitute the entire agreement and supersede all prior agreements and understandings, both written and oral, between the Authority and the Developer with respect to the subject matter hereof.

Section 8.3 Notices. All notices, certificates or other communications shall be sufficiently given and shall be deemed given on the second day following the date on which the same have been mailed by certified mail, postage prepaid, or sent via nationally recognized air courier service addressed as follows: if to the Authority: c/o Clerk of Courts, St. Johns County Courthouse, St. Augustine, Florida 32084; if to the Developer:

if to the Trustee: 200 South Orange Avenue, Orlando, Florida 32801, Attention:

; if to the Bank: One Main Place,
Buffalo, New York 14202, Attention: Officer in Charge - (i) Commercial Mortgage Servicing Department and (ii) Letter of Credit
Desk, Securities Investments Department; and if to the Remarketing
Agent: 200 Park Avenue, 8th Floor, New York, New York 10166,
Attention: Municipal Department. A duplicate copy of each notice,
certificate or other communication given hereunder by either
Authority or Developer to the other shall also be given to the
Trustee and to any subordinate lien holders of whom the Trustee
is provided notice in writing. The Authority, the Bank, the
Developer, and the Trustee may, by notice given hereunder, designate any further or different addresses to which subsequent
notices, certificates or other communications shall be sent.

Section 8.4 Assignments. The Agreement may not be assigned by either party without consent of the other except that the Authority has assigned to the Trustee certain of its rights under the Agreement, and the Developer may assign to any transferee or any surviving or resulting entity its rights under the Agreement as provided by Section 6.2 hereof.

Section 8.5 Severability. If any provisions of the Agreement shall be held or deemed to be or shall, in fact, be illegal, inoperative or unenforceable, the same shall not affect any other provision or provisions herein contained or render the same invalid, inoperative, or unenforceable to any extent whatever.

Section 8.6 Execution of Counterparts. This Amended and Restated Loan Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 8.7 Amounts Remaining in Funds. Amounts remaining in any Fund created under the Indenture shall be applied by Trustee as provided in Section 5.12 of the Indenture.

Section 8.8 Amendments, Changes and Modifications. Except as otherwise provided in the Agreement or in the Indenture, subsequent to the issuance of Bonds and prior to their payment in full (or provision for payment thereof having been made in accordance with the provisions of the Indenture), the Agreement may not be effectively amended, changed, modified, altered or terminated without the written consent of the Trustee, the Authority and the Bank and compliance with Sections 8.08 and 8.09 of the Indenture; provided, however, that all parties to this Agreement hereby agree to the amendment of the Agreement to the full extent necessary to comply with the requirements promulgated subsequent to the execution hereof in order to maintain the tax exempt status of the Bonds. Before the Authority shall enter into, and the Trustee shall consent to, any modification, alteration, amendment or supplement to the Agreement pursuant to this Section, there shall have been delivered to the Authority, the Trustee and the Bank an opinion of Bond Counsel stating that such modification, alteration, amendment or supplement is authorized or permitted by the Indenture and the Act, complies with their respective terms and will not adversely affect the exemption of interest on the Bonds from federal income taxation.

Section 8.9 Governing Law. The Agreement shall be governed exclusively by and construed in accordance with the applicable laws of the State, both substantive and remedial.

Section 8.10 Term of Agreement. The Agreement shall be in full force and effect from the date hereof until the later of (a) such time as all the Bonds shall have been fully paid or provisions made for such payment pursuant to the Indenture, (b) the payment by the Developer or on behalf of the Developer of all principal and interest due under the Developer Note in accordance with the terms thereof and of this Agreement, or (c) the end of the Qualified Project Period, as defined in the Land Use Restrictions.

Section 8.11 Limited Obligation of Authority. Notwithstanding anything to the contrary herein contained by implication or otherwise, the obligations of the Authority created by or arising out of the Agreement shall not be general debt obligations of the Authority, or of the State or any political subdivision thereof, do not constitute or give rise to charges against its or their general credit or taxing powers and shall not constitute or give rise to any personal liability of any member of the Authority or any of the officers, employees, counsel or agents of the Authority or for any act or omission related to authorization or issuance of the Bonds.

Neither the issuance of the Bonds nor the delivery of the Agreement shall, directly or indirectly or contingently, obligate the Authority or the State or any political subdivision thereof to levy any form of taxation therefor or to make any appropriation for their payment. Nothing in the Bonds or in the Indenture or in the Agreement or in the proceedings of the Authority authorizing the Bonds or in the Act shall be construed to authorize the Authority to create a debt of the Authority or of the State or any political subdivision thereof within the meaning of any constitutional or statutory provision of the State. Recourse to the Authority under the Agreement for damages is limited solely to the trust estate under the Indenture. The principal and the premium, if any, and interest on the Bonds shall be payable solely from the funds pledged for their payment in accordance with the Indenture.

The Developer shall pay or cause to be paid all costs incurred or to be incurred by the Authority in connection with the financing, construction and administration of the Project, except as may be paid out of the proceeds of sale of the Bonds.

Section 8.12 <u>Tax Status of Bonds</u>. It is intended that the interest on the Bonds be excluded from gross income for federal income tax purposes pursuant to Section 103 of the Code. In general, the Developer agrees that it will take no action which would (and will omit no action the omission of which would) cause the interest on the Bonds to become includable in the gross income (for federal income tax purposes) of any Bondholder, other than a

Bondholder who is a "substantial user" of the Project or a "related person" within the meaning and for the purpose of Section 147(a) of the Code and applicable regulations thereunder.

Section 8.13 Payment of Monitoring Expenses. The Developer agrees to pay the reasonable costs and expenses of the Authority and the Trustee incurred to monitor the compliance of the Developer with the terms of the Program Guidelines and the Land Use Restrictions.

Section 8.14 Use of Project. The Developer will, at its expense, continuously operate and use the Project only in accordance with the Program Guidelines and the Land Use Restrictions attached as Exhibits B and C hereto for the Term of Agreement and hereby consents to the issuance of a mandatory injunction by a court of competent jurisdiction requiring such use if the Authority should deem such injunction desirable.

Section 8.15 <u>Letter of Credit</u>. The Developer hereby approves the terms of the Letter of Credit and authorizes the Trustee and the Authority to make draws thereon in accordance with its terms. The Developer will hold the Trustee and the Authority harmless for any liability or damages resulting from such draws.

Section 8.16 <u>Indenture</u>. The Developer has read the Indenture and approves and accepts the terms thereof and agrees to comply with the terms, conditions and provisions thereof and to do and perform all acts and things contemplated in the Indenture to be done or performed by the Developer.

IN WITNESS WHEREOF, the parties hereto have executed this Amended and Restated Loan Agreement, all as of the day and year first above mentioned.

| Signed, sealed and delivered in the presence of: | JACKSONVILLE VENTURES, INC. |
|--|-----------------------------|
| | By |
| (Witnesses as to Developer) | Attest: |
| | [SEAL OF DEVELOPER] |

| Signed, sealed and delivered in the presence of: | HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA |
|--|--|
| | ByTitle: Chairman |
| (Witnesses as to Authority) | Attest: Title: Secretary |
| | (SEAL OF ISSUER) |

STATE OF FLORIDA

COUNTY OF ST. JOHNS

| 3 | <pre>was acknowledged before me this</pre> |
|---|--|
| , theand the Jacksonville Ventures, Inc., a Delauthorized to transact business in behalf of said corporation. | , respectively, of laware corporation duly |
| | Notary Public, State of Florida, at Large |
| [NOTARIAL SEAL] | My Commission Expires: |
| STATE OF FLORIDA | |
| COUNTY OF ST. JOHNS | |
| The foregoing instrument day of 1987, by the Chairman and the Secretary, raintenance Authority of St. Johns Corporate and politic of the State Authority. | ounty, Florida, a public body |
| | Notary Public, State of Florida, at Large |
| [NOTARIAL SEAL] | My Commission Expires: |

EXHIBIT A

The Project consists of 344 apartment units to be located at 611 Ponte Vedra Lakes Boulevard in Ponte Vedra Beach, St. Johns County, Florida. One hundred fifty-two units will contain one bedroom and one bath, and the remaining 212 units will contain two bedrooms and two baths. All units will be equipped with refrigerators, washer-dryers and microwave ovens. The Project will include over 600 parking spaces, as well as tennis courts, a clubhouse and swimming pools. The legal description of the Project is described in Exhibit D to this Amended and Restated Loan Agreement.

AC8SRPLA1

EXHIBIT B

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

MULTIFAMILY HOUSING - RESIDENTIAL RENTAL PROPERTY PROGRAM GUIDELINES

REMINGTON AT PONTE VEDRA DEVELOPMENT

<u>Definitions</u>

Words used herein which are defined in the Loan Agreement between the Housing Finance Authority of St. Johns County, Florida (the "Issuer") and Gene Branscome, formerly known as Eugene H. Branscome, Jr. (the "Developer"), dated as of August 1, 1985 (the "Loan Agreement"), and in the Indenture between the Issuer and Sun Bank, National Association, dated as of August 1, 1985 (the "Indenture"), shall have the same meaning as in the Loan Agreement and the Indenture unless otherwise stated. The following additional terms shall have the respective meanings set forth below for the purposes hereof:

"Eligible Tenants" means persons and families of moderate, middle or lesser income with total annual income equal to or less than 150% of the median income for the area as determined from time to time by the Secretary of Housing and Urban Develoment under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, median income for the area determined under the method used by said Secretary prior to the termination.

"Low or Moderate Income Tenants" means persons and families of low or moderate income within the meaning of Section 103(b)(4)(A) and 103(b)(12)(C) of the Code and applicable regulations thereunder as the same may be amended from time to time.

"Qualified Project Period" means that period of time beginning on the later of (i) the first day on which 10% of the units in the Project are first occupied and (ii) the date of issuance of the Bonds, and ending on the latest of (a) the date that is ten years after the date on which 50% of the units in the Project are first occupied, (b) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates, and (c) the date

that is 50% of the number of days constituting the term of the latest maturing Bond (including any refunding bond) after the date on which any of the units in the Project is first occupied; provided, however, that the Qualified Project Period shall end in the event that the Internal Revenue Service finds that the interest on the Bonds is taxable, other than as a result of ownership thereof by a "substantial user" or a "related person" under Section 103(b) of the Code.

Land Use Restriction

The Issuer shall make a loan to the Developer for the acquisition, construction, installation and ownership of the Project subject to the conditions set forth in the Loan Agreement, in addition to the conditions set forth in these Guidelines. Upon delivery of the Bonds, the Developer must submit to the Trustee the executed Land Use Restrictions which shall have been recorded in the official public records of St. Johns County, Florida.

Guidelines

These Guidelines have been adopted and approved by the Issuer and accepted and approved by the Developer and form a part of the contractual agreement between the Issuer and the Developer evidenced by the Loan Agreement and are incorporated by reference into the Loan Agreement and attached thereto as Exhibit B.

- (a) At all times during the Qualified Project Period, all of the completed units in the Project shall be rented to and occupied by Eligible Tenants and at least 20% of the completed units in the Project shall be rented to and occupied by Low or Moderate Income Tenants or held available for rental to and occupancy by Low or Moderate Income Tenants.
- (b) The Developer will rent continuously or make available for rent on a continuous basis all units in the Project to members of the general public for the longer of the remaining term of the Bonds or the Qualified Project Period; and the Developer will not give preference in renting units in the Project to any particular class or group of persons, other than persons and families of moderate, middle or lesser income and a resident manager and maintenance personnel.
- (c) To the extent permitted by applicable law, the Developer will obtain from each Eligible Tenant residing in the Project and maintain on file and available for inspection by the Issuer and the Trustee, a copy of such Eligible Tenant's federal income tax return for the taxable year immediately preceding such Eligible Tenant's initial

occupancy in the Project or independent verification of such Eligible Tenant's income for such year, such as wage statements or employer certification, which shall be acceptable to the Trustee.

- (d) For each Eligible Tenant which occupies a rental unit in the Project, the Developer will submit to the Trustee (i) an Income Certification in the form attached hereto as Schedule I, executed by such person or head of such family at the time of initial renting of a unit and (ii) an Occupancy Certificate in the form attached hereto as Schedule II.
- (e) The Developer will deliver to the Trustee on the first day of each month a Certification of Continuing Program Compliance, in the form attached hereto as Schedule III, certifying that income levels remain within the levels established by these Guidelines. Each new Eligible Tenant in the Project must fill out and sign an Income Certification, which shall be attached to the Occupancy Certificate and delivered to the Trustee by the Developer. Failure of the Developer to deliver such certifications on or before the fifteenth day of such month will constitute an event of default under the Loan Agreement and the Land Use Restrictions.
- (f) The Developer must comply with all of the terms, provisions and covenants contained in the Land Use Restrictions; and to the extent of any conflict or inconsistency between the provisions of these Guidelines and the requirements of the Land Use Restrictions, the requirements and provisions of the Land Use Restrictions shall be paramount and controlling.

For the purpose of these Guidelines, a rental unit occupied by an individual or family who at the beginning of its occupancy is an Eligible Tenant or a Low or Moderate Income Tenant shall be treated as occupied by an Eligible Tenant or a Low or Moderate Income Tenant during such individual's or family's tenancy in such unit even if the individual or family, as the case may be, subsequently ceases to qualify as an Eligible Tenant or a Low or Moderate Income Tenant. In addition such unit shall be treated as occupied by an Eligible Tenant or a Low or Moderate Income Tenant until reoccupied, other than for a temporary period not exceeding thirty-one (31) days by another occupant, at which time the character of the unit shall be redetermined according to the provisions of these Guidelines and the Land Use Restrictions.

SCHEDULE I

INCOME COMPUTATION AND CERTIFICATION

The undersigned, being first duly sworn, state-that we have read and answered fully, frankly and personally each of the following questions for all persons who are to occupy the apartment unit for which application for tenancy is made herewith, all of whom are listed below:

| 1. | 2. Deletienski | 3. | 4. | 5. |
|--|--|-------------------|--|------------------------|
| Name of Members of the Household | Relationship to Head of Household | <u>Age</u> | Social Security Number | Place of Employment |
| | HEAD | | | |
| | SPOUSE | | | |
| | | | | |
| | | | | |
| all sources during follows: | anticipated inc ng the 12-month | come of period | all the above perbect beginning today | is as |
| | Total | al | \$ | - - |
| income or contri | butions was inc real property | luded i | cribed above (or n item 6) has and er form of capital | y savings, |
| such persons | : \$ | _′ income | e expected to be | derived |
| S | . and | | period commencing income which is in | |
| | <u> </u> | | | |
| above be or have | they been full of this calenda er than a corre | -time : r vear | sons listed in co students during f at an educationa nce school) with | lve l |

| ies | _ |
|---|---|
| | son (other than nonresident to file a joint federal income |
| YesNo | |
| We acknowledge that all of the above the status under federal income to issued to finance construction of indersigned's accompanying applicate consent to the disclosure of souch bonds and to any trustee act dene Branscome and his successors apartment. | ax law of the interest on bonds the apartment for which the ation for tenancy is being made. uch information to the Issuer of ing on their behalf, and to |
| | Head of Household |
| | Spouse |
| SUBSCRIBED AND SWORN to | before me this day of |
| NOTARY SEAL) | |
| | Notary Public in and for the State of |
| | My Commission Expires: |
| FOR COMPLETION BY APARTMENT OWNER | ONLY: (REMINGTON AT PONTE VEDRA) |
| Calculation of eligi | ble tenant income: |
| <pre>(a) enter amount en entire household in 6 above:</pre> | tered for \$ |
| (b) if the amount e 7(a) above is greater than \$5 the greater of (i) the amount 7(b) less the amount entered (ii) 10% of the amount entere | ,000, enter entered in in 7(c) or |

Exhibit B - Page 5

| (c) TOTAL ELIGIBLE INCOME (Line l(a) plus l(b)): s |
|---|
| <u> </u> |
| 2. The amount entered in l(c) is: |
| Less than or equal to 80% of the median income for households in the Metropolitan Statistical Area which includes St. Johns County, Florida, as determined from time to time by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, median income determined under the method used by the Secretary prior to the termination ("Median Income for the Area"). |
| More than 80% of the Median Income for the Area, but less than or equal to 150% of the Median Income for the Area ("Eligible Tenant"). |
| More than 150% of the Median Income for the Area. |
| 3. Number of apartment unit assigned: |
| 4. This apartment unit was/was not (circle one) last occupied for a period of at least thirty-one (31) consecutive days by persons whose aggregate anticipated annual income as certified in the above manner upon their initial occupancy of the apartment unit was less than or equal to 80% of Median Income for the Area. |
| Applicant qualifies as: |
| Eligible Tenant |
| Low or Moderate Income Tenant |
| Does not qualify as Eligible Tentant or Low or Moderate Income Tenant |
| |

Manager, Remington at Ponte Vedra

SCHEDULE II

OCCUPANCY CERTIFICATE

The tenant identified in the attached Income Computation and Certification has entered into a lease with respect to an apartment unit in the above described multifamily housing development.

As evidenced by the Income Certification, such tenant qualifies as an Eligible Tenant and is/is not (circle one) a Low or Moderate Income Tenant.

| Date: | |
|------------------|--|
| | |
| ByGene_Branscome | |

SCHEDULE III

CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE

REMINGTON AT PONTE VEDRA DEVELOPMENT

| Witnesseth that on this day of , 19 , the undersigned, having borrowed certain funds from the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "Issuer") for the purpose of acquiring, constructing and installing a 344-unit multifamily housing development, qualifying as "residential rental property" within the meaning of Section 103(b)(4)(A) of the Internal Revenue Code of 1954, as amended (the "Project"), does hereby certify that (i) during the preceding month such Project was continually in compliance with the Loan Agreement and the Land Use Restrictions, (ii) on the last day of such month % of the units in the Project were actually occupied by Low or Moderate Income Tenants, (iii) on the last day of such month % of the units in the Project were vacant but were previously occupied by Low or Moderate Income Tenants (iv) on the last day of such month 100% of the occupied units in the Project were actually occupied by Eligible Tenants and (v) that the representations set forth herein are true and correct to the best of the undersigned's knowledge and belief. Witness |
|---|
| Witness By Gene Branscome |
| Names of Low or Moderate Income Tenants who commenced or terminated occupancy during the preceding month. |

| Commenced Occupancy | Terminated Occupancy |
|---------------------|----------------------|
| 1. | 1. |
| 2. | 2. |
| 3. | 3. |
| 4. | 4. |
| | |

MR1SJRGD1

Exhibit B - Page 8

LAND USE RESTRICTIONS

by and among

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (Issuer)

and

GENE BRANSCOME, (Developer)

and

SUN BANK, NATIONAL ASSOCIATION (Trustee)

Dated as of August 1, 1985

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

MULTIFAMILY HOUSING REVENUE BONDS (Remington at Ponte Vedra Project)

This Instrument Prepared By And Should Be Returned To:

Thomas B. Slade, III, Attorney Foley & Lardner 1700 Atlantic Bank Building 200 West Forsyth Street P.O. Box 1290 Jacksonville, Florida 32201-1290 (904) 356-2029

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LAND USE RESTRICTIONS

STATE OF FLORDA) KNOW ALL MEN BY THESE PRESENTS: COUNTY OF ST. JOHNS)

These Land Use Restrictions, made and entered into as of August 1, 1985, by and among the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA ("Issuer"), SUN BANK, NATIONAL ASSOCIATION ("Trustee") and GENE BRANSCOME ("Developer"), owner of the Land hereinafter defined;

WITNESSETH

WHEREAS, the Issuer proposes to issue the Bonds hereinafter defined, the proceeds of the sale of which will be used to provide the necessary funds to the Issuer to make a loan to the Developer to finance the Project hereinafter defined pursuant to the provisions of the Agreement hereinafter defined; and

WHEREAS, the Issuer and the Trustee, as a condition of issuing and authenticating such Bonds, require that the Developer execute this instrument for the purpose of imposing the land use restrictions herein contained upon said Land;

NOW, THEREFORE, in consideration of the mutual covenants and undertakings set forth herein, and other good and valuable considerations, the receipt and the sufficiency of which are hereby acknowledged, the Issuer, the Trustee and the Developer do hereby agree as follows:

Section 1. <u>Definitions</u>. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for the purposes hereof:

"Act": Chapter 159, Part IV, Florida Statutes, as amended.

"Agreement": the Loan Agreement dated as of the date hereof between the Issuer and the Developer, as amended and supplemented from time to time.

"Bank": the Bank as defined in the Indenture.

"Basic Documents": the Basic Documents as defined in the Indenture.

"Bond Counsel": Bond Counsel as defined in the Indenture.

"Bonds": the Issuer's bonds listed on the cover hereof.

"Code": the Internal Revenue Code of 1954, as amended.

"Completion Date": the date of completion of the Project as specified in the Agreement.

"County": St. Johns County, Florida.

"Developer": Gene Branscome, an individual, and his heirs, personal representatives, successors and assigns.

"Developer Cost Certificate": the Developer Cost Certificate as defined in the Indenture.

"Developer Documents": the Developer Documents as defined in the Indenture.

"Developer Loan": the loan to be made by the Issuer to the Developer to provide financing for the Project.

"Developer Note": that certain promissory note dated as of the date hereof, made from the Developer to the Issuer, evidencing the Developer's obligation to repay the Developer Loan.

"Eligible Tenants": persons and families of moderate, middle and lesser income with total annual income equal to or less than 150% of the medium income for the area as determined from time to time by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United Staets Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated, medium income for the area determined under the method used by said Secretary prior to the termination.

"Indenture": the Indenture of Trust dated as of the date hereof between the Issuer and the Trustee, relating to the issuance of the Bonds, as amended and supplemented from time to time.

"Issuer": Housing Finance Authority of St. Johns County, Florida and its successors.

"Land": the real property described in Exhibit "A" attached hereto.

"Lower-Income Tenants": individuals of low or moderate income within the meaning of Section 103(b)(4)(A) and 103(b)(12)(c) of the Code, whose income as defined by the Code is less than or equal to 80% of the median income for the area as determined from time to time by the Secretary of Housing and Urban Development under Section 8(f)(3) of the United States Housing Act of 1937, as amended, or if programs under Section 8(f) are terminated,

median income determined under the method used by the Secretary prior to the termination ("Median Income for the Area"). For this purpose, the occupants of a Unit in the Project shall not be considered to be of low or moderate income if all of such occupants are students (as defined in Section 151(e)(4) of the Code), no one of whom is entitled to a joint return under Section 6013 of the Code.

"Mortgage": the Mortgage and Security Agreement dated as of the date hereof from the Developer to the Issuer.

"Program Guidelines": The Program Guidelines as defined in the Indenture.

"Project": the 344-unit multifamily residential rental project to be financed with the Developer Loan and to be constructed upon the Land.

"Project Costs": the Project Costs as defined in the Indenture.

"Qualified Project Period": that period of time beginning on the later of (i) the first day on which 10% of the Units in the Project are first occupied and (ii) the date of issuance of the Bonds, and ending on the latest of (a) the date that is ten years after the date on which 50% of the Units in the Project are first occupied, (b) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937 terminates, and (c) the date that is 50% of the number of days constituting the term of the latest maturing Bond (including any refunding bond) after the date on which any of the Units in the Project is first occupied; provided, however, that the Qualified Project Period shall end in the event that the Internal Revenue Service finds that the interest on the Bonds is taxable, other than as a result of ownership thereof by a "substantial user" or a "related person" under Section 103(b) of the Code.

"State": the State of Florida.

"Trustee": Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under the Indenture, and its successors.

"Unit": "unit" as defined in Treasury Regulation 1.103-8(b)(8).

All capitalized, undefined terms used herein shall have the same meaning as used in Article I of the Indenture or Article I of the Agreement.

Unless the context clearly requires otherwise, words of the masculine gender shall be construed to include correlative words of the feminine and neuter genders and vice versa, and words of the singular number shall be construed to include correlative words of the plural number and vice versa. All the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof. The titles and headings of the sections hereof have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this instrument or any provision hereof or in ascertaining intent, if any question of intent should arise.

Section 2. <u>Tenants</u>. To the end of satisfying the requirements of the Act and of Section 103(b)(4)(A) of the Code and the regulations thereunder, the Developer hereby represents, covenants and agrees that, during the Qualified Project Period:

(a) commencing with the date on which at least 10% of the Units in the Project are occupied, (i) at least 20% (15% if the Project is located within a targeted area within the meaning of Section 103A of the Code) of the completed Units (or, if approved by a written opinion of Bond Counsel, at least 20% of the occupied Units) in the Project shall be occupied by Lower-Income Tenants, prior to the satisfaction of which no additional Units shall be rented or leased to Eligible Tenants and (ii) after initial rental occupancy of such Units by Lower-Income Tenants, at least 20% of the completed Units in the Project at all times shall be rented to and occupied (or held available for rent if previously rented to and occupied by a Lower-Income Tenant) by Lower-Income Tenants as required by Section 103(b)(4)(A) of the Code, and all remaining Units will be occupied by or held available for rental only to Eligible Tenants, unless in the opinion of Bond Counsel occupancy of a lower percentage of Units by Lower-Income Tenants will not adversely affect the exemption from federal income taxation of interest on the Bonds; provided, however, that the Units so occupied or so held available shall have substantially the same equipment and amenities (not including luxury amenities such as fireplaces) and be of similar location, quality, size and type of construction as the other dwelling units in the Project. For the purpose of complying with this requirement, a Unit occupied by an individual or family who at the commencement of the occupancy qualifies as a Lower-Income Tenant is treated as occupied by a Lower-Income Tenant during their tenancy in such Unit, even though they subsequently cease to qualify as a Lower-Income Tenant. Similarly, for the purposes of complying with this requirement, a Unit occupied by an individual or family who at the commencement of the occupancy qualifies as an Eligible Tenant is treated as occupied by an Eligible Tenant during their tenancy in such Unit, even though they subsequently cease to qualify as an Eligible

Tenant. Moreover, if a Unit is vacated by an individual or family who qualified as Lower-Income Tenants or as Eligible Tenants, such Unit shall be treated as occupied by Lower-Income Tenants or Eligible Tenants, as applicable, until reoccupied (other than for a temporary period of not more than 31 days) at which time the character of the Unit shall be redetermined;

- (b) the Developer shall obtain and maintain on file sworn and notarized income certifications from each Lower-Income Tenant and Eligible Tenant dated not more than five (5) days prior to the initial occupancy of such tenant in the Project, in the form and containing such information as may be required by Section 103(b)(12)(C) of the Code, Treasury Regulation 1.167(k)-3(b) and the Program Guidelines as the same may be from time to time amended by the Issuer on the advice of Bond Counsel, or in such other form and manner as may be required by applicable rules, rulings, procedures, official statements, regulations or policies now or hereafter promulgated or proposed by the Department of the Treasury or the Internal Revenue Service with respect to obligations issued under Section 103(b)(4)(A) of the Code. Photocopies of each such income certification shall be submitted to the Trustee (i) within 10 days following the end of the calendar month during which the first Unit the Project is first occupied, (ii) within 10 days following the end of each calendar month thereafter, together with the Certificate of Continuing Program Compliance required under subsection (g) below, and (iii) as requested by the Issuer or the Trustee, which may be as often as may be necessary, in the opinion of Bond Counsel, to comply with the provisions of Section 103(b)(4)(A) of the Code;
- (c) the Developer shall maintain complete and accurate records pertaining to the Units occupied or to be occupied by Lower-Income Tenants and Eligible Tenants, and to permit any duly authorized representative of the Issuer, the Trustee, the Bank, the Department of the Treasury or the Internal Revenue Service to inspect upon reasonable notice and at reasonable times the books and records of the Developer pertaining to the income certifications of Lower-Income Tenants and Eligible Tenants residing in the Project;
- (d) the Developer shall obtain and maintain on file from each tenant residing in the Project a copy of such tenant's federal income tax return for the taxable year immediately preceding such tenant's initial occupancy in the Project or if such tax return is unavailable, other satisfactory evidence of income for such year, such as wage statements or employer certification, which shall be acceptable to the Trustee;
- (e) the Developer shall permit any duly authorized representative of the Issuer, the Trustee, the Bank, the Department of the Treasury or the Internal Revenue Service to inspect upon reasonable notice and at reasonable times the books and records of the

Developer pertaining to the incomes of Lower-Income Tenants and Eligible Tenants residing in the Project upon reasonable notice and at reasonable times;

- (f) the Developer shall immediately notify the Issuer, the Bank and the Trustee if at any time the Units in the Project are not occupied or available for occupancy as provided in (a) above, and the Developer shall prepare and submit to the Bank and the Trustee, not later than the tenth (10th) day of each month following the initial occupancy of any of the Units in the Project, a Certificate of Continuing Program Compliance executed by the Developer, stating among other matters, the number of Units of the Project which, as of the first day of such month, in each case, were occupied by Lower-Income Tenants, were occupied by Eligible Tenants, were deemed to be occupied by Eligible Tenants as provided in subparagraph (a) above, and stating that all Units in the Project are occupied by or held available for rental to only Eligible Tenants (including Lower-Income Tenants); and
- (g) Upon the Issuer's request, the Developer shall submit Income Certifications and Certificates of Continuing Program Compliance to the Issuer or its agents.
- Section 3. Residential Rental Property. The Issuer, the Trustee and the Developer hereby declare their understanding and intent that the Project is to be owned, managed and operated as a "residential rental project" as such phrase is utilized in Section 103(b)(4)(A) of the Code continuously during the longer of the Qualified Project Period or until no Bonds remain outstanding. To that end, the Developer hereby represents, covenants and agrees that, during such period:
- (a) the Project is being acquired and will be constructed on the Land for the purpose of providing residential rental property, and the Developer shall own, manage and operate the Project to provide residential rental property, in accordance with Section 103(b)(4)(A) of the Code and Treasury Regulation 1.103-8(b), as amended from time to time, the Land Use Restrictions and the Program Guidelines.
- (b) each Unit in the Project shall be similarly constructed and shall contain complete and separate facilities for living, sleeping, eating, cooking and sanitation for a single person or a family, including a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink;
- (c) once available for occupancy, each Unit shall be rented or available for rental on a continuous basis to members of the general public meeting the income restrictions set forth herein and the Developer shall not give preference in renting

Units in the Project to any particular class or group of persons, other than Lower-Income Tenants and Eligible Persons; provided, however, that an insubstantial number of Units in the Project, not to exceed five Units, may be occupied by maintenance, security or managerial employees of the Developer or its property manager, which employees must be reasonably necessary for the operation of the Project;

- (d) none of the Units in the Project shall at any time be utilized on a transient basis; none of the Units in the Project shall ever be leased or rented for a period of less than 60 days; and neither the Project nor any portion thereof shall ever be used as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, nursing home, brothel, hospital, sanitarium, rest home or trailer court or park;
- (e) no part of the Project will at any time be owned or used by a cooperative housing corporation;
- the Project will consist of one or more discrete edifices and other man-made construction, each consisting of an independent foundation, outer walls and roof, all of which will be owned by the same person for federal tax purposes, located on a common tract of land or two or more tracts of land which are contiguous except for being separated only by a road, street, stream or similar property and financed by the Developer Loan or otherwise pursuant to a common plan of financing, and which will consist entirely of (i) Units which are similar in quality and type of construction and (ii) facilities functionally related and subordinate in purpose and size to the property described in (i) above, e.g., parking areas, laundries, swimming pools, tennis courts and other recreational facilities and other facilities which are reasonably required for the Project, e.g., heating and cooling equipment, trash disposal equipment or units for residential managers or maintenance personnel;
- (g) Lower-Income Tenants will have equal access to and enjoyment of all common facilities of the Project;
- (h) the Project will not include a unit in a building where all units in such building are not also included in the Project;
- (i) the Project will not be converted to condominium ownership;
- (j) Units designated for Lower-Income Tenants will be reasonably interspersed throughout the Project and will be proportionally available in all Unit sizes; and
- (k) no Unit in the Project shall be occupied by the Developer at any time unless the Developer resides in a Unit

in a building or structure which contains at least five Units and unless the resident of such Unit is a resident manager or other necessary employee (e.g. maintenance and security personnel); and

- (1) the Developer shall not discriminate on the basis of race, color, creed, religion, age, sex, marital status or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project;
- (m) the Developer specifically agrees that the Developer will not refuse or deny rental occupancy in the Project to persons whose family includes minor dependents who will occupy such Unit, unless such refusal is based upon factors not related to the presence of such minors in the family; provided, however, that the Developer may limit to two (2) the number of occupants of a studio apartment unit or a one-bedroom apartment unit and limit to four (4) the number of occupants of a two-bedroom apartment unit;
- (n) within thirty days after the date on which at least 10% of the Units in the Project are first occupied, the Developer shall prepare and submit to the Issuer, the Bank and the Trustee a certificate in recordable form identifying such date (unless such date is prior to the date of issuance of the Bonds) to evidence the commencement of the Qualified Project Period and shall cause such certificate to be recorded in the public records of the County;
- (0) within thirty days after the date on which at least 50% of the Units in the Project are first occupied, the Developer shall submit to the Issuer, the Bank and the Trustee a certificate in recordable form identifying such date (unless such date is prior to the date of issuance of the Bonds) for purposes of the calculation of the termination of the Qualified Project Period and shall cause such certificate to be recorded in the public records of the County;
- (p) substantially all (at least 90%) of the proceeds of the Bonds will be used to finance the acquisition of land and equipment or the construction of buildings that qualify as residential rental housing or facilities related and/or subordinate thereto; and
- (q) no more than 25% of the net proceeds of the Bonds will be used for the acquisition of a direct or indirect interest in land.

Section 4. Covenants Run With the Land: Term. The Issuer, the Trustee and the Developer hereby declare their express intent that the covenants, reservations and restrictions

set forth herein shall be deemed covenants running with the Land until the later of (a) the date that the last of the Bonds outstanding shall be retired or (b) the end of the Qualified Project Period and shall be an encumbrance on the Land and shall, without regard to technical classification or designation be binding upon and enforceable against the Developer and all successors in title Each and every contract, deed or other instrument to the Land. hereafter executed covering or conveying the Land or any portion thereof shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and restrictions regardless of whether such covenants are set forth in such contract, deed or other instrument. Unless sooner terminated in accordance with Section 8 hereof, such covenants, reservations and restrictions as are contained in Section 2 and 3 hereof shall continue in full force and effect during the respective period set forth therein, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds and the expiration of the Agreement, the Developer Note and the Mortgage, if such retirement and expiration occurs prior to those periods.

Section 5. Uniformity; Common Plan. The provisions hereof shall apply uniformly to the entire Project in order to establish and carry out a common plan for the use, development and improvement of the Land.

Section 6. Burden and Benefit. The Issuer, the Trustee and the Developer hereby declare their understanding and intent that the burden of the covenants, reservations and restrictions set forth herein touch and concern the Land in that the Developer's legal interest in the Land is rendered less valuable thereby. The Issuer, the Trustee and the Developer hereby further declare their understanding and intent that the benefit of such covenants, reservations and restrictions touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project by Eligible Tenants, the intended beneficiaries of such covenants. No part of the Project shall be voluntarily transferred by the Developer prior to expiration of both the rental restrictions period and the Qualified Project Period, unless prior thereto or simultaneously therewith the transferree enters into an agreement in form acceptable to the Issuer and the Trustee assuming all obligations of the Developer hereunder with respect to the transferred property.

Section 7. Remedies; Enforceability. If either the Issuer or the Trustee becomes aware of a possible violation or attempted violation of any of the provisions hereof, it shall give immediate written notice thereof to the Developer, directing him to remedy the violation within a specified period of time. After the earlier of: (a) the date specified in the notice hereinabove provided for, or (b) a date which is sixty (60) days after the date either the Issuer or the Trustee first became aware of

such possible violation or attempted violation, if the violation has not been fully remedied by the Developer to the satisfaction of both the Issuer and the Trustee, or either, acting on behalf of the owners of the Bonds as third-party beneficiaries of these Land Use Restrictions, the Issuer and the Trustee, or either, may institute and prosecute any proceeding at law or in equity to enforce the provisions hereof or to abate, prevent or enjoin any such violation or attempted violation, or to compel specific performance hereunder or to recover monetary damages caused by such violation or attempted violation. In addition to any such remedy, a default by the Developer hereunder shall constitute an Event of Default under Section 7.1 of the Agreement which shall enable the Issuer thereunder, after notice and an opportunity to cure as therein provided, to accelerate the Developer's Loan and to take such other actions as may be permitted under the terms thereof. Whether or not the Developer prevails in such action, it shall pay all of the expenses of the Issuer and the Trustee incurred in connection with such action. It shall also pay all other expenses incurred by the Issuer or the Trustee in connection with the alleged violation. The liability of the Developer for his obligation under these Land Use Restrictions is non-recourse to the same extent and subject to the same limitation provided in Section 6.10 of the Loan Agreement with respect to the Developer's obligations under the Loan Agreement. No partner of the Developer shall be personally liable for any violation by the Developer of these Land Use Restrictions. The provisions hereof are imposed upon and made applicable to the Land, shall constitute an encumbrance thereon and shall run with the Land and shall be enforceable against the Developer, each purchaser, owner or lessee of the Project, and the respective heirs, legal representatives, successors and assigns of the Developer and each such purchaser, owner or lessee. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the same or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation thereof at any later time or times. Any attempted sale, transfer, lease or other disposition which would cause or result in a violation of any of the provisions hereof shall be null and void and of no effect, shall cause a reversion of the title to the Developer as the purported transferor and shall be ineffective to relieve the Developer of its obligations under these Land Use Restrictions. Venue for law suits concerning these restrictions shall be in St. Johns County, Florida.

Section 8. Amendment; Termination. The provisions hereof shall not be amended, revised or terminated prior to the stated
term hereof except by an instrument in writing duly executed by
the Issuer, the Trustee and the Developer or its successor in
title and duly recorded in the official public records of the
County. The Issuer's and Trustee's consent to any such amendment,
revision or termination shall be given only (i) in accordance

with the Indenture, or (ii) upon receipt of (a) an opinion of Bond Counsel that such amendment, revision or termination will not adversely affect the exemption from federal income taxation of interest on any of the Bonds or (b) evidence satisfactory to the Issuer and Trustee that compliance with the provisions hereof is no longer possible or feasible for the reasons enumerated in Treasury Regulation 1.103-8(b)(6)(iii), relating to default, involuntary loss or change in law.

Section 9. <u>Covenants, Representations and Warranties of the Developer.</u> The Developer makes the following representations and warranties:

- (a) The Developer will provide in the lease of each tenant that a material misrepresentation in such tenant's income certification will be grounds for default and eviction (the enforcement of such provision, however, being subject to limitations under applicable law).
- (b) The Developer has full legal right, power and authority (i) to enter into the Basic Documents, (ii) to be bound by the terms thereof, (iii) to perform its obligations thereunder and (iv) to consummate the transactions contemplated thereby.
- (c) The Developer has duly authorized (i) the execution and delivery of the Developer Documents, (ii) the performance by the Developer of its obligations thereunder and (iii) the consummation of the transactions contemplated thereby.
- (d) The Developer Documents have been duly executed and delivered by the Developer and constitute valid and binding obligations of the Developer, enforceable in accordance with their terms, except as limited by bankruptcy, insolvency, reorganization, moratorium or other similar laws affecting the rights of creditors generally.
- (e) The execution and delivery of the Developer Documents, the performance by the Developer of its obligations thereunder do not, and the consummation of the transactions contemplated thereby will not, violate any law, regulation, rule or ordinance, or any order, judgment or decree of any federal, state, or local court, and do not conflict with, or constitute a breach of, or a default under, any document, instrument or commitment to which the Developer is a party or by which the Developer or any of its property is bound, which would materially adversely affect the Developer's ability to perform its obligations hereunder.
- (f) There is no action, suit, proceeding, inquiry or investigation by or before any court, governmental agency, public board or body pending or threatened against the Developer (nor is there any basis therefor), which (i) affects or seeks to prohibit, restrain or enjoin the issuance, sale or delivery of the Bonds or

the loan of the proceeds of the Bonds to the Developer or the execution and delivery of the Basic Documents, (ii) affects or questions the validity or enforceability of the Bonds or any of the Basic Documents, (iii) questions the tax-exempt status of the Bonds or (iv) questions the power or authority of the Developer to carry out the transactions contemplated by, or to perform its obligations under, the Basic Documents or the power of the Developer to own, acquire, construct, equip or operate the Project.

- (g) The Developer is not in default under any document, instrument or commitment to which the Developer is a party or to which it or any of its property is subject, which would materially adversely affect the Developer's ability to perform its obligations hereunder.
- (h) The operation of the Project in the manner presently contemplated will not conflict with any zoning, water, or air pollution or other ordinance, order, law or regulation applicable thereto. The Developer has or will cause the Project to be designed in accordance with all federal, state and local laws or ordinances (including rules and regulations) relating to zoning, building, safety and environmental quality and will proceed with due diligence to construct and install the Project.
- (i) The Developer has filed or caused to be filed all federal, state and local tax returns which are required to be filed, and has paid or caused to be paid all taxes as shown on said returns or on any assessment received by it, to the extent that such taxes have become due and are not yet delinquent.
- (j) The Developer is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any material agreement or instrument to which it is a party.
- (k) No changes shall be made in the Project and no action will be taken by the Developer which will in any way affect the qualification of the Project as a "qualifying housing development", within the meaning of the Act.
- (1) The Developer will not take or permit to be taken any action within its control which would (and will not omit any action within its control the omission of which would), have the effect, directly or indirectly, of subjecting interest on any of the Bonds to federal income taxation and will take any lawful actions, including amending these Land Use Restrictions, as is necessary, in the opinion of a Bond Counsel, to comply fully with all applicable requirements affecting the federal tax exemption of interest on the Bonds under Section 103(b)(4)(A) of the Code.
- (m) The Project will be located entirely within the boundaries of St. Johns County, Florida.

- (n) In accordance with Section 103(b)(14) of the Code, the average maturity of the Bonds does not exceed 120% of the average reasonably expected economic life of the facilities being financed by the Bonds.
- (o) No portion of the proceeds (including any "imputed proceeds") of the Bonds or investment earnings on Funds to be deposited in or credited to the Construction Fund is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for farming purposes, or used to provide the following: any airplane, skybox, or other private luxury box, 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.
- (p) If any portion of the proceeds (including any "imputed proceeds") of the Bonds or investment earnings on Funds to be deposited in or credited to the Construction Fund is to be used (directly or indirectly) for the acquisition of land (or an interest therein) to be used for other than farming purposes, such portion will be less than 25%.
- (q) No portion of the proceeds (including any "imputed proceeds") of the Bonds or investment earnings on Funds to be deposited in or credited to the Construction Fund is to be used for the acquisition of any property (or any interest therin) unless the first use of such property is pursuant to the acquisition, except as otherwise permitted by Section 103(b)(17)(B) of the Internal Revenue Code and the Regulations now or hereafter promulgated thereunder.
- (r) No part of the proceeds of the Bonds will be invested (directly or indirectly) in federally insured deposits or accounts within the meaning of Section 103(h)(23)(B)(ii) of the Internal Revenue Code, except to the extent that under Section 103(h)(2) of the Internal Revenue Code such proceeds (i) may be so invested for an initial temporary period until needed for the purpose for which the Bonds are being issued, (ii) may be so used in making investments of a bona fide debt service fund, (iii) may be invested in obligations issued by the United States Treasury, or (iv) may be invested in other investments permitted under Regulations under Section 103(h)(2) of the Internal Revenue Code.
- (s) The Developer has incurred, or will incur within six months after the date of the issuance of the Bonds, a substantial binding obligation to commence the acquisition and construction of the Project, pursuant to which the Developer is, or will be, obligated to expend at least the lesser of (i) 2-1/2% of the principal amount of the Bonds or (ii) \$100,000.

- (t) The Developer's reasonable expectations respecting the total cost of the acquisition and construction of the Project are accurately set forth in the Developer Cost Certificate.
- (u) The Developer has commenced or reasonably expects to commence the acquisition and construction of the Project within 6 months after the date of issuance of the Bonds, and will proceed with due diligence and will complete the same no later than three years after issuance of the Bonds.
- (v) The Developer reasonably expects to complete the acquisition and construction of the Project and to expend the full amount of the proceeds of the Developer Loan plus the investment earnings thereon for Project Costs within 36 months after issuance of the Bonds. The proceeds of the Developer Loan and the investment earnings thereon will be expended only for Project Costs.
- (w) The statements made in the Developer Cost Certificate are true and correct.
- before the date of each disbursement on the Developer Loan, a statement (which statement may be contained in the Developer requisition for payment under the Indenture) certifying that the full amount of such disbursement will be applied to pay or reimburse the Developer for the payment of Project Costs and that, after taking into account the proposed disbursements, the aggregate disbursements will have been applied to pay or reimburse the Developer for the payment of Good Costs (as defined in the Developer Cost Certificate) in an amount equal to 90% or more of the aggregate disbursements less any amount of the aggregate disbursements applied to pay or reimburse the Developer for the payment of Neutral Costs (as defined in the Developer Cost Certificate).
- Upon completion of the Project, the Developer will submit to the Issuer, the Bank and the Trustee, a certificate of completion as provided in the Agreement, in form and substance acceptable to each of them, containing the following: (i) the statement of the Developer and its architect or engineer that the Project was substantially completed and ready and available for occupancy as of a specified date; (ii) the Developer's statement, of the aggregate amount disbursed on the Developer Loan to the Developer prior to and upon the completion date; and (iii) the Developer's certification that all of the amounts disbursed on the Developer Loan have been applied to pay or reimburse the Developer for the payment of Project costs and that none of the amounts disbursed on the Developer Loan have been applied to pay or reimburse any party for the payment of costs or expenses other than Project Costs; and (iv) the Developer's certification that the Developer Loan has been applied to pay or reimburse the Developer

for the payment of Good Costs (as defined in the Developer Cost Certificate) in accordance with the preceding paragraph.

- (z) The Developer will not take or omit to take, as is applicable, any action if such action or omission would in any way cause the proceeds from the sale of the Bonds to be applied in a manner contrary to the requirements of the Indenture or the Agreement.
- (aa) The Developer will comply at all times with the Agreement, including without limitation, the Program Guidelines defined therein.
- (bb) The Developer will immediately upon discovering any violation of any of the covenants, restrictions and representations, set forth herein, notify the Trustee in writing of such violations.
- (cc) The Developer has not, and will not, execute any other agreement with provisions contradictory to, or in opposition to, the provisions hereof, and in all events the requirements of these Land Use Restrictions are paramount and controlling as to the rights and obligations herein set forth and supercede any other requirements in conflict herewith.
- (dd) the Developer shall include the requirements and restrictions contained in these Land Use Restrictions in any deed or other documents transferring any interest in the Project to another person to the end that such transferee has notice of, and is bound by such restrictions, and to obtain the agreement from any transferee so to abide; and
- (ee) to the extent the Code and the regulations promulgated thereunder, or any amendments thereto, shall impose requirements upon the ownership or operation of the Project more restrictive than those imposed by these Land Use Restrictions, the Developer agrees that these Land Use Restrictions and the Agreement shall be deemed to be automatically amended to impose such additional or more restrictive requirements to the extent necessary to preserve the tax exempt status of interest on the Bonds; and the Developer, the Trustee and the Issuer shall execute, deliver and, if applicable, file of record any and all documents and instruments necessary to effectuate the intent of this subsection (ee), and the Developer and the Issuer hereby appoint the Trustee as their true and lawful attorney-in-fact to execute, deliver, and, if applicable, file of record on behalf of the Developer or the Issuer, as is applicable, any such document or instrument if either the Developer or the Issuer defaults in the performance of its obligation under this subsection (ee); provided, however, that the Trustee shall take no action under this subsection (ee) without first notifying the Developer, the Bank and the Issuer of its intention to take such action and without first providing the

Developer or the Issuer, or both of them, as is applicable, an opportunity to comply with the requirements of this subsection (ee); and provided further, that the Trustee shall take no unilateral action under this subsection (ee) which will have a substantially detrimental effect upon the Developer or upon the operation of the Project, without the consent of the Developer and the Bank.

Section 10. Governing Law. This instrument shall be governed by the laws of the State.

Section 11. <u>Notice</u>. Any notice required to be given hereunder shall be given as provided in the Indenture.

Section 12. Severability. If any provision hereof shall be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions shall not in any way be affected or impaired.

Section 13. <u>Multiple Counterparts</u>. This instrument may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument and each of which shall be deemed to be an original.

Section 14. Indemnification. The Developer releases the Issuer and the County from, agrees that the Issuer and the County shall not be liable for, and indemnifies the Issuer and the County against, all liability, claims, costs and expenses imposed upon or asserted against the Issuer or the County on account of: (a) any loss or damage to property or injury to or death of or loss by any person that may be occasioned by any cause whatsoever pertaining to the construction, maintenance, operation and use of the Project; (b) any breach or default on the part of the Developer in the performance of any covenant or agreement of the Developer under the Developer Documents or any related document, or arising from any act or failure to act by the Developer, or any of its agents, contractors, servants, employees or licensees; (c) the authorization, issuance and sale of the Bonds, and the provision of any information furnished in connection therewith concerning the Project or the Developer (including, without limitation, any information furnished by the Developer for inclusion in any certifications made by the Issuer or for inclusion in, or as a basis for preparation of, the information furnished by the Issuer in offering the Bonds for purchase); and (d) any claim or action or proceeding with respect to the matters set forth in (a), (b) or (c) above brought thereon.

The Developer agrees to indemnify the Trustee for and to hold it harmless against all liabilities, claims, reasonable costs and expenses incurred without negligence or willful misconduct on the part of the Trustee, on account of any action taken or omitted to be taken by the Trustee in accordance with the terms of the

Basic Documents, the Bonds, the Developer Note or the Indenture or any action at the request of or with the consent of the Developer, including the costs and expenses of the Trustee in defending itself against any such claim, action or proceeding brought in connection with the exercise or performance of any of its powers or duties under the Basic Documents, the Bonds, the Indenture or the Developer Note.

In case any action or proceeding is brought against the Issuer, the County or the Trustee in respect of which indemnity may be sought hereunder, the party seeking indemnity promptly shall give notice of that action or proceeding to the Developer, and the Developer upon receipt of that notice shall have the obligation and the right to assume the defense of the action or proceeding; provided that failure of a party to give that notice shall not relieve the Developer from any of its obligations under this Section unless that failure prejudices the defense of the action or proceeding by the Developer. An 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, and the Developer shall pay the reasonable fees and expenses thereof. The Developer shall not be liable for any settlement without its consent.

The indemnification set forth above is intended to and shall include the indemnification of all affected officials, directors, officers, counsel and employees of the Issuer and the County and the Trustee, respectively. That indemnification is intended to and shall be enforceable by the Issuer, the County and the Trustee, respectively, to the full extent permitted by law.

IN WITNESS WHEREOF, Issuer and the Trustee has each caused this instrument to be signed and attested on its behalf by its duly authorized representatives, and the Developer, has executed this instrument, all as ofthe date hereof.

Signed, sealed and delivered in the presence of:

HOUSING FINANCE AUTHORITY
OF ST. JOHNS COUNTY, FLORIDA

Attest:

Secretary

(SEAL OF ISSUER)

Signed, sealed and delivered in the presence of:

SUN BANK, NATIONAL ASSOCIATION, as Trustee

Victoria M. Bujant

Shiresa B. Hawking (Witnesses as to Trustee)

Attest Its Somorate Trust Officer

(SEAL OF TRUSTEE)

Signed, sealed and delivered in the presence of:

nesses as to Developer)

GENE BRANSCOME, individually

STATE OF FLORIDA) ss.
COUNTY OF ST. JOHNS)

The foregoing instrument was acknowledged before me this ___ day of August 1985, by Andrew J. DuPont, Jr. and F. Mark Gillis, the Vice Chairman and the Secretary, respectively, of the Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic of the State of Florida, on behalf of said authority.

(NOTARIAL SEAL)

Notary Public State of Florida, at Large

My Commission Expires:

STATE OF FLORIDA)
COUNTY OF ORANGE)

The foregoing instrument was acknowledged before me this Add of August, 1985, by T. C. Knight and Linda L. Schuchman the Asst. Vice Pres. and the Corp. Trust Office, respectively, of the Sun Bank, National Association, a national banking association, on behalf of the association.

(NOTARIAL SEAL)

Notaty Public, State of

Florida, at Large

My Commission Expires Commission Expires MARCH 1, 1988

STATE OF FLORIDA SS. COUNTY OF ST. JOHNS) The foregoing instrument was acknowledged before me this/3 day of August, 1985, by Andrew J. DuPont, Jr. and F. Mark Gillis, the Vice Chairman and the Secretary, respectively, of the Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic of the State of Florida, on behalf of said authority. (NOTARIAL) SEAL) Florida, at Large My Commission Expires: STATE OF FLORIDA SS. COUNTY OF ORANGE The foregoing instrument was acknowledged before me this __ day of August, 1985, by and the respectively, of the Sun Bank, National Association, national banking association, on behalf of the association, Notary Public, State of (NOTARIAL SEAL) Florida, at Large

My Commission Expires:_

STATE OF PLORIDA)

NEW YORK)

NEW YORK) ss.

COUNTY OF DUVAL)

The foregoing instrument was acknowledged before me this ____day of August, 1985, by Gene Branscome.

(NOTARIAL SEAL)

Notary Fublic, State of Florida, at Large

My Commission Expires: 1986

PRECIA T. COGNATO
Public, State of New York
No. 24-9331440
Qualified in Kings County
Commission Expires March 10, 1986

문주다(BIL W

That certain piece, parcel or tract of land situate, lying and being in the County of St. Johns, State of Plorida, to wit:

PARCEL I:

A part of Government Lots 3 and 4, Section 16, together with a part of the William Hart Grant, Section 55, all in Township 3 South, Range 29 East, St. Johns County, Florida, more particularly described as follows: For a point of beginning commence at the Northeast corner of said Government Lot 3, said corner being on the dividing line between St. Johns County and Duval County, Plorida; thence S. 01 deg. 06' 36" E., along the East line of said Government Lot 3, a distance of 1245.38 feet to a point, said point being on a curve concave Northeasterly having a radius of 650.00 feet; thence Northwesterly along the arc of said curve, a chord bearing of N. 58 deg. 40' 40" W., and a chord distance of 443.57 feet to the Point of Tangency of said curve; thence N. 38 deg. 43' 37" W., a distance of 71.08 feet to the Point of Curve of a curve concave southwesterly having a radius of 859.15 feet; thence Northwesterly along the arc of said curve, a chord bearing of N. 64 deg. 56' 38" W., and a chord distance of 759.09 feet to the Point of Tagency of said curve; thence 8. 88 deg. 50' 21" W., a distance of 100.00 feet to the Point of Curve of a curve concave Northerly having a radius of 550.00 feet thence Westerly along the arc of said curve, a chord bearing of N. 84 deg. 56' 30° W., and a chord distance of 119.17 feet to a point of compound curve; thence Northwesterly along the arc of a curve concave Northeasterly having a radius of 812.57 feet and a chord bearing of N. 51 deg. 11' 12' W., and a chord distance of 751.24 feet; thence No. 89 deg. 09' 52° E., along a line parallel with and 100 feet South of, when measured at right angles to aforementioned dividing line between St. Johns County and Duval County, a distance of 737.72 feet; thence N. 44 deg. 09' 52" E., a distance of 145.28 feet; thence N. 87 deg. 38' 31° E., along said dividing line between St. Johns County and Duval County, a distance of 1053.02 feet of the Point of

PARCEL II:

A non-exclusive easement for ingress and egress over and across the lands described in Official Record Book 587, Page 247; Official Record Book 647, Page 58 and Official Record Book 656, Page 899 as corrected and re-recorded in Official Record Book 681, Page 193 of the Public Records of St. Johns County, Florida, and recorded in Official Record Book 5864, Page 946 of the Public Records of Duval

EXHIBIT D

That certain piece, parcel or tract of land situate, lying and being in the County of St. Johns, State of Plorida, to wit: PARCEL I:

A part of Government Lots 3 and 4, Section 16, together with a part of the William Hart Grant, Section 55, all in Township 3 South, Range 29 East, St. Johns County, Plorida, more particularly described as follows: For a point of beginning commence at the Northeast corner of said Government Lot 3, said corner being on the dividing line between St. Johns County and Duval County, Plorida, thence 6. 01 deg. 06' 36" E., along the East line of said Government Lot 3, a distance of 1245.38 feet to a point, said point being on a curve concave Northeasterly having a radius of 650.00 feet; thence Northwesterly along the arc of said curve, a chord bearing of N. 58 deg. 40' 40' W., and a chord distance of 443.57 feet to the Point of Tangency of said curve; thence N. 38 deg. 43' 37" W., a distance of 71.08 feet to the Point of Curve of a curve concave southwesterly having a radius of 859.15 feet; thence Worthwesterly along the arc of said curve, a chord bearing of M. 64 deg. 56' 38" W., and a chord distance of 759.09 feet to the Point of Tagency of said curve; thence 8. 88 deg. 50' 21° W., a distance of 100.00 feet to the Point of Curve of a curve concave Mortherly having a radius of 550.00 feet thence Westerly along the arc of said curve, a chord bearing of N. 84 deg. 56' 30° W., and a chord distance of 119.17 feet to a point of compound curve; thence Morthwesterly along the arc of a curve concave Northeasterly having a radius of \$12.57 feet and a chord bearing of N. 51 deg. 11' 12" W., and a chord distance of 751.24 feet; thence No. 89 deg. 09' 52° E., along a line parallel with and 100 feet South of, when measured at right angles to aforementioned dividing line between St. Johns County and Duval County, a distance of 737.72 feet; thence N. 44 deg. 09' 52' E., a distance of 145.28 feet; thence N. 87 deg. 38' 31° E., along said dividing line between St. Johns County and Duval County, a distance of 1053.02 feet of the Point of

PARCEL II:

A non-exclusive easement for ingress and egress over and across the lands described in Official Record Book 587, Page 247, Official Record Book 647, Page 58 and Official Record Book 656, Page 899 as corrected and re-recorded in Official Record Book 681, Page 193 of the Public Records of St. Johns County, Plorida, and recorded in Official Record Book 5864, Page 946 of the Public Records of Duval County, Plorida.

DRAFT OF 4/16/87

AMENDED AND RESTATED DEVELOPER NOTE

\$12,000,000

May 15, 1987

Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida (the "Developer") FOR VALUE RECEIVED, promises to pay to the order of the Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic of the State of Florida (the "Issuer"), at the principal place of business in Orlando, Florida of Sun Bank, National Association (the "Trustee"), or any successor trustee acting as such under that certain Indenture dated as sor trustee acting as such under that certain Indenture dated as ture") in lawful money of the United States of America, and in DOLLARS (\$12,000,000), and to pay interest on the unpaid principal balance owing hereunder from the date hereof (being the date of place of business in the amounts and at the rates specified below.

All capitalized terms used in this Note shall have the meanings assigned to such terms in the Indenture.

All sums paid hereon shall be applied first to the satisfaction of accrued interest and the balance to the unpaid principal. Interest shall be calculated on the same basis as is provided for payment of interest on the Bonds.

Payments of interest on this Note shall be paid on each May 15 and November 15, beginning November 15, 1987, until maturate or redemption of the Bonds. Payment of principal shall be made on May 15, 2008, or such other date as may be set forth pursuant to the Indenture.

Notwithstanding the foregoing, if on any Interest Payment Date or Bond redemption date, the amount held in the Bond Fund is not sufficient to pay Bond service charges when due, the Developer shall forthwith pay or cause to be paid the amount of such deficiency to the Trustee.

Draws made under the Letter of Credit or proceeds from the liquidation of Collateral to pay Bond service charges shall constitute payments made hereunder. Reimbursement shall be had by the Bank therefor pursuant to the Letter of Credit Agreement or the Collateral Agreement.

This Note is subject to mandatory prepayment at the times and under the circumstances and to the extent provided in the Indenture for mandatory redemption of Bonds at the percentage of principal amount specified for the corresponding Bond redemption plus interest hereon to the date set for the corresponding Bond redemption.

If default is made in the payment of any installment of interest or principal on this Note and the same is placed in the hands of an attorney for collection, or if suit is filed hereon, or proceedings are had in bankruptcy, probate, receivership, reorganization, arrangement or other judicial proceedings for the establishment or collection of any amounts called for hereunder, or any amount payable or to be payable hereunder is collected through any such proceedings, the Developer agrees to pay to the expenses.

This Note and the Developer's obligations under the Loan Agreement are secured by the Mortgage, which Mortgage and assignment are or will be recorded in the public records of St. Johns County, Florida. The Developer irrevocably and unconditionally agrees to make payments hereunder sufficient to pay all of the principal of, premium, if any, and interest on the Bonds when and as the same become due, and to timely pay all other sums required to be paid by the Developer under the terms and provisions of the Loan Agreement, the Mortgage and the Indenture. This Note is subject to acceleration and to prepayment in whole or in part as the Trustee may deem necessary to redeem or purchase the Bonds in accordance with their terms or the terms of the Indenture. This Note is entitled to the security and benefits of the Loan Agreement and the Mortgage. Reference is hereby made to the Loan Agreement, the Mortgage and the Indenture for a statement of the terms and conditions on which the loan evidenced hereby was made, for a description of the circumstances under which there shall be credits allowed against the installments of principal and interest on this Note, for a description of the terms and conditions under which this Note will be in default, and for a description of the terms and conditions upon which this Note may be prepaid or its maturity accelerated.

This Note is a contract issued, executed and delivered in the State of Florida and shall be construed in accordance with and governed by the laws of the State of Florida.

| Demand, hereby waived. | presentment, | notice of dishonor, | and protest are |
|---------------------------|--------------|---------------------|-----------------|
| [SEAL] | | JACKSONVILLE VEN | TURES, INC. |
| ATTEST: | | ByPresident | |
| Secretary | | | |
| ASSIGNMEN | IM 2 | | |

ASSIGNMENT dated May 15, 1987 of Amended and Restated Developer Note dated May 15, 1987, made by Jacksonville Ventures, Inc. and payable to the order of the Housing Finance Authority of St. Johns County, Florida (the "Issuer").

The undersigned Housing Finance Authority hereby assigns the above Note to the Trustee named in the Note, in trust, pursuant to the terms and under the conditions of the Indenture described in the Note, without recourse or warranty except warranty of good title and warranty that the Issuer has not assigned the Note to a person other than the Trustee and that the entire initial principal amount thereof remains unpaid under the Note.

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

| Chairman | |
|----------|----------|
| | |
| | Chairman |

SS8SRPNT1

EXHIBIT F

Consent and Indemnification Agreement by Bank

Capitalized terms used in this Consent and Indemnification Agreement by Bank are used as defined in the foregoing Amended and Restated Loan Agreement. Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York, for itself and as issuer of the letter of credit supporting ment of the Original Loan Agreement, the Original Note and restate-Original Mortgage, and further agrees to indemnify and hold harmity or damages they or either of them may suffer or incur by reason of such amendment and restatement.

EMPIRE OF AMERICA FEDERAL SAVINGS BANK

| | By |
|-----------|----|
| Attest: | |
| Title: | |
| AC8SRPLA1 | |

INDENTURE

between

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (as Issuer)

and

SUN BANK, NATIONAL ASSOCIATION (as Trustee)

Dated as of May 15, 1987

\$12,000,000

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA
MULTIFAMILY HOUSING REFUNDING REVENUE BONDS

(Remington at Ponte Vedra Project)

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EXHIBITS

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INDENTURE

THIS INDENTURE is made and entered into as of May 15, 1987, by and between the Issuer and the Trustee, each as identified below, under the circumstances described in the following recitals (the capitalized terms used in the recitals and granting clauses having the meanings set forth in Article I below):

WHEREAS, the Issuer is a public body corporate and politic duly created and existing under and by virtue of the Act and is duly authorized and empowered by the Act (i) to provide for the issuance of and to issue and sell its multifamily housing and construction of qualifying housing developments or portions thereof, and (ii) to provide for the issuance of and to issue and ously issued and outstanding revenue bonds: and

WHEREAS, by resolution duly adopted by the Issuer on October 3, 1984, as amended and supplemented, the Issuer authorized the issuance and sale of the Refunded Bonds in the original principal amount of \$12,000,000; on November 9, 1984, the Refunded Bonds were validated by final judgment of the Circuit Court of the Seventh Judicial Circuit, in and for St. Johns County, Florida; and on August 15, 1985, in furtherance of the purposes for which Issuer was created, the Issuer issued the Refunded Bonds under and pursuant to the Refunded Bonds Indenture for the purpose of Froject; and

WHEREAS, the proceeds derived from the sale of the Refunded Bonds were loaned to Branscome under the Original Loan Agreement, pursuant to which Branscome agreed to acquire, construct and install the Project and to make Loan payments sufficient to pay the principal of, premium, if any, and interest on the Refunded Bonds; and as evidence of the Loan, Branscome executed and delivered the Original Note in the principal amount of \$12,000,000; and

WHEREAS, the Loan is secured by the Original Mortgage which encumbers the Project and is recorded in the current public records of St. Johns County, Florida; the Issuer pledged and assigned the Original Loan Agreement (except for the right to enforce certain limited provisions of the Original Loan Agreement), the Original Note and the Original Mortgage to the Refunded Bonds Trustee as security for the Refunded Bonds; and the use of the Project is governed and restricted by the Land Use Restrictions, Which are recorded in the current public records of St. Johns County, Florida; and

WHEREAS, payment of the principal of and interest on the Refunded Bonds is secured by the Empire Letter of Credit, pursuant to the Empire Letter of Credit Agreement, in favor of the Refunded Bonds Trustee; and

WHEREAS, subsequent to the issuance of the Refunded Bonds, and with the prior written consent of the Issuer, Empire and the Refunded Bonds Trustee, Branscome sold the Project to Country View; and under and pursuant to an Assumption Agreement dated August 15, 1985, by and between Country View and the Issuer, Country View assumed the obligations of Branscome under the Land and the Original Mortgage; and

WHEREAS, on April , 1987, with the prior written consent of the Issuer, Empire and the Refunded Bonds Trustee, Country View sold the Project to the Developer; and under and pursuant to an Assumption Agreement dated April , 1987, by and between the Developer and the Issuer, the Developer assumed the Obligations of Branscome and Country View under the Land Use Restrictions, the Original Loan Agreement, the Original Note and the Original Mortgage; and

WHEREAS, pursuant to Section 4.01(b)(3) of the Refunded Bonds Indenture the Refunded Bonds are subject to mandatory redemption by the Issuer in whole at the earliest practicable date, at a redemption price of par plus accrued interest to the redemption of a default under the Empire Letter of Credit Agreement, and Empire has advised the Refunded Bonds Trustee that pursuant to said Section of the Refunded Bonds Indenture Empire shall deliver on the Delivery Date such written notice to the Refunded Bonds Trustee of such a default under the Empire Letter of Credit Agreement; and

WHEREAS, the Developer has requested the Issuer to issue the Bonds in the aggregate principal amount of \$12,000,000 for the purpose of refunding the Refunded Bonds; and the Issuer has determined that the refunding of the Refunded Bonds in the manner provided in the Indenture, the Loan Agreement and the Escrow Deposit Agreement will advance the public purposes expressed in the Act; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer has determined that it is necessary and appropriate that the Original Loan Agreement, the Original Note and the Original Mortgage be amended and restated for the purpose of providing for the payment of the principal of, premium, if any, and interest on the Bonds: and

WHEREAS, the Refunded Bonds Indenture permits the refunding of the Refunded Bonds on the terms set forth therein; and the Escrow Deposit Agreement will, when properly completed and when the redemption dates of the Refunded Bonds are established, accomplish the defeasance of the Refunded Bonds Indenture and provide for payment of the Refunded Bonds.

WHEREAS, a public hearing was held by the Issuer on April 20, 1987, upon public notice published in a newspaper of general circulation in the County no less than 14 days prior to the scheduled date of such public hearing, at which hearing members of the public were afforded reasonable opportunity to be heard on all matters pertaining to the location and nature of the Project and to the issuance of the Bonds. The public hearing provided a reasonable opportunity for interested individuals to express their views, both orally and in writing, on the proposed issue of the Bonds and the location and nature of the Project, and was held in a location which, under the facts and circumstances, was convenient for residents of the County. The notice was reasonably designed to inform residents of the County of the proposed issue, stated that the Issuer would be the issuer of the Bonds, stated the time and place for the hearing and contained the information required by the Code. The 14-day period was adequate for notice to be brought to the attention of all interested persons, exceeds the normal periods for notices of public hearings conducted by the Issuer and various agencies of the County and the State, and provided sufficient time for interested persons to prepare for and to express their views at such hearing.

WHEREAS, the Issuer, by resolution duly adopted on April 20, 1987, as amended and supplemented on , 1987, in accordance with all requirements of law, and after the above-mentioned public hearing duly held at such meeting, has duly authorized the execution and delivery of the Amended and Restated Loan Agreement, the Indenture and the Escrow Deposit provided in the Indenture; and

WHEREAS, on April ___, 1987, after the above-mentioned public hearing the issuance of the Bonds was approved by the Board of County Commissioners of the County, which is the governing body of the County and consists of elected public officials, from which the Issuer derives its authority to issue revenue bonds such as the Bonds, and which is deemed to be the applicable elected representative of the Issuer; and

WHEREAS, all acts, conditions and things required to happen, exist and be performed precedent to and in the issuance of the Bonds and the execution and delivery of this Indenture have happened, exist and have been performed in order to make the

Bonds, when issued, delivered and authenticated, valid obligations of the Issuer in accordance with the terms thereof and hereof, and in order to make this Indenture a valid, binding and legal trust agreement for the security of the Bonds in accordance with its terms; and

WHEREAS, the Trustee has accepted the trusts and duties created by this Indenture, and in evidence thereof has joined in the execution hereof;

NOW, THEREFORE, THIS INDENTURE WITNESSETH, that in order to secure the payment of the Bond service charges on the Bonds according to their true intent and meaning, and to secure the performance and observance of all the covenants and conditions therein and herein contained and to declare the terms and conditions upon and subject to which the Bonds are and are intended to be issued, held, secured and enforced, the Issuer, in consideration of the premises and the acceptance by the Trustee of the trusts hereby created and of the purchase and acceptance of the Bonds by the holders thereof, and for other good and valuable consideration, the receipt of which is hereby acknowledged, has executed and delivered this Indenture and does hereby transfer without recourse to the Trustee, and to its successors in trust, and its and their assigns, (a) all amounts receivable by or on behalf of the Issuer under the Basic Documents (other than amounts receivable by virtue of indemnification of the Issuer) and the interest of the Issuer in all moneys and investments in the Funds, (b) all right, title and interest of the Issuer in and to the Basic Documents (other than any rights of the Issuer thereunder to indemnity or notice), and (c) all money, obligations and securities conveyed, assigned, hypothecated, endorsed, pledged, mortgaged, granted, or delivered to or held by the Trustee in any Fund and all earnings thereon.

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

BUT IN TRUST, NEVERTHELESS, and subject to the provisions hereof, for the equal and proportionate benefit, security and protection of all present and future holders of the Bonds issued or to be issued under and secured by this Identure, and for the enforcement of the payment of the Bond service charges on the Bonds, when payable, according to the true intent and meaning thereof and of this Indenture and to secure the performance of and compliance with the covenants, terms and conditions of this Indenture, without preference, priority or distinction, as to lien or otherwise, of any one Bond over any other by reason of designation, number, date of authorization, issuance, sale, execution or delivery, date of the Bonds or of maturity, or otherwise, so that each and all Bonds shall have the same right, lien and privilege under this Indenture, and shall be equally and ratably secured hereby, it being intended that the lien and security of

this Indenture shall take effect from the date hereof, without regard to the date of actual issue, sale or disposition of the Bonds as though upon such date all the Bonds were actually issued, sold and delivered to purchasers for value; provided, however, that if the Issuer, its successors or assigns shall well and truly pay, or cause to be paid, the Bond service charges, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall have caused the outstanding Bonds to have been paid and discharged in accordance with Sections 9.01 and 9.02 of this Indenture, shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay or cause to be paid to the Issuer and the Fiduciaries all sums of money due or to become due to them in accordance with the terms and provisions of the Basic Documents, then this Indenture and the rights hereby granted shall cease, determine and be void; otherwise, this Indenture shall be and remain in full force and effect.

PROVIDED, HOWEVER, that the Issuer reserves the right to enforce in its own name and for its own account the obligations of the Developer set forth in Sections 4.6, 5.2, 5.3 and 6.7 of the Loan Agreement and to enforce the Developer's obligations contained in the Program Guidelines and the Land Use Restrictions; and

PROVIDED FURTHER, HOWEVER, that if the Issuer shall pay, cause to be paid or provide for the payment of the principal of premium, if any, and interest on the Bonds in accordance with this Indenture, and if the Issuer shall promptly, faithfully and strictly keep, perform and observe all of its representations, covenants and agreements contained in this Indenture, then in such event this Indenture and the rights hereby granted (excepting Bondholders' rights theretofore vested) shall cease, terminate and be void, otherwise to remain in full force and effect upon the trusts and subject to the conditions hereinafter set forth.

And it is expressly declared that all Bonds issued and secured hereunder are to be issued, authenticated and delivered and all Revenues hereby transferred are to be dealt with and disposed of under, upon and subject to the terms, conditions, stipulations, covenants, agreements, trusts, uses and purposes provided in this Indenture, and the Issuer and the Trustee agree and covenant, and do hereby further agree and covenant, each with the other and with the respective holders from time to time, of the Bonds, or any part thereof, as follows:

[The next page is One-1]

ARTICLE I

DEFINITIONS

Section 1.01 <u>Definitions</u>. In addition to the words and terms defined elsewhere in this Indenture or in the Loan Agreement, unless the context or use clearly indicates another meaning or intent, the following terms shall have the meanings set forth below when used herein:

"Acquire": and its variants: acquire, construct, install, improve, furnish, equip, repair, and rehabilitate, as applicable.

"Act": Chapter 159, Part IV, Florida Statutes, as amended and other applicable laws.

"Agreement" or "Loan Agreement": the Original Loan Agreement, as amended and restated by the Amended and Restated Loan Agreement, and as amended and supplemented from time to time in accordance with Article VIII of the Indenture.

"Alternate Credit Facility": any letter of credit, guaranty, standby loan commitment, insurance policy, surety bond, or any combination thereof, including any extension or renewal of the Letter of Credit or credit enhancement then in effect, or any other instrument or arrangement sufficient to enable the Bonds to maintain or improve the credit rating they enjoyed immediately prior to the furnishing of the Alternate Credit Facility if other than in connection with a Reset Date, and which will provide, without limitation, for the payment of the purchase price of all Bonds tendered pursuant to Section 3.10 hereof or at the maturity thereof.

"Amended and Restated Loan Agreement": the Amended and Restated Loan Agreement dated as of the date hereof, by and between the Issuer and the Developer, amending and restating the Original Loan Agreement.

"Amended and Restated Mortgage": the Amended and Restated Mortgage and Security Agreement dated as of the date hereof, from the Developer to the Issuer (and to be assigned without recourse by the Issuer to the Trustee), amending and restating the Original Mortgage for the purpose of providing mortgage, security interest or other collateral security for the payment of the Bonds and the performance of the Developer's obligations under the Loan Agreement.

"Amended and Restated Note": the Amended and Restated Developer Note dated as of the date hereof, made by the Developer, payable to the order of the Issuer (and to be assigned without recourse by the Issuer to the Trustee), in a principal amount equal to the principal amount of the Bonds, amending and restating

the Original Note and evidencing the Developer's indebtedness and obligation to repay the Developer Loan made by the Issuer pursuant to the Loan Agreement, in the amounts and at the times required for the payment of the principal of, premium, if any, and interest on the Bonds when and as the same become due and payable and evidencing the Developer's indebtedness and obligation to pay its related and additional obligations pursuant to Article III of the Loan Agreement.

"Applicable Jurisdiction": the area within the political boundaries of the Issuer or those of the public entity on behalf of which it acts and all areas within one-half mile of the Project, whether or not located within the aforementioned area.

"Authenticating Agent": the Trustee and any other bank or trust company appointed as such by or pursuant to this Indenture.

"Available Moneys": Bond proceeds, proceeds of refunding bonds, proceeds from draws on the Letter of Credit or liquidation of Collateral, or moneys on deposit in trust with the Trustee for a period of at least ninety-one (91) days during which no petition in bankruptcy or similar insolvency proceeding has been filed or is pending by or against the Developer.

"Bank": Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York, as issuer of the Letter of Credit, its successors and assigns, and any issuer of any Alternate Credit Facility.

"Bankruptcy Law": Title 11 of the United States Code, or similar federal, state, or foreign law for the relief of debtors.

"Basic Documents" or "Documents": the Indenture, the Agreement, the Escrow Deposit Agreement, the Letter of Credit, the Developer Note, the Program Guidelines, the Letter of Credit Agreement, the Collateral Agreement, the Mortgage, the Land Use Restrictions and the Purchase Contract.

"Bond" or "Bonds": all Bonds issued pursuant hereto.

"Bond Counsel": initially and through the original issuance of the Bonds, Foley & Lardner, and thereafter an attorney or firm of attorneys of nationally recognized standing in matters pertaining to the tax-exempt status of interest on obligations issued by states and their political subdivisions and acceptable to the Trustee.

"Bond Form": the form of bonds as provided in Exhibits A and B attached hereto.

"Bond Fund": the fund created pursuant to Section 5.02 hereof.

"Bondholder" or "holder" or "holder of Bonds": the person in whose name a Bond is registered on the Bond Register.

"Bond Payment Date" or "Interest Payment Date": each date on which interest or both principal and interest are payable on any of the Bonds according to their respective terms, whether by scheduled payment or mandatory redemption or acceleration or mandatory tender, so long as any Bonds are outstanding.

"Bond Purchase Contract" or "Purchase Contract" or "Bond Purchase Agreement" or "Purchase Agreement": the agreement dated May __, 1987, among the Issuer, the Developer, the Original Purchaser and any other parties thereto relating to the purchase of the Bonds by the Original Purchaser from the Issuer.

"Bond Register": the registration books kept by the Bond Registrar for the purpose of registering ownership of the Bonds.

"Bond Registrar": the Trustee acting as Bond Registrar with respect to the Bonds pursuant to Section 3.06 hereof.

"Bond Resolution": the resolution of the Issuer adopted April 20, 1987, as amended and supplemented by resolution of the Issuer adopted ______, 1987, authorizing the issuance of the Bonds.

"Bond Service Charges" or "Bond service charges": for any time period, the principal of and premium, if any, and interest on the Bonds for such time period.

"Bond Year": the period from May 15 to May 14, so long as the Bonds are outstanding.

"Branscome": Gene Branscome, an individual.

"Business Day": any day other than a Saturday, Sunday or day which is a legal holiday in the state in which the Principal Office of the Trustee or the Bank is located or a day on which banks located in New York and Florida are authorized or obligated by law or executive order to close and on which the New York Stock Exchange is not closed.

"Chairman": the Chairman or Vice-Chairman of the Issuer.

"Code": the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"1954 Code": the Internal Revenue Code of 1954, as amended and in effect on the date of issuance of the Refunded Bonds, and the regulations thereunder as of the date of issuance of the Refunded Bonds, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"Collateral": the collateral pledged to the Trustee by the Bank to secure performance by the Bank under the Letter of Credit and shall consist of any of the following or such other collateral necessary to obtain a rating of at least AAA by S&P, all in amounts that total in the aggregate in excess of the par amount of the Bonds in accordance with the collateral requirements of S&P as described in the Collateral Agreement:

- Conventional, Federal Housing Administration ("FHA") insured or Veteran's Administration ("VA") guaranteed home mortgages;
- Federal Home Loan Mortgage Corporation ("FHLMC"), participation certificates or Federal National Mortgage Association ("FNMA"), Mortgage-backed Securities ("MBSs");
- 3. Government National Mortgage Association ("GNMA") certificates;
 - 4. United States Government securities:
 - 5. Cash:
 - 6. Conventional Pass-Through Certificates; or
 - Other collateral approved by S&P.

"Collateral Agreement": the Collateral Agreement, dated as of the date hereof, by and between the Bank and the Trustee.

"Cost of Funds": the semiannual cost of funds for FSLIC-insured institutions as issued by the Federal Home Loan Bank Board.

"Costs of Issuance Fund": the fund created pursuant to Section 5.06 hereof.

"Country View": Country View Property, Ltd., a Texas limited partnership the general partners of which are Daseke

Properties Corporation, a Texas corporation, and Daseke Associates Limited, a Texas limited partnership.

"County": St. Johns County, a political subdivision of the State.

"30-Day Collateral": Collateral described in parts 2, 3, 4 and 5 of the definition of Collateral herein.

"Delivery Date": the date of original delivery of the Bonds to the Original Purchaser.

"Determination of Taxability": (i) the entry of a final decree or judgment of any federal court or the taking of a final action by the Internal Revenue Service, which decree, judgment, event or action determines that interest paid or payable on any Bond is or was includable in the gross income of a Bondholder for federal income tax purposes under the Code (other than a Bond-holder who is a "substantial user" or a "related person" within the meaning of Section 147(a) of the Code), or (ii) the adoption of legislation by the United States Congress the effect of which is, in the opinion of Bond Counsel, to cause interest paid or payable on the Bonds to be includable in the gross income of a Bondholder for federal income tax purposes under the Code (other than a Bondholder who is a "substantial user" or "related person" within the meaning of Section 147(a) of the Code). No decree or action described in clause (i) shall be considered "final" for purposes of this Indenture, however, unless the Developer has been given written notice and, if it so desires and is legally allowed, has been afforded the opportunity to contest the same either directly or in the name of any Bondholder, and until conclusion of any appellate review, if sought.

"Developer": Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida, and any successor, surviving, resulting or transferee Person as provided in the Loan Agreement.

"Developer Documents": the Agreement, the Developer Note, the Mortgage, the Land Use Restrictions and the Purchase Contract.

"Developer Loan": the loan made by the Issuer pursuant to the Original Loan Agreement, as assumed by the Developer pursuant to the Assumption Agreement dated April ___, 1987, by and between the Developer and the Issuer, and the Amended and Restated Loan Agreement to finance a part of the cost of the acquisition, construction and installation of the Project.

"Developer Note": the Original Note, as amended and restated by the Amended and Restated Note.

"Developer Representative": any person authorized by law to act on behalf of the Developer, designated to act on behalf of the Developer by written certificate furnished to the Issuer, the Bank and the Trustee.

"Draw Date": in the event the Trustee has determined that 30-Day Collateral will not be sufficient to provide funds for payments to Bondholders, should the Bank fail to honor a draw on the Letter of Credit, on the next succeeding Bond Payment Date, the ninety-third (93rd) calendar day prior to each Bond Payment Date (or, if not a Business Day, the next succeeding Business Day) (the "90-Day Draw Date") and, in the event the Trustee determines that existing 30-Day Collateral will be sufficient to pay Bondholders, should the Bank fail to honor a draw on the Letter of Credit on the next succeeding Bond Payment Date, the thirty-third (33rd) calendar day prior to such Bond Payment Date (or, if not a Business Day, the next succeeding Business Day) (the "30-Day Draw Date").

"Eligible Investments": to the extent allowable by State law for permissible investments by Housing Finance Authorities, the following obligations or securities as to which neither the Developer nor any of its affiliates is the obligor:

- (a) Government Obligations;
- (b) obligations of any agency or instrumentality of the United States of America:
- (c) interest-bearing deposit accounts (which may be represented by certificates of deposit, time deposit open account agreements or other deposit instruments) in national or state banks, or federal savings banks or federally chartered savings and loan institutions having a combined capital and surplus of not less than \$25,000,000 and which deposits are fully insured by the Federal Deposit Insurance Corporation or the Federal Savings and Loan Insurance Corporation;
- (d) repurchase agreements backed by obligations described in (a) or (b) above with any institution having a combined capital and surplus of not less than \$100,000,000 whose unsecured debt securities are rated at least "AA" (or equivalent rating of short-term obligations if the investment is for a period not exceeding one year) by S&P or rated at least "Aa2" by Moody's (or equivalent rating of short-term obligations if the investment is for a period not exceeding one year) or with members of the Association of Primary Dealers in United States Government Securities, which provide: (i) the repurchase obligation is collateralized by the securities themselves, (ii) such investments have on the date of the repurchase agreement and at all times thereafter a fair market value equal to at least 100% of the amount of the repurchase obligation of the institution,

including principal and interest, (iii) the Trustee either holds the securities themselves or written evidence that the investments are being held by a third party acceptable to the Trustee, (iv) a perfected security interest under the Uniform Commercial Code or book-entry procedures prescribed in 31 CFR 306.1 et seq. or 31 CFR 350.0 et seq. in such investments is created for the benefit of the Trustee, (v) if the repurchase agreement is with the bank serving as Trustee or any related party, the third party holding such investments holds them as agent for the benefit of the Trustee as fiduciary, and (vi) the repurchase obligation is identified and set aside as required by the Act; and

(e) any other investment permitted under the Act and approved by the Bank.

"Empire": Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York as issuer of the Empire Letter of Credit.

"Empire Letter of Credit": the irrevocable transferable letter of credit issued by Empire pursuant to the Empire Letter of Credit Agreement, securing the Refunded Bonds.

"Empire Letter of Credit Agreement": the Letter of Credit and Reimbursement Agreement, dated as of August 1, 1985, between Empire and Branscome.

"Escrow Account" shall have the meaning assigned to such term in the Escrow Deposit Agreement.

"Escrow Deposit Agreement": the Escrow Deposit Agreement, dated as of the date hereof, by and among the Issuer, the Escrow Holder, the Refunded Bonds Trustee and the Developer.

"Escrow Holder": _____, a national banking association with its principal offices in ______, Florida, and its successors and assigns.

"Event of Bankruptcy": a petition by or against the Developer or the Bank under any Bankruptcy Law which shall have been filed unless dismissed within 60 days of filing if involuntary, and such dismissal shall be final and not subject to appeal.

"Event of Default": any one of those events set forth in Section 7.01 hereof.

"Extraordinary Services": and "Extraordinary Expenses": all services rendered and all reasonable expenses properly incurred by the Trustee under this Indenture other than Ordinary Services and Ordinary Expenses.

"<u>Fiduciaries</u>": the Trustee, any Paying Agents, Authenticating Agents, Bond Registrars and, if applicable, the Remarketing Agent.

"Funds": any funds and accounts created pursuant to Article V hereof.

"Government Obligations": direct general obligations of, or obligations the payment of principal and interest of which are unconditionally guaranteed by and backed by the full faith and credit of, the United States of America.

"Indenture": this Indenture, including all supplements.

"Insurance and Condemnation Proceeds Fund": the fund created pursuant to Section 5.06 hereof.

"Interest Payment Dates": May 15 and November 15 of each year, beginning November 15, 1987.

"Issuer": Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic duly created and existing under and by virtue of the Act, and its successors and assigns.

"Issuer Documents": the Indenture, the Purchase Contract, the Agreement, the Program Guidelines and the Land Use Restrictions.

"Issuer Representative": the person at the time designated to act on behalf of the Issuer by written certificate furnished to the Developer, the Bank and the Trustee, containing the specimen signature of such person and signed on behalf of the Issuer by its Chairman or Vice-Chairman. Such certificate may designate an alternate or alternates who shall have the same authority, duties and powers as such Issuer Representative.

"Land Use Restrictions": the Land Use Restrictions, dated as of August 1, 1985, by and among the Issuer, Branscome and the Refunded Bonds Trustee, recorded under Clerk's No. 85-17682 on August 15, 1985, in Official Records Book 681, pages 751-774, public records of St. Johns County, Florida.

"Legislative Authority": the board, council or other governing body of the Issuer.

"Letter of Credit": the irrevocable Letter of Credit dated as of the Delivery Date issued by the Bank and delivered to the Trustee, together with any Alternate Credit Facility.

"Letter of Credit Agreement": the Letter of Credit and Reimbursement Agreement, dated as of the date hereof, by and between the Developer and the Bank.

"Loan": the Developer Loan.

"Mandatory Tender Date": any Reset Date.

"Minimum Denomination": the amount specified in the Bond Form as the minimum authorized denomination of the Bonds.

"Moody's": Moody's Investors Service Inc., its successors and assigns.

"Mortgage": the Original Mortgage, as amended and restated by the Amended and Restated Mortgage, and as amended and supplemented from time to time in accordance with Article VIII of the Indenture.

"Notice of Election": a direction to the Trustee from any Bondholder by such Bondholder prior to any Reset Date, as more fully described in Section 3.10 hereof and in the form set forth in Exhibit C hereto.

"Official Statement": the official statement relating to the Bonds.

"Opinion of Counsel": a written opinion of an attorney or firm of attorneys acceptable to the Trustee who (except as otherwise expressly provided herein or in the Agreement) may be counsel for the Developer, the Bank or the Trustee.

"Ordinary Services" and "Ordinary Expenses": those services normally rendered and those expenses normally incurred by a trustee under instruments similar to this Indenture.

"Original Loan Agreement": the Loan Agreement dated as of August 1, 1985, by and between the Issuer and Branscome.

"Original Mortgage": the Mortgage and Security Agreement dated as of August 1, 1985, from Branscome, as Mortgagor, to the Issuer, as Mortgagee (and assigned without recourse by the Issuer to the Refunded Bonds Trustee), recorded under Clerk's No. 85-17683 on August 15, 1985, in Official Records Book 681, pages 775-808, public records of St. Johns County, Florida.

"Original Note": the Developer Note dated as of August 1, 1985, made by Branscome, payable to the order of the Issuer (and assigned without recourse by the Issuer to the Refunded Bonds Trustee), in the principal amount of \$12,000,000.

"Original Purchaser": Wertheim Schroder & Co. Incorporated, its successors and assigns.

"Outstanding Bonds" or "Bonds Outstanding" or "outstanding" as applied to Bonds: as of any date, all Bonds which have been authenticated and delivered by the Trustee under the Indenture except:

- (a) Bonds surrendered for and replaced upon exchange or transfer, or cancelled because of payment or redemption prior to maturity, at or prior to such date;
- (b) Bonds for the payment, redemption or purchase for cancellation of which sufficient moneys have been deposited prior to such date with the Trustee (whether upon or prior to the maturity or redemption date of any such Bonds), or which are deemed to have been paid and discharged pursuant to the provisions of the Indenture; provided that if such Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been given or arrangements to the reasonable satisfaction of the Trustee shall have been made therefor, or waiver of such notice satisfactory in form to the Trustee shall have been filed with the Trustee;
- (c) Bonds in lieu of which others have been authenticated (or payment, when due, of which is made without replacement) hereunder, including Bonds authenticated in lieu of Bonds which have been deemed tendered pursuant to Section 3.10 hereof; or
- (d) Bonds of which the Bank or the Developer is a registered owner or which are otherwise held by either.

"Paying Agent": the Trustee and any other bank or trust company appointed as such by or pursuant to this Indenture.

"Payment Date Requirement": the sum of the quotients obtained by dividing the aggregate fair market value of all 30-Day Collateral pledged under the Collateral Agreement by the appropriate Coverage Ratio, as defined in the Collateral Agreement, set forth in Section 5.13 hereof for such 30-Day Collateral (expressed as a decimal), which, as of the date of the Payment Date Valuation shall be at least equal to the amount of the principal of and interest on the Bonds required to be drawn under the Letter of Credit on the next ensuing Draw Date.

"Payment Date Valuation": the discounted valuation of 30-Day Collateral performed by the Trustee thirty days prior to the 90-day Draw Date as provided in Sections 4.02, 5.05 and 5.13 hereof.

"Payments": all payments to be made under Article V of the Agreement.

"Person": a corporation, association, partnership, organization, business, joint venture, individual, government or political subdivision thereof or a governmental agency.

"Principal Office of the Trustee": the office of the Trustee designated herein or pursuant hereto for notices to the Trustee hereunder.

"Program Guidelines": the guidelines approved by the Board of County Commissioners of the County in connection with the Project and which are attached to the Agreement as Exhibit B.

"Project": the multifamily rental housing development with respect to which the Developer Loan is to be made, which Project will be operated and maintained in compliance with the Land Use Restrictions and the Program Guidelines located on the Project Realty and shall also include the Project Realty and the Project Personalty.

"Project Personalty": all goods, equipment, machinery, inventory, supplies, fixtures, furniture, furnishings and all other tangible personal property financed with the proceeds of Refunded Bonds for the Project, and any substitutions and replacement thereof, attachments, accessions and additions thereto.

"Project Realty": the real property described in the Mortgage, all appurtenances thereto, all rights of the Developer in and to any streets, roads or public places, easements or rights-of-way and relating thereto and any additional real property of any kind hereafter subjected to the lien of the Mortgage.

"Purchase Price": with respect to any Bond required to be purchased by the Trustee pursuant to Section 3.10 hereof, the principal amount of such Bond to the Reset Date.

"Refunded Bonds": the Issuer's Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project) dated August 1, 1985, issued on August 15, 1985 in the aggregate principal amount of \$12,000,000 under and pursuant to the Refunded Bonds Indenture.

"Refunded Bonds Indenture": the Indenture, dated as of August 1, 1985, by and between the Issuer and the Trustee, under and pursuant to which the Refunded Bonds were issued.

"Refunded Bonds Trustee": Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under the Refunded Bonds Indenture.

"Refunding": the issuance of the Bonds for the purpose of refunding and redeeming the outstanding Refunded Bonds in the manner provided in the Indenture, the Agreement and the Escrow Deposit Agreement.

"Regular Record Date": the fifteenth day of the calendar month next preceding an Interest Payment Date.

"Related Person": any "related" person as such term is defined in Section 147(a) of the Code.

"Remarketing Agent": the Wertheim Schroder & Co. Incorporated, its successors and assigns.

"Remarketing Agreement": the Remarketing Agreement dated as of the date hereof, by and among the Issuer, the Trustee, the Developer and the Remarketing Agent, and any similar substitute or additional such agreement providing for the remarketing of the Bonds, in each case as supplemented or amended from time to time.

"Remarketing Date": the date, prior to each Reset Date, by which the Remarketing Agent is required to notify the Trustee and the Bank of the Bonds for which it has found purchasers, as set forth in Section 11.03 hereof.

"Reset Date": the dates on which the rate of interest borne by the Bonds is adjusted pursuant to Section 3.09 hereof.

"Reset Period": the period during which interest on the Bonds will be payable at a particular Reset Rate, the initial Reset Period will commence on May 15, 1991 and will terminate on May 14, 1994.

"Reset Rate": with respect to any Bond, the rate of interest borne by such Bond commencing on any Reset Date and until the day before any subsequent Reset Date or any date on which such Bond matures.

"Revenues": (a) All prepayments, repayments and any other moneys, receipts or payments received pursuant to or in connection with the Agreement, the Collateral Agreement, the Letter of Credit or any other Basic Documents for the payment, redemption or purchase of Bonds, and (b) any interest or income received on investment of moneys held in any Fund hereunder, excluding any amounts deposited or to be deposited in the Rebate Fund, as defined in Section 5.09(b) hereof, for the benefit of the United States Treasury.

"S&P": Standard & Poor's Corporation, its successors and assigns.

"Secretary": the Secretary or the Assistant Secretary of the Issuer.

"Special Record Date": the date established by the Trustee in connection with the payment of interest in default on the Bonds pursuant to Section 3.05 hereof.

"State": the State of Florida.

"Supplemental Indenture": any indenture supplemental to this Indenture entered into between the Issuer and the Trustee in accordance with Article VIII hereof.

"Trust Estate": all right, title and interest of the Issuer in and to the Agreement and the other Basic Documents (except its rights to indemnification and to reimbursement or payment of its fees and expenses and the fees and expenses of the Trustee, as provided therein, its rights to receive notices, certificates, requests, requisitions and other communications thereunder and its rights to enforce the Developer's obligations contained in the Program Guidelines and the Land Use Restrictions), including, without limitation, all right, title and interest of the Issuer in the Developer Note, the Revenues of the Issuer from the Agreement and all moneys and other obligations which are, from time to time, deposited with or held by or on behalf of the Trustee in trust hereunder (except moneys or obligations deposited with or paid to the Trustee for payment or redemption of Bonds that are deemed no longer to be outstanding hereunder) including proceeds of the Letter of Credit and the liquidation of Collateral pursuant to the Collateral Agreement, and all other rights, title and interest which are subject to the lien of this Indenture.

"Trustee": Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under this Indenture, and its successors, and any successor to the duties of the Trustee hereunder, and any co-trustee at the time serving as such hereunder.

"Trustee Documents": the Indenture and the Collateral Agreement.

Section 1.02 <u>Interpretation</u>. Any reference herein to the Issuer, to the Legislative Authority or to any member or officer of either shall include those succeeding to their functions, duties or responsibilities pursuant to or by operation of law or lawfully performing their functions. Any reference to a section or provision or chapter of the Constitution of the State or the Act shall include such section or provision or chapter as from time to time amended, modified, revised, supplemented or superseded, provided that no change in Constitution or laws shall be applicable solely by reason of this provision if such change in any way constitutes an impairment of the rights or obligations

of the Issuer, the Bondholders, the Trustee, the Bank or the Developer under the Basic Documents, the Bond Resolution, the Bonds, or any other document executed in connection with any of the foregoing, including, without limitation, any alteration of the obligation to pay Bond service charges in the amount and manner, at the times, and from the sources provided in the Bond Resolution and this Indenture, except as otherwise permitted herein.

Unless the context shall otherwise indicate, words importing the singular number shall include the plural number, and vice versa; the terms "hereof," "hereby," "herein," "hereto," "hereunder" and similar terms refer to this Indenture; and the term "hereafter" means after, and the term "heretofore" means before, the effective date of this Indenture. Words of the masculine gender include the feminine and the neuter and when the sense so indicates, words of the neuter gender shall refer to any gender.

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ARTICLE II

AUTHORIZATION AND TERMS OF BONDS

Section 2.01 Authorized Amount of Bonds. No Bonds may be issued under the provisions of this Indenture except in accordance with this Article. The total authorized amount of Bonds which shall be issued under the provisions of this Indenture is the amount set forth on the cover page hereof.

Section 2.02 <u>Issuance of Bonds</u>. It is determined to be necessary to, and the Issuer shall, issue, sell and deliver the principal amount of Bonds set forth on the cover page hereof for the Refunding. The Bonds shall be designated "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project);" shall be issuable only in fully registered form, substantially as set forth in the Bond Form; shall be numbered in the order of their authentication; shall be in the denominations of \$5,000 each, or any integral multiple thereof; shall be dated May 15, 1987; and shall bear interest from the most recent Interest Payment Date to which interest has been paid or duly provided for or, if no interest has been paid, from May 15, 1987, all as more fully provided in Article III hereof.

Section 2.03 <u>Delivery of Bonds</u>. Upon the execution and delivery of this Indenture and satisfaction of the conditions established by the Issuer for the delivery of the Bonds, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Bonds and deliver them to, or on the order of, the Original Purchaser thereof as may be directed by the Issuer in accordance with this Section.

Prior to the delivery by the Trustee of any of the Bonds, there shall be filed with the Trustee:

- 1. Original executed counterparts of the Basic Documents and the Official Statement.
- 2. A copy, duly certified by the Secretary, of the Bond Resolution providing for the issuance and sale of the Bonds, the approval of the Agreement and the Indenture and related matters.
- 3. A request and authorization to the Trustee on behalf of the Issuer, signed by its Chairman to authenticate and deliver the Bonds to, or on the order of, the Original Purchaser upon payment to the Trustee but for the account of the Issuer, of the

sum specified therein plus accrued interest from May 15, 1987 to the Delivery Date, which shall be deposited as provided in Article V hereof.

- 4. Proof satisfactory to the Trustee that the Agreement and the Mortgage have been recorded in the official public records of the County and that any and all financing statements have been filed as required by Florida law in order to perfect a security interest in the Project Personalty and the Collateral.
- 5. The written opinion of Bond Counsel addressed to the Issuer and to the Trustee to the effect that the Bonds are not subject to tha provisions of Section 16(c), Article VII, Florida Constitution.
- 6. A statement in writing made by the State Board of Administration approving a negotiated sale by the Issuer of the Bonds, or a certificate on behalf of the Issuer to the effect that the State Board of Administration has not responded in writing within 30 days from the date of application on behalf of the Issuer for such Board's approval of such negotiated sale, unless Bond Counsel shall opine in writing addressed to the Issuer and the Trustee that the requirements set forth in Section 159.613-(2)(a), Florida Statutes, have been met.
- 7. Written authorization from the State Board of Administration authorizing a bond rate of interest for the Bonds in excess of the maximum rate of interest prescribed in Section 215.84, Florida Statutes or, in the alternative, an opinion of Bond Counsel addressed to the Issuer and Trustee affirming that the Bonds have been rated by a nationally recognized rating agency in one of the three highest classifications, which ratings and classifications have been determined pursuant to rules adopted by the State Board of Administration.
- 8. An opinion of Bond Counsel, addressed to the Issuer and to the Trustee, to the effect that all of the conditions precedent to the issuance of the Bonds as are set forth in this Indenture have been satisfied, that the Basic Documents in their final forms are consistent with and valid under the bond validation judgment for the Bonds, and with respect to such other matters as the Issuer or the Trustee may reasonably request.
- 9. An opinion of Bond Counsel, addressed to the Issuer to the effect that the Bonds are valid and that under existing statutes, regulations, rulings and court decisions, the interest thereon is excludable from gross income for federal income tax purposes, except interest for any period during which any such Bond shall be held by a Bondholder who is a "substantial user" of the Project or who is a "related person" to such user (within the meaning of Section 147(a) or the Code).

- 10. ALTA Form B mortgagee policy of title insurance (or binding commitment therefor) insuring the Issuer, in an amount equal to or greater than the principal amount of the Bonds, showing record title to the Project Realty in the Developer and insuring or committing to insure that the Mortgage constitutes a first and prior lien on the Project Realty, subject only to Permitted Encumbrances (as such term is defined in the Mortgage).
- 11. Executed UCC-1 Forms with respect to (i) the Trust Estate, including the Agreement and Loan repayments, executed by the Issuer as debtor and the Trustee as secured party, and (ii) the Project Personalty executed by the Developer as debtor, listing the Issuer as secured party, and executed by the Trustee as assignee of the secured party.
- 12. A copy of a current survey, by a Florida licensed surveyor, of the Project Realty showing no encroachments other than those allowed as Permitted Encumbrances (as defined in the Mortgage) and showing the location of the Project Realty to be at the location described in the proof of publication of the notice referred to in paragraph 19, below.
- 13. Nonarbitrage certificate of the Issuer and the Developer and such other instruments as the Issuer or Bond Counsel may reasonably request.
- 14. Evidence that the zoning on the real property permits the use of the Project for the purposes described in the Land Use Restrictions.
- 15. A disclosure statement as required by Section 218.385(4), Florida Statutes.
- 16. A certified copy of a resolution of the Board of County Commissioners of the County approving the issuance of the Bonds.
- 17. Written acknowledgment from the Issuer that it has received the disclosure information from the Original Purchaser required by Section 218.385(4), Florida Statutes.
- 18. An opinion of Issuer's counsel addressed to the Issuer and to Bond Counsel, in a form satisfactory to each, stating that the Issuer is a public body duly created and validly existing under the Constitution and laws of the State, that the Bond Resolution was duly adopted by the Issuer, that the Indenture, the Agreement and other documents executed by the Issuer concerning the Bonds and the Project were duly authorized, executed and delivered on behalf of the Issuer, and such other matters as the Issuer and Bond Counsel may reasonably require.

- 19. Proof of Publication of notice of public meeting and public hearing (TEFRA NOTICE) of the Issuer, scheduled for April 20, 1987.
- 20. A certificate of existence and good standing issued by the appropriate agency of the Developer's domicile state on a date as close as practicable to the Delivery Date, and a certificate of authority to do business in the State of Florida issued by the appropriate agency on a date as close as practicable to the Delivery Date.
- 21. A duplicate original of the written notice from Empire to the Refunded Bonds Trustee of a default as described in Section 4.01(b)(3) of the Refunded Bonds Indenture and proof that the Refunded Bonds Trustee received such notice.
- 22. Evidence that the sum described in Section 5.01 hereof has been paid or provided for by the Developer.
- 23. An opinion of Bond Counsel to the effect that the modification, alteration, amendment and restatement of the Original Loan Agreement and the Original Mortgage by the Amended and Restated Loan Agreement and the Amended and Restated Mortgage, respectively, is authorized or permitted by the Refunded Bonds Indenture and the Act, complies with their respective terms and will not adversely affect the exemption of interest on the Refunded Bonds from federal income taxation.
- 24. Such other instruments as the Trustee, the Issuer or Bond Counsel may reasonably request.

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ARTICLE III

TERMS OF BONDS GENERALLY

Section 3.01 Form of Bonds. The Bonds, the certificate of authentication and the form of assignment shall be substantially in the form set forth in the Bond Form, which Bond Form is a part hereof and by this reference is incorporated herein. Any Bonds delivered before the final Reset Date shall be in substantially the form set forth in Exhibit A hereto, and any Bonds delivered after the final Reset Date shall be in substantially the form set forth in Exhibit B hereto, in each case with necessary or appropriate variations, omissions and insertions as permitted or required by this Indenture, including any Supplemental Indenture. The Bonds shall each be assigned a number or numbers from "A-1" upward, for each Minimum Denomination of Bonds (in addition to any numbers assigned pursuant to the provisions of this Section 3.01) and all subsequent transfer of Bonds shall include the original "A" numerical designations of Bonds. All Bonds, including Bonds issued upon transfer or exchange for other Bonds, shall be in fully registered form and the person in whose name any Bond shall be registered on the Bond Register shall be regarded as the absolute owner thereof for all purposes of this Indenture. Bonds shall be negotiable instruments in accordance with the Act, and shall express thereon the purpose for which they are issued and such other statements or legends as may be required by law. The definitive Bonds shall be printed, lithographed or engraved or produced by any combination of these methods, all as determined by the officers executing such Bonds and as shall be evidenced by their execution of such Bonds.

Section 3.02 Terms.

- (a) Maturity Date. The Bonds shall be dated as of May 15, 1987, shall be subject to redemption prior to maturity as provided in Article IV hereof and shall bear interest initially at the per annum rate of percent (percent (perce
- (b) Interest Accrual. Interest on the Bonds (calculated on the basis of a year of 360 days and twelve 30-day months) shall be payable on May 15 and November 15 of each year commencing November 15, 1987. Each Bond shall bear interest from

the Interest Payment Date next preceding the date of registration and authentication thereof unless it is registered and authenticated as of an Interest Payment Date, in which event it shall bear interest from such date, or unless it is registered and authenticated prior to the first Interest Payment Date, in which event it shall bear interest from its date, or unless, as shown by the records of the Trustee, interest on the Bonds shall be in default, in which event it shall bear interest from the date to which interest has been paid in full, or unless no interest shall have been paid on the Bonds, in which event it shall bear interest from its date. The Trustee shall insert the date of registration and authentication of each Bond in the place provided for such purpose in the form of certificate of authentication of the Trustee to be printed on each Bond.

Section 3.03 Execution and Authentication of Bonds; Limited Obligations. The Bonds shall be signed in their official capacities by the Chairman or the Vice Chairman of the Issuer and by the Secretary or the Assistant Secretary of the Issuer, provided that either or both of such signatures may be facsimiles, and shall bear the seal or a facsimile seal of the Issuer if the Issuer has an official seal. In case any officer whose signature or a facsimile of whose signature shall appear on any Bonds shall cease to be such officer before the issuance of such Bonds, such signature or such facsimile shall nevertheless be valid and sufficient for all purposes, the same as if such person had remained in office until that time. Any Bonds may be executed on behalf of the Issuer by an officer who, on the date of execution is the proper officer, although on the date of such Bonds such person was not the proper officer.

No Bond shall be valid or become obligatory for any purpose or shall be entitled to any security or benefit under this Indenture unless and until a certificate of authentication, substantially in the form set forth herein, shall have been duly and manually endorsed upon such Bond by the Trustee or by any Authenticating Agent on behalf of the Trustee. Such authentication by the Trustee or an Authenticating Agent upon any Bond shall be conclusive evidence that the Bond so authenticated has been duly authenticated and delivered hereunder and is entitled to the security and benefit of this Indenture. Such certificate of the Trustee or an Authenticating Agent may be executed by the manual signature of any person duly authorized by the Trustee or Authenticating Agent, but it shall not be necessary that the same person sign the certificate of authentication on all of the Bonds.

The Bonds shall be limited obligations of the Issuer, shall be equally and ratably payable solely from the Revenues and shall be secured by an assignment of the Revenues and by this Indenture. Anything in the Bond Resolution, the Bonds or this Indenture to the contrary notwithstanding, the Bonds do not and

shall not represent or constitute a debt or pledge of the faith and credit of the Issuer, the County or the State.

Section 3.04 <u>Temporary Bonds</u>. Pending the preparation of definitive Bonds, or by agreement with the Original Purchaser, the Issuer may execute and, upon its request, the Trustee shall authenticate and deliver, temporary Bonds which shall be printed, lithographed, photocopied, typewritten or otherwise produced, shall be in the denominations specified herein for definitive Bonds and shall be substantially of the tenor of the definitive Bonds in lieu of which they are issued.

If temporary Bonds are issued, the Issuer will cause definitive Bonds to be prepared without unreasonable delay. After the preparation of definitive Bonds, the temporary Bonds shall be exchangeable, without charge to the holder, for definitive Bonds upon presentation and surrender of the temporary Bonds at the Principal Office of the Trustee or at the designated office of an Authenticating Agent. Upon surrender for cancellation of any one or more temporary Bonds, the Issuer shall execute, and the Trustee or any other Authenticating Agent shall authenticate and deliver, a like principal amount of definitive Bonds of authorized denominations in exchange therefor. Until so exchanged, the temporary Bonds shall be entitled in all respects to the same benefits under this Indenture as definitive Bonds.

Section 3.05 Payment of Bonds. Bond service charges shall be payable in lawful money of the United States of America without deduction for the services of any Paying Agent. The principal of and premium, if any, on all Bonds shall be payable upon presentation and surrender of such Bonds at the Principal Office of the Trustee or at the designated office of any other Paying Agent. Interest on any Bond shall be paid on each Interest Payment Date by check or draft mailed to the person who is the registered owner of such Bond at the address appearing on the Bond Register at the close of business on the Regular Record Date pertaining to such Interest Payment Date; provided, however, that if and to the extent the Issuer shall default in the payment or provision for payment of interest on any Bond on any Interest Payment Date, such interest in default shall cease to be payable to the person who was the holder of such Bond as of the Regular Record Date. Whenever moneys become available for the payment of such defaulted interest, the Trustee shall establish a Special Record Date for the payment of such defaulted interest which shall be not more than 15 nor less than 10 days prior to the date of the proposed payment, and the Trustee shall cause notice of the proposed payment and of such Special Record Date to be mailed by first class mail, postage prepaid, to each Bondholder at such Bondholder's address as it appears on the Bond Register not less than 10 days prior to such Special Record Date. Such notice having been so mailed, the defaulted interest shall be payable to the persons who are the holders of the Bonds at the close of business on such Special Record Date.

Notwithstanding the foregoing, payment of interest on the Bonds, at the option of any holder of at least \$1,000,000 aggregate principal amount of Bonds, and upon payment by such holder to the Trustee of a reasonable charge for such service, shall be made by wire transfer to such holder to the bank account on file with the Trustee on the applicable Regular or Special Record Date.

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

Section 3.06. Transfer, Exchange and Ownership of Bonds. So long as any of the Bonds remain outstanding, the Issuer will cause to be maintained and kept, at the Principal Office of the Trustee as Bond Registrar, books for the registration and transfer of Bonds as provided in this Indenture.

Bonds, upon presentation and surrender thereof at the corporate trust office of the Bond Registrar or the designated office of any Authenticating Agent, together with an assignment duly executed by the holder or such holder's duly authorized attorney in such form as shall be satisfactory to the Bond Registrar or Authenticating Agent, may, at the option of the holder, be exchanged for Bonds of any authorized denomination in the aggregate principal amount not exceeding the unmatured and unredeemed principal amount of such Bonds, and bearing interest at the same rate and maturing on the same date.

Any Bond may be transferred only upon the Bond Register, upon presentation and surrender thereof at the corporate trust office of the Bond Registrar or, at the option of the holder, at the designated office of any Authenticating Agent, together with an assignment duly executed by the holder or such holder's duly authorized attorney in such form as shall be satisfactory to the Bond Registrar or Authenticating Agent. Upon the transfer of any such Bond and on request of the Bond Registrar or Authenticating Agent, the Issuer shall execute in the name of the transferee, and the Bond Registrar or any other Authenticating Agent shall authenticate and deliver, a new Bond or Bonds of any authorized denomination, in aggregate principal amount equal to the unmatured and unredeemed principal amount of such Bond, and bearing interest at the same rate and maturing on the same date.

In all cases in which Bonds shall be exchanged or transferred hereunder, the Issuer shall execute and the Bond Registrar or any other Authenticating Agent shall authenticate and deliver

Bonds in accordance with the provisions of this Indenture. Such exchange or transfer shall be without charge, except that the Issuer and the Bond Registrar or Authenticating Agent may make a charge for every such exchange or transfer of Bonds sufficient to reimburse them for any tax, fee or other governmental charge required to be paid with respect to such exchange or transfer and such charge or charges shall be paid before any such new Bond shall be delivered. All Bonds issued upon any transfer or exchange of Bonds shall be valid obligations of the Issuer, evidencing the same debt, and entitled to the same benefits under this Indenture, as the Bonds surrendered upon such transfer or exchange. Neither the Issuer, the Bond Registrar nor any Authenticating Agent shall be required to make any such exchange or transfer of any Bond during a period beginning at the opening of business fifteen days before the day of the mailing of a notice of redemption of Bonds and ending at the close of business on the day of such mailing or to transfer or exchange any Bonds selected for redemption in whole or in part.

Except as provided in Section 3.05 hereof, the Person in whose name any Bond shall be registered shall be deemed and regarded as the absolute owner thereof for all purposes of this Indenture, and payment of or on account of the Bond service charges on any such Bond shall be made only to or upon the order of such Person or such Person's duly authorized attorney in such form as shall be satisfactory to the Bond Registrar, and neither the Issuer, the Bond Registrar nor any Paying Agent shall be affected by any notice to the contrary, but such registration may be changed as hereinabove provided. All such payments shall be valid and effectual to satisfy and discharge the liability upon such Bond, including the interest thereon, to the extent of the sum or sums so paid.

In case any Bond is redeemed in part only, the Issuer, on or after the redemption date and upon presentation and surrender of such Bond, shall cause execution of, and the Trustee or any other Authenticating Agent shall authenticate and deliver, a new Bond or Bonds in authorized denominations and in aggregate principal amount equal to the unredeemed portion of such Bond.

Section 3.07 Mutilated, Lost, Wrongfully Taken or Destroyed Bonds. If any Bond is mutilated, lost, wrongfully taken or destroyed, then in the absence of notice to the Issuer or the Trustee that a lost, wrongfully taken or destroyed Bond has been acquired by a bona fide purchaser, the Issuer shall execute, and the Trustee shall authenticate and deliver, a new Bond of like date, maturity and denomination as that mutilated, lost, wrongfully taken or destroyed; provided, that in the case of any mutilated Bond, such mutilated Bond shall first be surrendered to the Trustee, and in the case of any lost, wrongfully taken or destroyed Bond, there shall be first furnished to the Issuer and the Trustee evidence of such loss, wrongful taking or destruction

satisfactory to the Issuer and the Trustee, together with indemnity satisfactory to them. If any such lost, wrongfully taken or destroyed Bond shall have matured, instead of issuing a new Bond the Issuer may direct the Trustee to pay the same without surrender of upon the furnishing of satisfactory evidence and indemnity as in the case of issuance of a new Bond. The Issuer and the Trustee may charge the holder of such Bond with their reasonable fees and expenses in connection with their action pursuant to this Section.

Every new Bond issued pursuant to this Section by reason of any Bond being lost, wrongfully taken or destroyed shall constitute an additional contractual obligation of the Issuer, whether or not the lost, wrongfully taken or destroyed Bond shall be enforceable at any time by anyone, and shall be entitled to all the benefits of this Indenture equally and proportionately with any and all other Bonds duly issued hereunder.

All Bonds shall be held and owned on the express condition that the foregoing provisions of this Section are exclusive with respect to the replacement or payment of mutilated, lost, wrongfully taken or destroyed Bonds and shall preclude, to the extent permitted by law, any and all other rights and remedies, notwithstanding any law or statute existing or hereafter enacted to the contrary with respect to the replacement or payment of negotiable instruments or other securities without their surrender.

Section 3.08 Surrender and Cancellation of Bonds. Bond surrendered pursuant to this Article for the purpose of payment or retirement, or for exchange, replacement or transfer, shall be cancelled upon presentation and surrender thereof to the Trustee or any other Authenticating Agent or Paying Agent. Any Bond cancelled by a Paying Agent or Authenticating Agent other than the Trustee shall be promptly transmitted by such Paying Agent or Authenticating Agent to the Trustee. The Issuer may at any time deliver to the Trustee for cancellation any Bonds previously authenticated and delivered hereunder, which the Issuer may have acquired in any manner whatsoever and all Bonds so delivered shall be promptly cancelled by the Trustee. Unless otherwise directed by the Issuer or other lawful authority, cancelled Bonds shall be destroyed by shredding or cremation by the Trustee, and certificates of such destruction shall be provided by the Trustee to the Issuer.

Section 3.09 Determination of Reset Rate; Notice. Except as otherwise may be elected by the Developer pursuant to this Section 3.09, the rate of interest on the Bonds shall be adjusted to a Reset Rate on May 15 of each of the years 1991, 1994, 1997, 2001 and 2005, in accordance with the procedures set forth in this Section 3.09, as follows:

- (a) Not less than thirty-five days before each Reset Date the Developer shall deliver to the Trustee a notice specifying whether or not a Letter of Credit will be provided with respect to the Bonds on and after the Reset Date, and if a Letter of Credit is to be provided for any Reset Date on or after May 15, 1994, such notice from the Developer shall be accompanied by a commitment from the provider of such Letter of Credit.
- (b) Not less than thirty days before each Reset Date the Trustee shall give notice to the holders of the Bonds, in the same manner that notices of redemption are given, (1) that the interest rate on the Bonds will be specifying: adjusted to a Reset Rate on such Reset Date; (2) the formula for determining the Reset Rate, the date such rate will be determined and the minimum rate the Remarketing Agent expects to be the Reset Rate (which shall not limit the Reset Rate); (3) the expiration date of the current Letter of Credit, if any; (4) the nature and the expiration date of the Letter of Credit, if any, to be provided on and after the Reset Date, and the rating to be assigned to the Bonds as of the Reset Date or in the event that no Letter of Credit shall be provided on or after the Reset Date, that no rating will be assigned to the Bond as of the Reset Date; (5) the next succeeding Reset Date, if applicable; (6) that if all conditions to establishment of the Reset Rate are not satisfied, the Bonds will be redeemed on the Reset Date, including Bonds for which a Notice of Election is delivered; (7) that all outstanding Bonds shall be required to be tendered for purchase on or before the Reset Date, and any Bonds not so tendered will be deemed to have been so tendered and all such Bonds shall be purchased on the Reset Date at a price equal to the principal amount thereof plus interest accrued to such date, except for Bonds with respect to which the registered owners thereof shall have delivered to the Trustee a Notice of Election as provided in Section 3.10; (8) that all Bonds must either be surrendered to the Trustee for purchase or be delivered to the Trustee for exchange for new Bonds stating the Reset Rate and the next succeeding Reset Date, if applicable, in each case not later than the Reset Date; and (9) that Bonds not timely tendered for purchase or delivered for exchange will cease to accrue interest on the Reset Date.
- (c) On the fifth day before the Reset Date, or if such fifth day is not a Business Day, the next succeeding Business Day, the Remarketing Agent shall notify the Trustee of the Reset Rate for Bonds of each maturity to be outstanding after the Reset Date. The Reset Rate for the Bonds shall be that rate, determined by the Remarketing Agent, which in the judgment of the Remarketing Agent, having due regard for prevailing financial market conditions, would be required, but would not exceed the rate which would be required, to be

borne by such Bonds in order for the market value of such Bonds on the date of such determination to be 100% of the principal amount thereof (disregarding accrued interest); provided that if on the date any Reset Rate is required to be determined the Remarketing Agent is the beneficial owner of 15% or more in aggregate principal amount of the Bonds outstanding, the Reset Rate so determined shall be not more than 120% of a rate equal to 95% of the average yield of United States Treasury Bonds, evaluated at par on the basis of a term approximately equal to the time remaining until the earlier of the maturity of such Bonds or the next succeeding Reset Date, all as computed by the Remarketing Agent. In no event shall the rate of interest on any Bond exceed fifteen percent (15%) per annum or any different rate which may then be prohibited for such Bond under the laws of the State. determination of the Reset Rate by the Remarketing Agent shall be conclusive and binding on the holders of the Bonds, the Issuer, the Trustee and the Remarketing Agent. Trustee shall notify Bondholders of the Reset Rate to be in effect on and after the Reset Date in the same manner that notices of redemption are given.

- (d) The Remarketing Agent shall remarket the Bonds at the Reset Rate and shall give notice to the Trustee of Bonds remarketed as provided in Section 11.03 hereof.
- (e) Not later than the Reset Date, the Trustee shall cause to be prepared, at the expense of the Developer, new Bonds in the appropriate form set forth in Exhibit A or B hereto and stating the Reset Rate to be in effect on and after the Reset Date and the next Reset Date, if applicable. Any such Bonds shall be executed and authenticated as provided in Section 3.03 hereof, and shall be delivered by the Trustee to the appropriate Bondholders without charge on the Reset Date in exchange for any surrendered outstanding Bonds.

The Developer, on or after May 15, 1994, may elect to exercise its option to designate a Reset Period of a length other than the length of the then current Reset Period. The Developer shall evidence such election by (i) notifying the Issuer, the Trustee, the Bank and the Remarketing Agent of such exercise at least forty-five (45) days prior to the next proposed Reset Date and (ii) providing the Issuer, the Trustee, the Bank and the Remarketing Agent with an opinion of Bond Counsel to the effect that such change in the Reset Period is authorized or permitted by the Indenture and applicable State law and will not have an adverse effect on the federal income tax exemption of interest on Such notice will state (i) the Reset Date, which the Bonds. shall be May 15 commencing such Reset Period, and (ii) the length of such Reset Period which shall commence on such Reset Date and be equal to one year or any integral multiple thereof. Upon any

such designation of a Reset Period by the Developer, all subsequent Reset Periods will be as so designated until such time as the Developer shall elect to again designate a Reset Period, except the final Reset Period, which will terminate on May 14, 2008. No Reset Period shall be changed unless the Letter of Credit, if any, is in effect until at least 15 days following the Reset Date next succeeding the changed Reset Period.

Section 3.10. Mandatory Tender and Purchase of Bonds. All Bonds maturing after any Mandatory Tender Date shall be required to be tendered to the Trustee for purchase on or before such Mandatory Tender Date, and any Bonds not so tendered shall be deemed to have been so tendered for all purposes of this Indenture, including particularly Article XI hereof, and shall cease to bear interest on such date, unless the registered owner thereof shall have delivered to the Trustee at the Principal Office of the Trustee at least twenty days before the Mandatory Tender Date, a written, executed instrument of such registered owner or its attorney duly authorized in writing (a "Notice of Election"), in the form attached as Exhibit C hereto and satisfactory to the Trustee, (1) specifying the numbers and denominations of Bonds owned by such registered owner that are to be exchanged; (2) acknowledging the matters set forth in the notice from the Trustee described in Section 3.09(b) hereof; (3) directing the Trustee not to purchase such Bonds; and (4) acknowledging that such direction is irrevocable and binding on subsequent holders of such Bonds (or portions thereof). Bonds sold by remarketing as provided in Section 11.03 hereof and Bonds received by the registered owners as a result of having filed a Notice of Election with the Trustee shall remain outstanding after the Reset Date as Bonds bearing the Reset Rate, and all other Bonds shall be purchased as provided herein and in Section 11.04 hereof.

The Trustee shall (a) receive the Purchase Price of the remarketed Bonds from the Remarketing Agent, (b) draw upon the Letter of Credit for the interest accrued on such Bonds to the Reset Date, and (c) pay the Purchase Price of such Bonds delivered to the Trustee that were not exchanged pursuant to a Notice of Election.

It shall be the duty of the Trustee to hold such moneys, without liability for interest thereon, for the benefit of the former holders of the Bonds purchased, who shall thereafter be restricted exclusively to such moneys, for any claim of whatever nature on their part under the Indenture or on, or with respect to, such Bonds. Any moneys so held by the Trustee which are not so applied to the payment of Bonds, if any, for two (2) years after such Reset Date shall, on May 14 of each year be paid by the Trustee to the Developer, and thereafter the former Bondholders shall be entitled to look only to the Developer for payment, and then only to the extent of the amount so repaid, and

the Trustee shall not be liable for any interest thereon and shall not be regarded as a trustee of such money.

The Issuer shall execute and the Trustee shall authenticate and deliver new certificates in exchange for the certificates representing the Bonds outstanding on each Reset Date identifying the Reset Rate and the next Reset Date, if applicable. A copy of the Letter of Credit in effect with respect to the Bonds at any time shall be available for inspection at the Principal Office of the Trustee.

Section 3.11. Trustee to Make Timely Draws. The Trustee shall timely present such drafts and notices to the Bank as are necessary to enable the Trustee to draw upon the Letter of Credit at times and in the amounts necessary to pay on the Reset Date the Purchase Price of, plus accrued interest, if any, on all Bonds for which the Trustee has not received a Notice of Election.

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ARTICLE IV

REDEMPTION OF BONDS

Section 4.01 Terms of Redemption of Bonds. The Bonds are subject to redemption prior to maturity as provided in this Article IV.

optional Redemption. The Bonds shall be subject to optional redemption by the Issuer, at the direction of the Developer, with the consent of the Bank, if any, in whole or in part, on May 15 of each of the years 1993, 1996, 2000 and 2004 from Available Moneys on deposit with the Trustee at the time notice of redemption is given, in each case at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date.

(b) Mandatory Redemption.

- (1) The Bonds are subject to mandatory redemption by the Issuer, in whole or in part, on any Interest Payment Date prior to maturity at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date (in increments of \$5,000) from moneys deposited in the Bond Fund from insurance or condemnation proceeds in the event of damage, destruction or condemnation of the Project, representing the unused portion of any insurance proceeds or condemnation award following completion by the Developer of any repair, restoration, modification or improvement of the Project with such moneys pursuant to Section 5.07 hereof or the election by the Developer to apply such moneys to the redemption of Bonds. Such redemption shall be made on the first Interest Payment Date for which notice of redemption may be timely given by the Trustee following transfer of such moneys to the Bond Fund.
- (2) The Bonds are also subject to mandatory redemption by the Issuer in whole at the earliest practicable date at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date upon receipt of written notice by the Trustee from the Bank of a default under the Letter of Credit Agreement or upon a default under the Letter of Credit or a Collateral Agreement Event of Default.
- (3) The Bonds are also subject to mandatory redemption by the Issuer on any Mandatory Tender Date, in whole if the conditions set forth in Section 3.09 hereof for establishment of the Reset Rate have not been satisfied, or in part to the extent Bonds are not remarketed on such Mandatory Tender Date, in each case at a price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption.

- (4) The Bonds are also subject to mandatory redemption prior to maturity by the Issuer, pursuant to the terms of any sinking fund that may be provided with respect to the Bonds pursuant to Section 4.02 hereof, in part at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date in the principal amounts and on the dates set forth in Section 4.02 hereof or in any Supplemental Indenture establishing such sinking fund.
- (5) The Bonds are also subject to mandatory redemption by the Issuer in whole or in part on any Interest Payment Date in the event the Developer fails, taking into account applicable cure provisions, to comply with the covenants of Sections 2 and 3 of the Land Use Restrictions; provided, however, that no redemption shall be required pursuant to this paragraph if the Bank shall be in the process of exercising remedies available to it to cure such noncompliance.
- (6) The Bonds are also subject to mandatory redemption by the Issuer in whole at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, at the earliest practicable Interest Payment Date following receipt by the Trustee of notice of the occurrence of a Determination of Taxability.

The Trustee shall immediately draw upon the Letter of Credit, or if necessary, liquidate Collateral, for all redemptions specified in this Section 4.01.

Section 4.02 Establishment of Sinking Fund. The Issuer hereby reserves the right to establish a sinking fund with respect to the Bonds in the event that (a) the Developer shall elect to exercise its option to designate a Reset Period of a length other than the length of the then current Reset Period pursuant to the terms of Section 3.09 hereof and (b) the Issuer shall receive an opinion of Bond Counsel to the effect that the creation of such sinking fund shall not have an adverse effect on the federal income tax exemption of interest on the Bonds.

Section 4.03 Partial Redemption. If less than all of the outstanding Bonds are called for redemption at one time and in the case of a partial redemption of Bonds when Bonds of denominations greater than the Minimum Denomination are then outstanding, Bonds shall be called in inverse order of their numerical "A" designation, from the highest numerical "A" designation downward. If it is determined that one or more, but not all of the Minimum Denomination units represented by any such Bond are to be called for redemption, then upon notice of intention to redeem such Minimum Denomination unit or units, the holder of such Bond shall surrender such Bond to the Trustee (a) for payment of the redemption price (including the premium, if any, and accrued interest to the date fixed for redemption) of the unit or units

of face value of the Minimum Denomination called for redemption, and (b) for exchange, without charge to the holder thereof, for a new Bond or Bonds of the same interest rate and the same maturity and of any authorized denomination or denominations in the aggregate principal amount of the unredeemed balance of such Bond.

Section 4.04 <u>Purchase in Lieu of Redemption</u>. Wholly or partially in lieu of any mandatory redemption of the Bonds, the Trustee may apply moneys on deposit in the Bond Fund to the purchase of outstanding Bonds of the maturity or maturities to be redeemed at a price (including brokerage or other charges) not exceeding the redemption price of the Bonds purchased, including any premium and interest to the redemption date, all in such manner as the Trustee shall determine, at any time prior to the giving of a notice of redemption. Notice of any such purchase shall be provided by the Trustee to S&P. Under no circumstances shall any Bonds purchased pursuant to this Section be tendered for purchase pursuant to Section 3.10 hereof.

Section 4.05 Notice of Redemption. Notice of the call for redemption of Bonds, identifying by designation, letters, numbers or other distinguishing marks, the Bonds, or portions of Bonds in amounts of the Minimum Denomination or any integral multiple thereof, to be redeemed, the redemption price to be paid, the date fixed for redemption and the place or places where the amounts due upon such redemption are payable, shall be given by the Trustee on behalf of the Issuer by mailing a copy of the redemption notice by first class mail, postage prepaid, at least 30 days prior to the date fixed for redemption to the holder of each such Bond to be redeemed at the address shown on the Bond Register; provided, that failure to give such notice by mailing with respect to a particular Bond, or any defect in such notice, shall not affect the validity of the proceedings for the redemption of any of the other Bonds.

Anything to the contrary notwithstanding, no notice of optional or mandatory redemption shall be given until the Trustee has received Available Moneys in a sufficient amount to effect the redemption, including any redemption premium.

Section 4.06 Payment of Redeemed Bonds. Notice having been given in the manner provided in Section 4.05 hereof, the Bonds and portions thereof so called for redemption shall become due and payable on the redemption date at the appropriate redemption price, plus interest accrued to the redemption date, and, upon presentation and surrender thereof at the place or places specified in such notice, such Bonds and portions thereof shall be paid at the appropriate redemption price plus interest accrued to the redemption date. If, on the redemption date, moneys for the redemption of all such Bonds and portions thereof to be redeemed, together with accrued interest to the redemption date, are held by the Trustee or any other Paying Agent so as to be

available therefor on that date in Available Moneys, or from either draws on the Letter of Credit or liquidation of Collateral, and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date such Bonds and portions thereof so called for redemption shall cease to bear interest and said Bonds and portions thereof no longer shall be considered outstanding hereunder.

All moneys deposited in the Bond Fund and held by the Trustee or Paying Agent for the redemption of particular Bonds shall be held in trust for the account of the holders thereof and shall be paid to them upon presentation and surrender of such Bonds.

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ARTICLE V

APPLICATION OF BOND PROCEEDS; PROVISIONS AS TO FUNDS, PAYMENTS, LETTER OF CREDIT AND COLLATERAL

Section 5.01 Application of Bond Proceeds and of Certain Other Moneys. The payment of the principal of and interest on the Refunded Bonds is secured by the Empire Letter of Credit, issued pursuant to the Empire Letter of Credit Agreement in favor of the Refunded Bonds Trustee. Pursuant to Section 4.01(b)(3) of the Refunded Bonds Indenture, the Refunded Bonds are subject to mandatory redemption by the Issuer in whole at the earliest practicable date, at a redemption price of par plus accrued interest to the redempton date, upon receipt of written notice by the Refunded Bonds Trustee from Empire of a default under the Empire Letter of Credit Agreement. Empire has advised the Refunded Bonds Trustee that such a default has occurred and is continuing under the Empire Letter of Credit Agreement and that Empire will deliver written notice of such default to the Refunded Bonds Trustee pursuant to Section 4.01(b)(3) of the Refunded Bonds Indenture on the Delivery Date. Upon receipt of such written notice from Empire the Refunded Bonds Trustee will immediately draw \$ the Empire Letter of Credit, which is the amount necessary to pay accrued interest on the Refunded Bonds through the redemption date, which moneys shall be deposited with the Escrow Holder under and pursuant to the Escrow Deposit Agreement and applied to the payment of the interest on the Refunded Bonds in the manner provided in the Escrow Deposit Agreement.

Simultaneously with such draw under the Empire Letter of Credit the Issuer will issue the Bonds and cause the proceeds derived from the sale thereof to be deposited with the Trustee and applied as follows:

(a) \$12,000,000 shall be deposited with the Escrow Holder under and pursuant to the Escrow Deposit Agreement and applied to the payment of the principal of the Refunded Bonds in the manner provided in the Escrow Deposit Agreement; and

(b) Accrued interest on the Bonds in the amount of shall be deposited in the Bond Fund created under Section 5.03 hereof.

The Trustee shall deposit the moneys paid to it by the Developer pursuant to Section 3.3 of the Loan Agreement in the Costs of Issuance Fund created under Section 5.06 hereof.

Section 5.02 <u>Creation of Funds</u>. There are hereby created by the Issuer and ordered maintained by the Trustee the following funds which shall be held by the Trustee: (i) Bond Fund; (ii) Costs of Issuance Fund; and (iii) Insurance and Condemnation Proceeds Fund.

Section 5.03 Bond Fund. There is hereby established and created with the Trustee a trust fund in the name of the Issuer to be designated "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds Bond Fund, Remington at Ponte Vedra Project." There are hereby created and established within the Bond Fund two separate and segregated trust accounts designated "Available Moneys Account" and "Unavailable Moneys Account". The Trustee shall deposit into the Bond Fund an amount equal to accrued interest on the Bonds from June 1, 1987 to the Delivery Date as provided in Section 5.01(b) hereof. In addition, there shall be deposited into the accounts of the Bond Fund, as and when received: (a) into the Available Moneys Account all moneys drawn or received by the Trustee in the manner set forth in Sections 5.05 or 5.13 herein, under the Letter of Credit or pursuant to liquidation of Collateral; and (b) into the Unavailable Moneys Account all other moneys received by the Trustee under and pursuant to any of the provisions of the Loan Agreement which are required or which are accompanied by directions that such moneys are to be paid into the Bond Fund provided that, after such moneys become Available Moneys, such moneys shall be transferred to the Available Moneys Account. The Issuer hereby covenants and agrees that so long as any of the Bonds issued hereunder are Outstanding it will deposit, or cause to be paid to the Trustee for deposit in the Bond Fund for its account, sufficient sums from Revenues promptly to meet and pay the principal of and interest on the Bonds as the same become due and payable provided that prior to the expiration of the Letter of Credit only Available Moneys may be used to pay such principal of and interest on the Bonds. Nothing herein shall be construed as requiring the Issuer to use any funds or revenues from any source other than the Revenues.

Section 5.04 Use of Money in Bond Fund. Except as otherwise provided in Section 6.02 hereof, moneys in the Bond Fund shall be used solely for the payment of the principal of, premium, if any, and interest on the Bonds as the same shall become due and payable at maturity, upon redemption, mandatory tender or otherwise. Funds for such payments of the principal of, premium,

if any, and interest on the Bonds shall be derived from the following sources in the order of priority indicated:

- (a) Moneys paid into the Available Moneys Account of the Bond Fund pursuant to the third sentence of Section 5.03 hereof, which shall be applied to the payment of interest on the Bonds;
- (b) Moneys, if any, furnished by the Developer to the Trustee pursuant to the Loan Agreement, and proceeds from the investment thereof which shall constitute Available Moneys;
- (c) Moneys drawn or received by the Trustee under the Letter of Credit or upon liquidation of the Collateral pursuant to the Collateral Agreement; and
- (d) Moneys, if any, furnished by the Developer to the Trustee pursuant to the Loan Agreement, and proceeds from the investment thereof which shall constitute Unavailable Moneys.

Section 5.05 Letter of Credit.

(a) The Trustee shall, without further direction, timely draw moneys under the Letter of Credit in accordance with the terms thereof or make timely demand for payment under the Collateral Agreement and to commence foreclosure proceedings with respect to the Collateral upon dishonor of the Letter of Credit by the Bank as shall be necessary to make timely payments of principal of and interest on the Bonds required to be made from the Bond Fund. In addition, the Trustee shall, on the applicable Draw Date draw moneys under the Letter of Credit in accordance with the terms thereof to the extent necessary to make timely payments required to be made pursuant to, and in accordance with, Sections 3.10 and 4.06 hereof.

In the event that the Trustee shall fail to receive from the Bank the full amount drawn under the Letter of Credit in accordance with the terms hereof, the Trustee shall immediately and without further direction, make demand under the Collateral Agreement and shall commence foreclosure proceedings with respect to the Collateral in accordance with the terms thereof as shall be necessary to make timely payments of the amounts described in this subsection (a).

(b) If at any time there shall have been delivered to the Trustee an Alternate Credit Facility meeting the requirements of Section 3.6(b) of the Loan Agreement, together with (i) an opinion of Bond Counsel stating that the delivery of such Alternate Credit Facility to the Trustee is authorized under the Loan Agreement, complies with the terms of the Loan Agreement and this Indenture and does not cause the Bonds to violate provisions of Section 159.613 or 215.84, Florida Statutes, as amended, (ii) if

such Alternate Credit Facility has not been delivered by the Developer in connection with any Reset Date, written evidence satisfactory to the Trustee from S&P, if the Bonds are rated by S&P, or Moody's, if the Bonds are rated by Moody's, to the effect that such rating agency has reviewed the proposed Alternate Credit Facility and that the substitution of the proposed Alternate Credit Facility for the Letter of Credit will not, by itself, result in either a reduction or a withdrawal of its rating of the Bonds, and (iii) if required by such rating agency, a new Collateral Agreement in form and substance acceptable to such rating agency, then the Trustee shall accept such Alternate Credit Facility and promptly surrender the previously held Letter of Credit to the Bank, in accordance with the terms of such Letter of Credit, for cancellation. If at any time, there shall cease to be any Bonds Outstanding hereunder, then the Trustee shall promptly surrender the Letter of Credit to the Bank, in accordance with the terms of the Letter of Credit, for cancellation. The Trustee shall comply with the procedures set forth in the Letter of Credit relating to the termination thereof.

Without making any prior claim or providing any prior notice to the Issuer or the Developer, the Trustee shall: (i) No later than thirty days prior to each 90-day Draw Date, upon such 90-day Draw Date and sixty days prior to the next succeeding Interest Payment Date, determine whether there exists pursuant to the terms of the Collateral Agreement 30-day Collateral at a discounted value to, upon liquidation, provide funds for all payments to be made to Bondholders on the next succeeding Interest Payment Date. In the event the 30-day Collateral is deemed insufficient, the Trustee shall, no later than the 90-day Draw Date, make demand on the Bank in accordance with the terms of the Letter of Credit for a drawing under the Letter of Credit in an amount that will be sufficient to pay the principal of and interest on the Bonds becoming due on the next Interest Payment Date in accordance with the provisions of this Indenture. 11:00 a.m., New York City time, on the 90-day Draw Date, the Bank has failed to make payment in full, then the Trustee shall immediately provide written notice of such failure to perform to the Developer. If the Trustee shall not have received on or before the 90-day Draw Date amounts sufficient to pay principal and interest on the Bonds becoming due on the next Interest Payment Date, then the Trustee shall commence foreclosure proceedings with respect to the Collateral as provided under the Collateral Agreement; or (ii) In the event the discounted value of 30-day Collateral is deemed sufficient pursuant to (i) above shall, no later than the 30-day Draw Date, make demand on the Bank in accordance with the terms of the Letter of Credit in an amount that will be sufficient to pay the principal of and interest on the Bonds becoming due on the next Interest Payment Date in accordance with the provisions of this Indenture. If, by 11:00 a.m., New York City time, on the 30-day Draw Date, the Bank has failed to honor such demand in full, the Trustee shall immediately commence foreclosure proceedings with respect to the Collateral as provided under the Collateral Agreement.

Section 5.06 Costs of Issuance Fund; Insurance and Condemnation Proceeds Fund. There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds Costs of Issuance Fund, Remington at Ponte Vedra Project," which shall be expended in accordance with the provisions of Sections 5.07 and 5.08 hereof. There is hereby created and established with the Trustee a trust fund in the name of the Issuer to be designated "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds Insurance and Condemnation Proceeds Fund, Remington at Ponte Vedra Project," which shall be expended in accordance with the provisions of Sections 5.07 and 5.08 hereof.

Section 5.07 Payments Into Costs of Issuance Fund and Insurance and Condemnation Proceeds Fund; Disbursements. The Trustee shall deposit into the Costs of Issuance Fund all moneys paid by the Developer to the Trustee pursuant to Section 3.3 of the Loan Agreement as provided in Section 5.01 hereof. The Trustee is hereby authorized and directed to make disbursements from such fund to pay all costs of issuance with respect to the Bonds, including any fees of the Original Purchaser, and all fees and expenses required to be paid by the Developer pursuant to Section of the Escrow Deposit Agreement. The Trustee shall keep and maintain adequate records pertaining to such fund and all disbursements therefrom. After payment of all such costs, fees and expenses the moneys in such fund shall be applied as provided in Section 5.08 hereof.

There shall be deposited in the Insurance and Condemnation Proceeds Fund all insurance proceeds and condemnation awards received by the Trustee with respect to the Project pursuant to the Loan Agreement. The Trustee is hereby authorized and directed to make disbursements from such fund for the repair, restoration, modification or improvement of the Project or for redemption of Bonds as required or permitted by the Loan Agreement. The Trustee shall keep and maintain adequate records pertaining to such fund and all disbursements therefrom. Upon receipt of a certificate from the Developer Representative that all costs of such repair, restoration, modification or improvement to be paid from such moneys have been paid or that the Developer has elected to apply such moneys to the redemption of Bonds (accompanied by the written consent of the Bank) the moneys in such fund shall be applied as provided in Section 5.08 hereof.

Section 5.08 Use of Costs of Issuance Fund and Insurance and Condemnation Proceeds Fund Moneys. After disbursement of all amounts specified in Section 5.07 hereof from the Costs of Issuance Fund the Trustee shall transfer any amount in the Costs of Issuance Fund to the Developer and the Trustee shall then close the Costs of Issuance Fund.

Upon delivery by the Developer Representative of a certificate stating that (i) all costs of repair, restoration, modification or improvement of the Project which are to be paid from moneys in the Insurance and Condemnation Proceeds Fund have been so paid or (ii) that the Developer has elected to apply such moneys to the redemption of Bonds (which election shall be accompanied by the written consent of the Bank) the Trustee shall immediately transfer any amount in the Insurance and Condemnation Proceeds Fund to the Bond Fund in accordance with Section 5.03 hereof and apply such moneys to the redemption of Bonds or, with the consent of the Bank, the purchase of Bonds.

Section 5.09 Investment of Funds; Rebate Fund; Arbitrage.

- (a) Moneys in the Funds shall be invested and reinvested by the Trustee in any Eligible Investments at the oral or written direction of the Developer; provided that any moneys held as part of the Bond Fund or the Insurance and Condemnation Proceeds Fund may be invested only in Eligible Investments which are Government Obligations maturing in no later than 90 days or when needed. Subject to any such directions with respect thereto, the Trustee may from time to time sell such investments and reinvest the proceeds therefrom in Eligible Investments. Any such investments may be purchased from or sold to the Trustee or any commercial bank affiliated with the Trustee. The Trustee shall sell or redeem investments outstanding to the credit of the Funds to produce sufficient moneys applicable hereunder to and at the times required for the purposes of paying Bond service charges or other disbursements when due, and shall do so without necessity for any order on behalf of the Issuer and without restriction by reason of any such order. An investment made from moneys credited to a Fund shall constitute part of that Fund and such Fund shall be credited with all proceeds of sale from such investment. Notwithstanding anything to the contrary contained herein or in the Agreement, funds drawn under the Letter of Credit shall be invested only in Government Obligations with a maturity equal to the lesser of thirty (30) days or the date on which such funds are required for the purposes for which they are drawn.
- (b) There is hereby created and established with the Trustee a trust fund to be known and designated as the "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds Rebate Fund, Remington at Ponte Vedra Project" (the "Rebate Fund"), and the Trustee shall hold and administer the same. The moneys in the Rebate Funds shall be

used solely for payment or payments to the U.S. Treasury pursuant to Section 148(f) of the Code. The Trustee shall take the following actions to provide for such payment or payments:

- (i) Unless the Trustee is furnished with an opinion of Bond Counsel that such determinations are unnecessary, either the Trustee, or Bond Counsel employed by the Trustee, shall make a determination on behalf of the Issuer of the amount required to be paid to the U.S. Treasury at least every year (as of the anniversary of the date of issue of the Bonds) and upon the final payment of the Bonds (the "Rebate Amount"). If Bond Counsel is employed, the Trustee may pay its reasonable compensation and any compensation so paid by the Trustee shall be deemed conclusively to be an ordinary and necessary expense incurred in carrying out the terms of this Indenture.
- (ii) An amount equal to the Rebate Amount above shall be promptly deposited by the Developer with the Trustee to be placed into the Rebate Fund which shall be held for the sole benefit of the U.S. Treasury and shall not be or be deemed to be a pledged fund (and no moneys deposited therein shall be or deemed to be Revenues).
- (iii) The Trustee shall make payment on behalf of the Issuer to the U.S. Treasury from the Rebate Fund on the dates and in the manner required by law.
- (iv) The Trustee shall take any additional action required to be taken pursuant to the non-arbitrage certificate, or other instructions, delivered by the Issuer in connection with the issuance and sale of the Bonds.
- (v) The Trustee shall keep records of the determinations made under this paragraph (b) on behalf of the Issuer, until six years after the final payment on the Bonds. The Trustee shall keep adequate records, including any necessary certifications, to evidence the fair market value of any certificate of deposit, investment contract or other obligation purchased with Bond proceeds.
- (c) For the purpose of determining the amount on deposit in any Fund, Eligible Investments in which money in such Fund is invested shall be valued as follows:
- (i) as to investments the bid and asked prices of which are published on a regular basis in The Wall Street Journal (or, if not there, then in The New York Times), the average of the bid and asked prices for such investments so published on or most recently prior to such time of determination; (ii) as to investments the bid and asked prices of which are not published on a regular basis in The Wall Street Journal or The New York Times,

the average bid price at such time of determination for such investments by any two nationally recognized government securities dealers (selected by the Trustee in its absolute discretion) at the time making a market in such investments; (iii) as to certificates of deposit and bankers acceptances, the face amount thereof, plus accrued interest; and (iv) as to any investment not specified above, the value thereof established by prior agreement between the Issuer and the Trustee. If more than one provision of this definition of "value" shall apply at any time to any particular investment, the value thereof at such time shall be determined in accordance with the provision establishing the lowest value for such investment.

The Trustee shall value the Eligible Investments in the Funds established under this Indenture five business days prior to each Interest Payment Date. In addition, the Eligible Investments shall be valued by the Trustee at any time requested by the Issuer or the Developer on reasonable notice to the Trustee (which period of notice may be waived or reduced by the Trustee); provided, however, that the Trustee shall not be required to value the Eligible Investments more than once in any calendar month.

(d) The Issuer and the Trustee covenant that they will not knowingly take any action to permit any investment or other use of the proceeds of the Bonds which would cause any Bond to be classified as an "arbitrage bond" within the meaning of Section 148 of the Code.

The Issuer and the Trustee covenant that no investment of Bond proceeds shall be made if it would result in a "prohibited payment," as such term is used in Section 148(f) of the Code.

In the event the Issuer or the Developer is of the opinion (supported by an opinion of Bond Counsel) that it is necessary or advisable to restrict or limit the yield on the investment of any moneys held in any Trust Fund in order to avoid the Bonds being considered "arbitrage bonds" within the meaning aforesaid, the Issuer may (and shall if so requested by the Developer) issue to the Trustee a written certificate to such effect together with appropriate written instructions, in which event the Trustee shall take such action as is necessary so to restrict or limit the yield on such investment in accordance with such certificate and instruction, irrespective of whether the Trustee share such opinion.

Section 5.10 Moneys to be Held in Trust. All moneys required or permitted to be deposited with or paid to the Trustee or any Paying Agent under any provision of the Basic Documents, and any investments thereof, shall be held by the Trustee or such Paying Agent in trust and, except for moneys deposited with or paid to the Trustee or any Paying Agent for the redemption of

Bonds, notice of the redemption of which has been duly given, and moneys held by the Trustee pursuant to Section 5.11 hereof, shall, while held by the Trustee or Paying Agent, be subject to the lien hereof.

Section 5.11 Non-Presentment of Bonds. In the event any Bond shall not be presented for payment when the principal thereof becomes due, either at maturity, at the date fixed for redemption thereof, or otherwise, if funds sufficient to pay such Bond shall have been made available to the Trustee for the benefit of the holder thereof, all liability of the Issuer to the holder thereof for the payment of such Bond shall thereupon cease and be completely discharged, and it shall be the duty of the Trustee to hold such funds, without liability for interest thereon, in a separate account in the Bond Fund for the benefit of the holder of such Bond, who shall thereafter be restricted exclusively to such funds for any claim of whatever nature on such holder's part under this Indenture or on, or with respect to, said Bond; provided, that any funds which shall be so held by the Trustee and which remain unclaimed by the holder of the Bond not presented for payment for a period of four years after such due date thereof, shall be paid to the Developer, upon request in writing by the Developer, free of any trust or lien and thereafter the holder of such Bond shall look only to the Developer for payment and then only to the amounts so received by the Developer without any interest thereon; and the Trustee shall have no further responsibility with respect to such moneys.

Section 5.12 <u>Liquidation of Funds</u>. Except as provided in Section 5.11 hereof, any amounts remaining in the Funds after all of the outstanding Bonds shall be deemed to have been paid and discharged under the provisions of this Indenture, and the fees, charges and expenses of the Fiduciaries and all other amounts required to be paid under the Basic Documents shall have been paid, shall be paid to the Developer.

Section 5.13 Collateral and Collateral Agreement.

- (a) Pledge of Collateral. The Trustee covenants to take all actions necessary to assure that the Bank grants a lien on and first perfected security interest in the Collateral to the Trustee and that the Collateral Agent, as such term is defined in the Collateral Agreement, shall hold such Collateral, for the benefit of the Bondholders, as security for the Bank's undertakings, duties and obligations under the Letter of Credit and Collateral Agreement.
- (b) <u>Collateral Proceeds</u>. Pursuant to the terms of the Collateral Agreement, the Collateral shall include certain of the proceeds of any and all such Collateral, the interest and income

earned on such Collateral upon any liquidation, and the Trustee's right to receive such interest and income upon any liquidation.

(c) Collateral Requirement.

(i) Under the Collateral Agreement, the Bank must deliver to the Collateral Agent, prior to the delivery of the Bonds, and maintain for the term of the Collateral Agreement, Collateral the aggregate fair market value of which is at least equal to the "Collateral Requirement." The Collateral Requirement is the requirement that on any date the Pledge Value (the value of Collateral determined by multiplying the Market Value thereof by the applicable Discounted Collateral Value, as such terms are defined in the Collateral Agreement) of each type of Eligible Collateral, as such term is defined in the Collateral Agreement, shall be at least equal to the stated amount of the Letter of Credit. The following are the Collateral Requirements for the indicated types of Collateral, based upon their Discounted Collateral Values:

Collateral Requirement

Discounted Collateral Value/Frequency of Valuation/ Cure Period

Cash And Goverment Securities

| Type of | Monthly/ | Monthly/ | Weekly/ |
|---------------------------|------------------------------------|------------|------------|
| Collateral | Month Cure | 2-day Cure | 2-day Cure |
| Cash | 100.00% | 100.00% | 100.00% |
| FHLMC PC's | 62.50% | 68.97% | 71.43% |
| FNMA MBS's | 62.50% | 68.97% | 71.43% |
| GNMA Certificates | 66.67% | 74.07% | 76.92% |
| Government Obligations | | | |
| Remaining Maturit | ies | | |
| l year | 92.59% 78.13% 74.07% 71.43% 66.67% | 93.46% | 95.24% |
| 5 years | | 80.00% | 86.96% |
| 10 years | | 75.19% | 84.75% |
| 15 years | | 74.07% | 83.33% |
| 30 years | | 68.97% | 76.92% |

Discounted Collateral Value/Frequency Of Valuation/ Cure Period

Mortgage Collateral

| | Quarterly/ Month Cure | Monthly/ Monthly Cure |
|---|--------------------------|--------------------------|
| Conventional/FHA/VA Mortgages | 58.82% | 62.50% |
| Conventional Pass Through Certificates | 58.82% | 62.50% |

FHA Multifamily Notes/Other Securities

The Discounted Collateral Value, valuation period and applicable cure period relating to FHA multifamily notes and other securities shall be such as may be necessary to secure and/or maintain the existing rating on the Bonds, as S&P may hereafter from time to time determine.

- (ii) Under the Collateral Agreement, the Bank must maintain at all times 30-Day Collateral at a Discounted Collateral Value sufficient to equal the Payment Date Requirement.
- (d) Valuation of Collateral. The Trustee covenants to cause the Collateral Agent to calculate the fair market value of the Collateral once every thirty (30) or seven (7) Business Days (as determined by the Bank) and to make the Payment Date Valuation and at such other times as directed by the Trustee. After each such valuation, the Collateral Agent shall determine whether the total value of the Collateral meets the Collateral Requirement and, for the Payment Date Valuation, whether the total 30-Day Collateral meets the Payment Date Requirement. In the event that the Collateral Requirement is not satisfied, the Collateral Agent shall so notify the Bank and the Trustee.

(e) Substitution of Collateral.

- (i) The Trustee acknowledges that, subject to the provisions of (ii) below, the Bank may substitute Collateral pledged under the Collateral Agreement so long as such substitution does not adversely affect the rating or tax-exempt status of the interest on the Bonds and all requirements with respect to the Collateral are met;
- (ii) The Trustee covenants that in the event of such substitution, it will cause the Collateral Agent to (A) evaluate the Collateral proposed to be substituted, (B) value such substitute Collateral, (C) value all of the Collateral to

determine whether, after substitution of Collateral, the Collateral Requirement or the Payment Date Requirement, as applicable, is satisfied; and

- (iii) From and including the date of each Payment Date Valuation to and including each Bond Payment Date, substitutions of Collateral shall be permitted only with respect to Collateral in excess of the Payment Date Requirement.
- (f) <u>Liquidation of Collateral</u>. The Trustee shall, after dishonor of a draw on the Letter of Credit without cure, cause the liquidation of the Collateral for the best available price and apply the proceeds thereof to pay principal of and interest due on the Bonds.
- (g) Provision for Surety Bond. Pursuant to the Letter of Credit Agreement, the Bank may, at its option, at any time after issuance of the Bonds, secure a surety bond ("Surety Bond") issued by a recognized commercial surety company, which Surety Bond will insure the Letter of Credit and permit a reduction of the market value of Collateral. Any conversion to a Surety Bond based transaction may be accomplished only in such manner as will not adversely affect the rating on the Bonds.
- (h) Conflict. In the event of a conflict between the provisions of this Section 5.13 and the provisions of the Collateral Agreement with respect to the Collateral the Collateral Agreement shall prevail over this Section 5.13.

[The next page is Six-1]

ARTICLE VI

THE TRUSTEE, PAYING AGENTS AND AUTHENTICATING AGENTS

Section 6.01 <u>Trustee's Acceptance and Responsibilities</u>. The Trustee accepts the trusts and duties imposed upon it by this Indenture, and agrees to perform those trusts and duties as an ordinarily prudent trustee under a trust agreement, but only upon and subject to the following express terms and conditions:

- (a) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall be answerable for the conduct of the same in accordance with the standard specified above, and shall be entitled to advice of counsel concerning all matters of trusts hereof and duties hereunder, and may in all cases pay reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts thereof. The Trustee may act upon an Opinion of Counsel approved by the Trustee in exercising of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action taken or not taken in good faith in reliance upon that opinion.
- (b) Except for its certificate of authentication on the Bonds, and its duty to receive the items set forth in Section 2.03 hereof, the Trustee shall not be responsible for any recital herein or in the Bonds, or for the validity, priority, recording or re-recording, filing or re-filing of this Indenture or of any Supplemental Indenture or the Mortgage, or any instrument of further assurance, collateral assignment or any financing statements, amendments thereto or continuation statements, or for insuring the Project or collecting any insurance moneys, or for the validity of the execution by the Issuer of this Indenture or of any supplements thereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be secured hereby, or for the value of or title to the Project or as to the maintenance of security hereof, except that in the event the Trustee enters into possession of a part or all of the Project pursuant to any provision of the Mortgage or other instrument collateral thereto, it shall use due diligence in preserving such property. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Developer, as applicable, under the Agreement except as hereinafter set forth; but the Trustee may require of the Issuer or the Developer, as applicable, full information and advice as to the performance of those covenants, conditions and agreements. Except as otherwise provided in Section 7.04 hereof,

the Trustee shall have no obligation to perform any of the duties of the Issuer under the Agreement.

- (c) The Trustee shall not be accountable for the application by any other Person of the proceeds of any Bonds authenticated or delivered hereunder.
- (d) The Trustee shall be protected in acting upon any notice, request, consent, certificate, order, affidavit, letter, telegram or other paper or document believed by it to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request or authority or consent of any Person who at the time of making such request or giving such authority or consent is the holder of any Bonds, shall be conclusive and binding upon all future holders of the same Bond and of Bonds issued in exchange therefor or in place thereof.
- As to the existence or nonexistence of any fact for which the Issuer may be responsible or as to the sufficiency or validity of any instrument, report, paper or proceeding, the Trustee shall be entitled to rely upon a certificate signed on behalf of the Issuer by an authorized officer thereof as sufficient evidence of the facts therein contained, and, prior to the occurrence of a default of which the Trustee has been notified as provided in paragraph (g) of this Section, or of which by that paragraph it is deemed to have notice, may accept a similar certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion obtain such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate of the officer, or an assistant thereto, having charge of the appropriate records to the effect that legislation in the form therein set forth has been enacted by the Legislative Authority as conclusive evidence that such legislation has been duly adopted and is in full force and effect.
- (f) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and the Trustee shall not be answerable for other than its negligence or willful default.
- (g) The Trustee shall not be required to take notice or be deemed to have notice of any default hereunder, except Events of Default described in paragraphs (a), (b) and (f) of Section 7.01 hereof, unless the Trustee shall be specifically notified of such default in writing delivered to it by the Issuer or by the holders of at least twenty-five percent in aggregate principal amount of Bonds then outstanding, and in the absence of such notice so delivered, the Trustee may conclusively assume there is no default except as aforesaid.

- (h) The Trustee shall not be personaly liable for any debts contracted, or for injury or damage to Persons or to personal property, or for salaries or nonfulfillment of contracts, relating to its possession or management of the Project during any period in which it may be in possession of or managing the Project pursuant to any provision of the Mortgage or other instrument collateral thereto.
- (i) At any and all reasonable times the Trustee, and its duly authorized agents, attorneys, experts, engineers, accountants and representatives may inspect any and all books, papers and records of the Issuer pertaining to the Project and the Bonds, and may make such memoranda from and in regard thereto as may be desired.
- (j) Other than as provided in Section 6.12 hereof, the Trustee shall not be required to give any bond or surety in respect of the execution of those trusts and powers or otherwise in respect of the premises.
- (k) Notwithstanding anything contained elsewhere in this Indenture, the Trustee may, but shall not be required to, demand in respect of the authentication of any Bonds or any action whatsoever within the purview of this Indenture, any showings, certificates, reports, opinions, appraisals or other information, or corporate action or evidence thereof, in addition to that required by the terms hereof as a condition of such action by the Trustee, deemed by it desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds or the taking of any other action by the Trustee.
- (1) Before taking action under Article VII or Section 6.03 hereof, the Trustee may require that a satisfactory indemnity bond be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful default, by reason of any action so taken. The Trustee may take such action without such indemnity, and in such case the Developer shall reimburse the Trustee for all such expenses pursuant to Section 6.02 hereof.
- (m) Any action by the Legislative Authority, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warranty, protection and authority to the Trustee for its actions taken hereunder.
- (n) The Trustee, Paying Agents and Authenticating Agents, and any of their directors, officers, employees or agents, may in good faith become the owners of Bonds secured

hereby with the same rights which it or they would have hereunder if the Trustee, Paying Agents or Authenticating Agents were not such.

(0) Nothing herein shall relieve the Trustee from liability for its own willful or grossly negligent conduct.

Section 6.02 Fees, Charges and Expenses of the Fiduci-The Trustee shall be entitled to payment or reimbursement by the Developer pursuant to the Agreement for reasonable fees for its Ordinary Services rendered hereunder and all advances, counsel fees and other Ordinary Expenses reasonably and necessarily paid or incurred by the Trustee in connection with such Ordinary Services and, in the event that it should become necessary that the Trustee perform Extraordinary Services, it shall be entitled to reasonable extra compensation therefor, and to reimbursement for reasonable and necessary Extraordinary Expenses in connection therewith; provided, however, the Developer may in good faith contest, without creating a default hereunder, the necessity for any such Extraordinary Services and Extraordinary Expenses and the reasonableness of any such fees, charges or expenses and, furthermore, if such Extraordinary Services or Extraordinay Expenses are occasioned by the negligence or misconduct of the Trustee, the Trustee shall not be entitled to compensation or reimbursement therefor. Other Fiduciaries shall be entitled to payment and reimbursement, but only from the sources specified above, for their reasonsable fees and charges.

Section 6.03 <u>Intervention by Trustee</u>. In any judicial proceeding to which the Issuer, the Bank, the Developer, or any Fiduciary other than the Trustee, is a party and which in the opinion of the Trustee and its attorney has a substantial bearing on the interests of holders of the Bonds, the Trustee may seek to intervene on behalf of the Bondholders and shall do so if requested in writing by the holders of at least twenty-five percent of the aggregate principal amount of Bonds then outstanding.

Section 6.04 Successor Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it or any successor to it may be consolidated, or to which it may sell or transfer its assets and trust business as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto, shall be and become successor Trustee hereunder and vested with all of the title to the whole property or trust estate hereunder and all of the trusts, powers, duties, discretions, immunities, privileges and all other matters as was its predecessor, without execution or filing of any instrument or any further act on the part of any of the parties hereto, anything herein to the contrary notwithstanding; provided, that any such successor Trustee shall be a corporate trust company or a bank or a banking association having

the powers of a trust company in good standing, within or without the State but authorized to exercise trust powers within the State and having a reported capital and surplus of not less than \$50 million.

Section 6.05 Appointment of Co-Trustee. It is the purpose of this Indenture that there shall be no violation of any law of any jurisdiction (including particularly the laws of the State), denying or restricting the right of banking corporations or associations to transact business as trustee in such jurisdic-It is recognized that in case of litigation under this tion. Indenture or other documents relating to the Bonds and the Project, and in particular in case of the enforcement thereof on default, or in the case the Trustee deems that by reason of any present or future law of any jurisdiction it may not exercise any of the powers, rights or remedies herein granted to the Trustee or hold title to the properties, in trust, as herein granted, or take any action which may be desirable or necessary in connection therewith, it may be necessary that the Trustee appoint an individual or additional institution as a separate or co-trustee. The following provisions of this Section are adapted to these ends.

In the event that the Trustee appoints an individual or additional institution as a separate or co-trustee, each and every remedy, power, right, duty, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Indenture to be exercised by or vested in or conveyed to the Trustee with respect thereto shall be exercisable by and vest in such separate or co-trustee but only to the extent necessary to enable such separate or co-trustee to exercise such powers, rights and remedies, and every covenant and obligation necessary to the exercise thereof by such separate or co-trustee shall run to and be enforceable by either of them.

Should any instrument in writing from the Issuer be reasonably required by the separate or co-trustee so appointed by the Trustee for more fully and certainly vesting in and confirming to the separate or co-trustee such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered, but not prepared, by the Issuer. In case any separate or co-trustee or a successor to either shall die, become incapable of acting, resign or be removed, all the estates, properties, rights, powers, trusts, duties and obligations of such separate or co-trustee, so far as permitted by law, shall vest in and be exercised by the Trustee until the appointment of a successor to such separate or co-trustee.

Section 6.06 Resignation by the Trustee. Subject to Section 6.07 hereof, the Trustee may at any time resign from the trusts hereby created by giving written notice thereof to the

Issuer, the Bank, the Developer and the Fiduciaries not less than sixty days before the resignation is to take effect, and by mailing written notice of such resignation by first class mail, postage prepaid, to the Bondholders as their names and addresses appear on the Bond Register, not less than forty-five days before such resignation is to take effect. However, such resignation shall take effect immediately upon the appointment of a successor Trustee if the successor Trustee is appointed and accepts the trust hereof before the time stated in that notice.

Section 6.07 Removal of the Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee, the Issuer, the Bank, the Developer and the Fiduciaries, and signed by or on behalf of the holders of not less than a majority in aggregate principal amount of Bonds then outstanding.

Notwithstanding anything else herein or in Section 6.06, no removal or resignation of the Trustee shall be effective until a successor Trustee is duly appointed hereunder and has accepted such appointment.

Section 6.08 Appointment of Successor Trustee. the Trustee hereunder shall resign or be removed, or be dissolved, or otherwise become incapable of acting hereunder, or in case it shall be taken under the control of any public officer or officers, or of a receiver appointed by a court, a successor shall be appointed by the Issuer with the written consent of the Bank, the Developer and the Fidicuaries; provided that if a successor Trustee is not so appointed within ten days after notice of resignation is mailed or instrument of removal is delivered as provided in Sections 6.06 and 6.07 hereof, respectively, or the Trustee is dissolved, taken under control or otherwise incapable of action as above provided, then the holders of a majority in aggregate principal amount of Bond then outstanding, by an instrument or concurrent instruments in writing signed by or on behalf of such holders, may designate a successor Trustee. Every such successor Trustee appointed pursuant to this Section shall be a corporate trust company or bank or banking association in good standing, within or without the State but duly authorized to exercise trust powers within the State, having a reported capital and surplus of not less than \$50 million, and willing to accept the trusteeship under the terms and conditions of this Indenture.

Every successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Issuer, the Bank, the Developer and the Fidicuaries, in writing accepting such appointment hereunder, and thereupon such successor without any further act shall become fully vested with all the rights, powers, trusts, duties and obligations of its predecessor. The predecessor Trustee shall on the written request of its successor or of the Issuer, execute and deliver an instrument

transferring to the successor Trustee all the estates, properties, rights, powers and trusts of the predecessor Trustee hereunder, and shall duly assign, transfer and deliver all property, securities and moneys held by it as Trustee to its successor. Should any instrument in writing from the Issuer be required by any successor Trustee for more fully and certainly vested in that successor the rights, powers and duties hereby vested or intended to be vested in the predecessor, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Issuer.

In the event of a change in Trustee, the predecessor Trustee which has resigned or been removed shall cease to be custodian of any funds it may hold pursuant ot this Indenture, and cease, to the extent that it was such, to be Bond Registrar, Paying Agent and Authenticating Agent for any of the Bonds, and the successor Trustee shall become such custodian, Bond Registrar, Paying Agent and Authenticating Agent.

Section 6.09 Adoption of Authentication. In case any of the Bonds shall have been authenticated but not delivered, any successor Trustee may adopt the certificate of authentication of the original Trustee or of any successor of it as Trustee hereunder and deliver those Bonds so authenticated as hereinbefore provided; and, in case and of such Bonds shall not have been authenticated, any successor Trustee may authenticate such Bonds either in the name of any predecessor or in its name. In all such cases the certificate of authentication shall have the same force and effect as provided in the Bonds or in this Indenture with respect to the certificate of authentication of the Trustee.

Section 6.10 Designation and Succession of Authenticating and Paying Agents. The Trustee and any other banks or trust companies designated as Paying Agent or Agents or Authenticating Agent or Agents, as the case may be, in the Bond Resolution shall be the Paying Agent or Agents or Authenticating Agent or Agents for the Bonds and, in the absence of such designation, the Trustee shall be the sole Paying Agent and Authenticating Agent.

If the position of Paying Agent or Authenticating Agent shall become vacant for any reason, the Issuer shall, within thirty days thereafter, appoint a bank or trust company located in the same city as such Paying Agent or Authenticating Agent to fill such vacancy. If the Issuer fails to appoint a successor Paying Agent or Authenticating Agent within that period, the Trustee shall make the appointment.

For all purposes of this Indenture, the authentication and delivery of Bonds by an Authenticating Agent other than the Trustee shall be as effective as if such Bonds had been delivered and authenticated by the Trustee.

Section 6.11 Fiduciary Protection. Fiduciaries other than the Trustee shall enjoy the same protective provisions in the performance of their duties hereunder as are specified in Section 6.01 hereof with respect to the Trustee, insofar as such provisions may be applicable.

Section 6.12 <u>Trustee Acceptable to Court</u>. The Trustee, all successor Trustees, all separate Trustees, and all co-Trustees, if any, shall be bonded Trustees acceptable to the validation court, if any, and shall certify the proper expenditure of the proceeds of the Bonds as required by Section 75.04(2), Florida Statutes, as amended.

Section 6.13 Approval of Agreement. The Trustee approves the Agreement and agrees to perform the duties of the Trustee, if any, required thereby.

Section 6.14 Fiduciary Agreements. The Issuer shall enter into appropriate contracts or agreements with the Remarketing Agent and other Fiduciaries requiring each to perform their respective duties as described herein and will require such bonds from each as the Issuer deems appropriate. Such agreements shall provide that all costs and expenses of any Fiduciary shall be paid by the Developer.

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ARTICLE VII

DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS

Section 7.01 <u>Defaults, Events of Default</u>. The occurrence of any of the following events, subject to the provisions of this Article VII, is hereby defined as and declared to be and to constitute an Event of Default hereunder:

- (a) Failure in the payment of any interest on any Bond when and as the same shall have become due and payable.
- (b) Failure in the payment of the principal of or any premium on any Bond when and as the same shall become due and payable, whether at stated maturity or upon acceleration, redemption, mandatory tender or otherwise.
- (c) Failure by the Issuer to perform or observe any other covenant, agreement or condition on the part of the Issuer contained in this Indenture or in the Bonds, which failure or default shall have continued for a period of sixty days after written notice, by registered or certified mail, to the Issuer, the Bank and the Developer specifying the failure or default and requiring the same to be remedied, which notice may be given by the Trustee in its discretion and which notice shall be given by the Trustee at the written request of the holders of not less than twenty-five percent in aggregage principal amount of Bonds then outstanding;
- (d) The commencement by the Issuer of proceedings under Bankruptcy Law, or the consent, by answer or otherwise, to such filing against the Issuer, or the involuntary commencement against the Issuer of such proceedings, if not dismissed, enjoined, or halted within sixty days;
- (e) The occurrence of an "Event of Default" as defined in the Loan Agreement or the Mortgage, continuing beyond the applicable cure period provided therein, if any, for which the remedy is acceleration of the Developer's obligations thereunder;
- (f) The Trustee receives written notice from the Bank of its election to exercise its remedies under the Letter of Credit Agreement due to the occurrence and continuation of an "Event of Default" thereunder beyond the term of any cure provisions.

The term "default" as used in this Article means default by the Issuer in the performance or observance of any of the covenants, agreements or conditions on its part contained in this Indenture or in the Bonds, exclusive of any period of grace required to constitute a default or Event of Default as provided above or in the Agreement.

Section 7.02 Notice if Default Occurs. If an Event of Default shall occur, the Trustee shall, within five days after knowledge of such Event of Default (immediately in the case of default under paragraphs (a) and (b) of Section 7.01 hereof), give written notice of the Event of Default (a) by registered or certified mail to the Issuer, the Developer and the Bank, and (b) by first class mail to the holders of all Bonds then outstanding as shown by the registration books maintained pursuant to Section 3.06 hereof.

Section 7.03 Acceleration.

- Declaration. Upon (i) the occurrence of any Event of Default as defined in paragraphs (c), (d) or (e) of Section 7.01 hereof, the Trustee may, and upon the written request of the holders of not less than twenty-five percent in aggregate principal amount of Bonds then outstanding the Trustee shall, or (ii) the occurrence of any Event of Default as defined in paragraphs (a), (b) or (f) of Section 7.01 hereof, the Trustee shall, by notice in writing delivered to the Issuer, the Bank and the Developer declare the principal of and any premium on all Bonds then outstanding (if not then due and payable) and the interest accrued thereon to be due and payable immediately, and, upon such declaration, that principal and premium, if any, and interest shall become and be immediately due and payable. Interest on the Bonds shall accrue to the date determined by the Trustee for the tender of payment to the Bondholders pursuant to such declara-The Trustee shall immediately draw moneys under the Letter of Credit and/or pursuant to liquidation of Collateral under the Collateral Agreement to the extent available thereunder to pay the principal of the Bonds and interest accrued on the Bonds pursuant to the previous sentence.
- (b) Annulment. Subject to the immediately succeeding sentence, at any time after the principal of the Bonds shall have been so declared to be due and payable and before the entry of final judgment or decree in any suit, action or proceeding instituted on account of such default, or before the completion of the enforcement of any other remedy hereunder, the Trustee may, with the consent of holders of a majority in aggregate principal amount of Bonds outstanding, annul such declaration and its consequences with respect to any Bonds not then due by their terms, which annulment shall be binding on all Bondholders if (i) Available Moneys shall have been deposited in the Bond Fund sufficient to pay all matured installments of Bond service charges then due

(other than the principal then due only because of such declaration) of all Bonds outstanding; (ii) moneys shall have been deposited with the Trustee sufficient to pay the charges, compensation, expenses, disbursements, advances and liabilities of the Fiduciaries; (iii) all other amounts then payable by the Issuer hereunder shall have been paid or a sum sufficient to pay the same shall have been deposited with the Trustee; and (iv) every other default (other than a default in the payment of the principal of such Bond then due only because of such declaration) shall have been remedied to the satisfaction of the Trustee. The Trustee shall promptly give written notice of such waiver, rescission or annulment to the Issuer, the Developer, the Bank and the Remarketing Agent, and shall give notice by mail to all holders of Outstanding Bonds. No such annulment shall extend to or affect any subsequent Event of Default or impair any right consequent thereon.

Section 7.04 Other Remedies; Rights of Bank and Bond-holders. Upon the happening and continuance of an Event of Default the Trustee or the Issuer may, with or without taking action under Section 7.03 hereof, pursue any available remedy to enforce the payment of Bond service charges, or the performance of or compliance with any other obligation or requirement of the Basic Documents.

Upon the happening and continuance of an Event of Default, and if requested so to do by the Bank or the holders of at least twenty-five percent in aggregate principal amount of Bonds then outstanding, the Trustee shall, subject to the provisions of Section 6.01 hereof, exercise such of the rights and powers conferred by this Section and Section 7.03 hereof as the Trustee, being advised by counsel, shall deem most effective to enforce and protect the interests of the Bondholders. In the event of a conflict between the requests of the Bank and the Bondholders (other than upon the happening and continuance of a default under the Letter of Credit or the Collateral Agreement), the request of the Bank shall prevail over the request of the Bondholders.

No remedy by the terms of this Indenture conferred upon or reserved to the Issuer or the Trustee (or to the Bondholders or the Bank) is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Trustee or to the Bondholders hereunder or now or hereafter existing.

No delay or omission to exercise any right or power accruing upon any default or Event of Default shall impair any such right or power or shall be construed to be a waiver of any such default or Event of Default or acquiescence therein; and every such right and power may be exercised from time to time and as often as may be deemed expedient.

The Trustee shall be empowered to enforce each and every right granted to the Issuer under the Basic Documents. In exercising such rights and the rights given the Trustee under this Article, the Trustee shall, unless otherwise directed by the Bank or the Bondholders in accordance with this Article VII, take such action as, in the judgment of the Trustee, applying the standards described in Section 6.01 hereof, would best serve the interests of the Bondholders.

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

Section 7.05 Right of Bank or Bondholders to Direct Proceedings. Except as otherwise expressly provided in this Section, the Bank or the holders of a majority in aggregate principal amount of Bonds then outstanding shall have the right at any time, by an instrument or instruments in writing executed and delivered to the Trustee, to direct the method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Indenture or any other proceedings hereunder; provided, that (i) such direction shall not be otherwise than in accordance with the provisions of law and of this Indenture, (ii) the Trustee shall be indemnified as provided in Section 6.01 hereof, and (iii) the Trustee may take any other action deemed proper by the Trustee which is not inconsistent with such direction. In the event of a conflict between the directions of the Bank and the Bondholders (other than that concerning a default under the Letter of Credit or the Collateral Agreement), the directions of the Bank shall prevail over those of the Bondholders. This Section shall not be construed to prevent the Issuer or the Trustee from enforcing the provisions of the Program Guidelines or the Land Use Restrictions.

Section 7.06 Application of Moneys. After payment of the costs, expenses, liabilities and advances incurred or made by the Trustee and the Issuer in the collection thereof (including, without limitation, reasonable attorneys fees and expenses except as may be limited by law or judicial order or decision entered in any action taken under this Article), all moneys received by the Trustee pursuant to any right given or action taken under the provisions of this Article, if any, subject to any provision made pursuant to Sections 4.05 or 5.11 hereof, shall be applied as follows:

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

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

Second -- To the payment to the persons entitled thereto of the unpaid principal of any of the Bonds which shall have become due (other than Bonds previously called for redemption for the payment of which moneys are held pursuant to the provision of this Indenture), whether at maturity or by call for redemption, in the order of their due dates and beginning with the earliest such due date, with interest on such Bonds from the respective dates upon which they became due, and if the amount available shall not be sufficient to pay in full all Bonds due on any particular date, together with such interest, then to the payment thereof ratably, according to the amount of principal due on such date, to the person entitled thereto without any discrimination or privilege.

- (b) If the principal of all the Bonds shall have become due or shall have been declared due and payable pursuant to this Article, all such moneys shall be deposited into the Bond Fund and shall be applied to the payment of the principal and interest then due and unpaid upon the Bonds, without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or privilege except as to any difference in the respective rates of interest specified in the Bonds.
- (c) If the principal of all the Bonds shall have been declared due and payable pursuant to this Article, and if that declaration shall thereafter have been rescinded and annulled under the provisions of Section 7.03 or 7.10 hereof, then, subject to the provisions of paragraph (b) of this Section in the event that the principal of all the Bonds shall later become due and payable, the moneys shall be deposited into the Bond Fund and shall be applied in accordance with the provisions of paragraph (a) of this Section.

Whenever moneys are to be applied pursuant to the provisions of this Section, those moneys shall be applied at such times and from time to time, as the Trustee shall determine, having due regard to the amount of such moneys available for application and

the likelihood of additional moneys becoming available for such application in the future. Whenever the Trustee shall direct the application of those moneys, it shall fix the date upon which the application is to be made and upon such date interest on the amounts of principal to be paid on such dates, and for which moneys are available, shall cease to accrue. The Trustee shall give such notice as it may deem appropriate of the deposit with it of any moneys and of the fixing of any such date consistent with the requirements of Section 3.05 hereof for the establishment of, and notice with respect to, a Special Record Date for the payment of interest in default. The Trustee shall not be required to make payment of principal of and premium, if any, on any Bond to the holder thereof until such Bond shall be presented to the Trustee for appropriate endorsement or for cancellation if fully paid.

Whenever all Bonds and interest thereon have been paid under the provisions of this Section and all expenses and charges of the Fiduciaries and all other expenses payable under the Basic Documents have been paid, any balance remaining in the Bond Fund shall be paid to the Developer subject to any direction by a court of competent jurisdiction by final order not subject to appeal.

Section 7.07. Remedies Vested in Trustee. All rights of action (including the right to file proof of claims) under this Indenture or under any of the Bonds may be enforced by the Trustee without the possession of any of the Bonds or the production thereof in any trial or other proceeding relating thereto. Any suit or proceeding instituted by the Trustee shall be brought in its name as Trustee without the necessity of joining as plaintiffs or defendants any holders of the Bonds. Any recovery of judgment shall be for the benefit of the holders of the outstanding Bonds, subject to the provisions of this Indenture.

Section 7.08. Rights and Remedies of Bondholders. No holder of any Bond shall have any right to institute any suit, action or proceeding for the enforcement of this Indenture, for the execution of any trust hereof or any other remedy hereunder, unless (i) an Event of Default has occurred and is continuing, of which the Trustee has been notified as provided in paragraph (q) of Section 6.01 hereof, or of which by said paragraph it is deemed to have notice, (ii) the holders of at least twenty-five percent in aggregate principal amount of Bonds then outstanding shall have made written request to the Trustee and shall have afforded the Trustee reasonable opportunity to proceed to exercise the powers hereinbefore granted or to institute such action, suit or proceeding in its own name and shall have offered to the Trustee indemnity as provided in Section 6.01 hereof, and (iii) the Trustee shall thereafter have failed or refused to exercise the powers granted herein or to institute such action, suit or proceeding in its own name. That notification, request and offer of indemnity

are in every case, at the option of the Trustee, conditions precedent to the execution of the powers and trusts of this Indenture, and to any action or cause of action for the enforcement of this Indenture, or for any other remedy hereunder.

It is understood and intended that no one or more holders of the Bonds shall have any right in any manner whatsoever to affect, disturb or prejudice the security or benefit of this Indenture by its or their action or to enforce any right hereunder except in the manner herein provided and that proceedings shall be instituted, had and maintained in the manner herein provided and for the benefit of the holders of all Bonds then outstanding. Nothing in this Indenture, however, shall affect or impair the right of any Bondholder to enforce the payment of the principal of and premium, if any, and interest on any Bond owned by that holder when due and payable at the place, from the sources and in the manner in that Bond expressed.

Section 7.09. Termination of Proceedings. In case the Trustee shall have proceeded to enforce any right under this Indenture, and those proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to it, then and in every such case the Issuer, the Trustee, the Remarketing Agent, the Bank and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies and powers of the Trustee shall continue as if no such proceedings had been taken.

Section 7.10. Waivers of Events of Default. at any time in its discretion and with the consent of the Bank may waive any Event of Default hereunder and shall do so upon the written request of the holders of at least a majority in aggregate principal amount of all the Bonds then outstanding, with the consent of the Bank, in respect of which an Event of Default in the payment of Bond service charges exists. However, there shall not be so waived any Event of Default described in paragraphs (a), (b) or (f) of Section 7.01 hereof unless at the time of waiver payments of the amounts provided in Section 7.03 hereof have been made or provided for. In case of any such waiver or in case any proceeding taken by the Trustee on account of any such Event of Default shall have been discontinued or abandoned or determined adversely to it, then and in every such case the Issuer, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder. No such waiver shall extend to any subsequent or other Event of Default or impair any right consequent thereon.

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ARTICLE VIII

SUPPLEMENTAL INDENTURES; AMENDMENTS TO DOCUMENTS

Section 8.01. <u>Supplemental Indentures Generally</u>. The Issuer and the Trustee may enter into indentures supplemental to this Indenture as provided in this Article and pursuant to the other provisions therefor in this Indenture.

Section 8.02 Supplemental Indentures Not Requiring Consent of Bondholders. The Issuer and the Trustee may without the consent of, or notice to, any of the Bondholders, enter into indentures supplemental to this Indenture which shall not, in the opinion of the Issuer and the Trustee, be inconsistent with the terms and provisions hereof for any one or more of the following purposes:

- (a) To cure any ambiguity, inconsistency or formal defect or omission in this Indenture;
- (b) To grant to or confer upon the Trustee for the benefit of the Bondholders any additional rights, duties, remedies, powers or authority that lawfully may be granted to or conferred upon the Trustee;
 - (c) To assign additional revenues under this Indenture;
- (d) To accept additional security and instruments of further assurance with respect to the Project;
- (e) To add to the covenants and agreements of the Issuer contained in the Indenture other covenants and agreements thereafter to be observed for the protection of the Bondholders, or to surrender or limit any right, power or authority reserved to or conferred upon the Issuer in this Indenture;
- (f) To make any change which will become effective only on a Reset Date; provided that notice of such change is given to the holders of all Bonds to be outstanding on and after such Reset Date; and provided further that there has been delivered to the Issuer and the Trustee an opinion of Bond Counsel to the effect that such change will not adversely affect the exemption from federal income taxation of interest on any of the Bonds;
 - (g) To provide for an Alternate Credit Facility;
- (h) To maintain or secure the ratings assigned, or to be assigned, to the Bonds by Moody's and/or S&P;

- (i) To evidence any succession to the Issuer and the assumption by such successor of the covenants and agreements of the Issuer contained in this Indenture, the Agreement and the Bonds;
- (j) To permit the exchange of Bonds, at the option of the holder or holders thereof, for coupon Bonds payable to bearer of the same series in an aggregate principal amount not exceeding the unmatured and unredeemed principal amount of such Bonds and bearing interest at the same rate or rates and maturing on the same date or dates with coupons attached representing all unpaid interest due or to become due thereon if, in the opinion of Bond Counsel selected by the Trustee, such exchange would not adversely affect the exemption of interest on Bonds from federal income taxation;
- (k) To permit qualification of the Indenture under the Trust Indenture Act of 1939, as amended; and
- (1) To modify, amend, alter or supplement the Indenture in any other respect not materially adverse to the Bondholders in the Trustee's sole opinion, including any change necessary in the opinion of Bond Counsel to comply fully with all applicable law promulgated or proposed by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued under Section 103 of the Code.

Section 8.03 Supplemental Indentures Requiring Consent of Bondholders and Bank. Exclusive of Supplemental Indentures referred to in Section 8.02 hereof and subject to the terms and provisions and limitations contained in this Section, and not otherwise, the Issuer and the Trustee, with the consent of the Bank and the holders of not less than 66-2/3% in aggregate principal amount of the Bonds at the time outstanding, evidenced as in this Indenture provided, may execute Supplemental Indentures adding any provisions to or changing in any manner or eliminating any of the provisions of this Indenture or any Supplemental Indenture or restricting in any manner the rights of the holders of the Bonds. However, nothing in this Section or Section 8.02 hereof shall permit, or be construed as permitting (a) without the consent of the holder of each Bond so affected, (i) an extension of the maturity of the principal of or the interest on any Bond, (ii) a reduction in the principal amount of any Bond or the rate of interest or premium thereon, or (iii) a reduction in the amount or extension of the time of payment of any mandatory sinking fund requirements (if any are shown on the Bond Form), or (b) without the consent of the holders of all Bonds then outstanding, (i) the creation of a privilege or priority of any Bond or Bonds over any other Bond or Bonds or (ii) a reduction in the aggregate principal amount of the Bonds required for consent to such Supplemental Indenture.

If at any time the Issuer shall request the Trustee to enter into any Supplemental Indenture for any of the purposes of this Section, the Trustee shall, upon being satisfactorily indemnified with respect to expenses, cause notice of the proposed execution of such Supplemental Indenture to be mailed by first class mail, postage prepaid, to the Bank and all holders of Bonds then outstanding at their addresses as they appear on the Bond The Trustee shall not be subject to any liability to Register. any Bondholder by reason of its failure to mail, or the failure of such Bondholder to receive, the notice required by this Section, and any such failure shall not affect the validity of the Supplemental Indenture when consented to and approved as provided in this Section. Such notice shall briefly set forth the nature of the proposed Supplemental Indenture and shall state that copies thereof are on file at the corporate trust office of the Trustee for inspection by all Bondholders.

If within a period of not less than sixty days but not exceeding one year, as shall be prescribed by the Issuer, following the mailing of such notice, the Trustee shall receive an instrument or instruments purporting to be executed by the Bank and the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding, which instrument or instruments shall refer to the proposed Supplemental Indenture described in such notice and shall specifically consent to and approve the execution thereof in substantially the form of the copy thereof referred to in such notice as on file with the Trustee, thereupon, but not otherwise, the Trustee shall execute such Supplemental Indenture in substantially that form, without liability or responsibility to the Bank or any holder of any Bond, whether or not that holder shall have consented thereto.

Any such consent shall be binding upon the Bank and the holder of the Bond giving such consent and upon any subsequent holder of such Bond and of any Bond issued in exchange therefor (whether or not such subsequent holder thereof has notice thereof). However, the consent may be revoked in writing by the holder of the Bond who gave such consent or by a subsequent holder thereof by filing such revocation with the Trustee prior to the execution by the Trustee of the Supplemental Indenture. At any time after the Bank and the holders of the required percentage of Bonds shall have filed their consents to the Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the Bank and the holders of such required percentage of Bonds have filed such consents. That written statement shall be conclusive that such consents have been so filed.

If the holders of the required percentage in aggregate principal amount of the Bonds outstanding shall have consented to and approved the execution thereof as provided in this Section,

no holder of any Bond shall have any right to object to the execution of the Supplemental Indenture, or to object to any of the terms and provisions contained therein or the operation thereof, or in any manner to question the propriety of the execution thereof, or to enjoin or restrain the Trustee or the Issuer from executing the same or from taking any action pursuant to the provisions thereof.

Section 8.04 Consent of Developer, Bank and Fiduciaries. Anything herein to the contrary notwithstanding, a Supplemental Indenture under this Article VIII which affects adversely any rights of the Developer, the Bank or any Fiduciary shall not become effective unless and until the affected party shall have consented in writing to the execution and delivery of such Supplemental Indenture and no Supplemental Indenture may become effective without the Bank's consent. In this regard, the Trustee shall cause notice of the proposed execution and delivery of any Supplemental Indenture together with a copy of the proposed Supplemental Indenture to be mailed as provided in Section 11.04 hereof to the Borrower, the Bank, and each Fiduciary at least ten days before the date of this proposed execution and delivery in the case of a Supplemental Indenture referred to in Section 8.02 hereof, and not later than five days after the giving of the notice of the proposed execution and delivery in the case of a Supplemental Indenture provided for in Section 8.03 hereof.

Authorization to Trustee; Effect of Supple-Section 8.05 The Trustee is authorized to join with the Issuer in the execution of any Supplemental Indenture provided for in this Article and to make the further agreements and stipulations which may be contained therein. Any Supplemental Indenture executed in accordance with the provisions of this Article shall thereafter form a part of this Indenture; all the terms and conditions contained in any such Supplemental Indenture as to any provision authorized to be contained therein shall be deemed to be part of the terms and conditions of this Indenture for any and all purposes; this Indenture shall be and be deemed to be modified and amended in accordance therewith; and the respective rights, duties and obligations under this Indenture of the Issuer, the Developer, the Bank, the Fiduciaries, and all holders of Bonds then outstanding shall thereafter be determined, exercised and enforced hereunder, subject in all respect to such modifications and amendments. Express reference to such executed Supplemental Indenture may be made in the text of any Bonds issued thereafter, if deemed necessary or desirable by the Trustee or the Issuer.

Section 8.06 Opinion of Counsel. The Trustee shall be entitled to receive, and shall be fully protected in relying upon, an Opinion of Counsel as conclusive evidence that any proposed

Supplemental Indenture complies with the provisions of this Indenture, and that it is proper for the Trustee, under the provisions of this Article, to join in the execution of that Supplemental Indenture.

Section 8.07 Modification by Unanimous Consent. Not-withstanding anything contained elsewhere in this Indenture, the rights and obligations of the Issuer and of the holders of the Bonds, and the terms and provisions of the Bonds and this Indenture or any Supplemental Indenture, may be modified or altered in any respect with the consent of the Issuer and of the holders of all of Bonds then outstanding and, if required by Section 8.04 hereof, with the consent of the affected party.

Section 8.08 Amendments to Basic Documents Not Requiring Consent of Bondholders. The Issuer and the Trustee may, without the consent of or notice to the Bondholders, consent to any amendment, change or modification of the Basic Documents as may be required (i) by the provisions of the Basic Documents, (ii) for the purpose of curing any ambiguity, inconsistency or formal defect or omission in the Basic Documents, (iii) for the purposes set forth in Section 8.02(g), (h) or (i) hereof, or (iv) in connection with any other change therein which, in the judgment of the Trustee, is not to the prejudice of the Trustee or the holders of the Bonds, including any change necessary in the opinion of Bond Counsel to comply fully with applicable law promulgated or proposed by the Department of the Treasury or the Internal Revenue Service pertaining to obligations issued pursuant to Section 103 of the Code.

Section 8.09 Amendments to Basic Documents Requiring Consent of Bondholders. Except for the amendments, changes or modifications as provided in Section 8.08 hereof, neither the Issuer nor the Trustee shall consent to (i) any amendment, change or modification of the Basic Documents which would change the amount or time as of which Loan Payments or Letter of Credit draws are required to be made without the giving of notice as provided in this Section of such proposed amendment, change or modification and receipt of the written approval or consent thereto of the holders of all the then outstanding Bonds or (ii) any other amendment, change or modification of the Basic Documents without the giving of notice as provided in this Section of such proposed amendment, change or modification and receipt of the written approval or consent thereto of the Bank and the holders of not less than 66-2/3% in aggregate principal amount of the Bonds then outstanding. Such approval or consent shall be procured as provided in Section 8.03 hereof with respect to Supplemental Indentures. If at any time the Issuer, the Bank, and the Developer shall request the consent of the Trustee to any such proposed amendment, change or modification of the Basic Documents, as provided in clause (i) or (ii) of the first sentence of this Section, the Trustee shall, upon being satisfactorily indemnified

with respect to expenses, cause notice of such proposed amendment, change or modification to be provided in the same manner as required by Section 8.03 hereof with respect to notice of Supplemental Indentures, which notice shall briefly set forth the nature of such proposed amendment, change or modification and shall state that copies of the instrument embodying the same are on file at the corporate trust office of the Trustee for inspection by all Bondholders.

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ARTICLE IX

DEFEASANCE

Section 9.01 Release of Indenture. If the Issuer shall pay or cause to be paid and discharged all the outstanding Bonds, or there shall otherwise be paid to the holders of the outstanding Bonds all Bond service charges due or to become due thereon, and provision shall also be made for paying all other sums payable hereunder or under the Basic Documents, then and in that event this Indenture (except for Sections 5.11, 5.12 and 9.02 hereof) shall cease, determine and become null and void, and the covenants, agreements and other obligations of the Issuer hereunder shall be discharged and satisfied. The Trustee then shall release this Indenture and execute and deliver to the Issuer such instruments in writing as shall be requisite to evidence the release and discharge as may be reasonably required by the Issuer, and the Trustee and Paying Agents shall assign and deliver to the Issuer any property at the time subject to the lien of this Indenture which may then be in their possession, except amounts in the Bond Fund required to be paid to the Developer under Article V hereof, or to be held by the Trustee and Paying Agents under Section 5.11 hereof or otherwise for the payment of Bond service charges.

Section 9.02 Payment and Discharge of Bonds. All the outstanding Bonds shall be deemed to have been paid and discharged within the meaning of this Indenture, including without limitation, Section 9.01 hereof if:

- (a) the Trustee and the Paying Agents shall have received, in trust for and irrevocably committed thereto, sufficient moneys, or
- (b) the Trustee shall have received, in trust for and irrevocably committed thereto, non-callable Government Obligations which are certified by an independent public accounting firm of national reputation to be of such maturities and interest payment dates and to bear such interest as will, without further investment or reinvestment of either the principal amount thereof or the interest earnings therefrom (likewise to be held in trust and committed, except as hereinafter provided), be sufficient together with moneys referred to in (a) above, for the payments, at their maturities or redemption dates, of all Bond service charges thereon to the date of maturity or redemption, as the case may be, or if default in such payment shall have occurred on such maturity or redemption date, then for the payment of all Bond service charges to the date of the tender of such payment; provided that if any Bonds are to be redeemed prior to the maturity thereof, notice of such redemption shall have been duly given or irrevocable provision satifactory to the Trustee shall have been duly made for the giving of such notice. Any moneys held by the Trustee in accordance with the provisions of this Section may

be invested by the Trustee only in Government Obligations the maturities or redemption dates of which, at the option of the holder, shall not be later than the time or times at which moneys will be required for the aforesaid purposes. Any income or interest earned by, or incremental to, the investments held under this Section shall, to the extent determined from time to time by the Trustee to be in excess of the amount required to be held by it for the purposes of this Section, be transferred at the time of such determination as provided in Section 5.12 hereof for transfers of remaining amounts in the Bond Fund. In the event of nonpresentment as referred to in Section 5.11 hereof, the moneys held pursuant to this Section to which Section 5.05 would apply but for the release of this Indenture shall be held and paid as provided for in said Section 5.05.

(c) No Bond may be so deemed paid or defeased if, as a result thereof or of any other action in connection with which the provision for payment of such Bond is made, the interest payable on any Bond is made includable in gross income for federal income tax purposes. The Trustee and the Issuer may require and rely upon an opinion of Bond Counsel (which opinion may be based upon a ruling or rulings of the Internal Revenue Service) to the effect that the provisions of this paragraph will not be breached by so providing for the payment or defeasance of any bonds before accepting any deposit under this Section.

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ARTICLE X

COVENANTS AND AGREEMENTS OF THE ISSUER

Section 10.01 <u>Covenants and Agreements of the Issuer</u>. In addition to any other covenants and agreements of the Issuer contained in this Indenture, the Issuer further covenants and agrees with the Bondholders and the Trustee as follows:

- (a) Payment of Bond Service Charges. The Issuer will, solely from the sources herein provided, pay or cause to be paid all Bond service charges on the dates, at the places and in the manner provided in this Indenture.
- (b) Revenues and Assignment of Revenues. The Issuer will not pledge or assign the Revenues or create or permit to be created any debt, lien or charge thereon other than the assignment thereof under this Indenture.
- (c) Recordings and Filings. The Issuer will allow this Indenture and any related documents or instruments relating to the assignment made by it under this Indenture to secure the Bonds, to be recorded and filed in such manner and in such places as may be required by law in order to fully preserve and protect the security of the holders of the Bonds and the rights of the Trustee hereunder.
- (d) <u>Inspection of Project Books</u>. All books and documents in the Issuer's possession relating to the Project and the Revenues shall at all times during the Issuer's regular business hours be open to inspection by such accountants or other agents of the Trustee as the Trustee may from time to time designate.
- (e) Registration Books. At reasonable times and under reasonable regulations established by the Trustee, the Bond Register of the Issuer held by the Trustee may be inspected and copied by the Developer, Bank, any Fiduciary or by holders (or a designated representative thereof) of twenty-five percent or more in principal amount of Bonds then outstanding.
- The Trustee, in its name or in the name of the Issuer may, for and on behalf of the Bondholders, enforce all rights of the Issuer, except for the Issuer's rights to notice or idemnity, and all obligations of the Developer and under and pursuant to the Issuer Documents, whether or not the Issuer is in default in the pursuit or enforcement of such rights and obligations. However, the Issuer shall, upon receipt of all necessary and reasonable guarantees of payment of its expenses, do all things and take all actions on its part necessary to comply with obligations, duties and responsibilities on its part under the Issuer Documents, and

will take all actions within its authority to keep the Issuer Documents in effect in accordance with the terms thereof.

Section 10.02 Performance of Covenants, Authority and The Issuer will, upon receipt of necessary and reasonable guarantees of payment of its expenses, at all times faithfully observe and perform all agreements, covenants, undertakings, stipulations and provisions contained in the Agreement, this Indenture, the Bond Resolution, and in any and every Bond executed, authenticated and delivered under the Indenture, and in all proceedings of its Legislative Authority pertinent thereof, on its part to be performed or observed. The Issuer represents that it is duly authorized by the Constitution and laws of the State, including particularly and without limitation the Act, to issue the Bonds, to execute the Issuer Documents and to provide the security for payment of the Bond service charges in the manner and to the extent set forth in this Indenture; that all actions on its part for the issuance of the Bonds and for the execution and delivery of the Issuer Documents have been or will be duly and effectively taken; and that the Bonds will be valid and enforceable special obligations of the Issuer enforceable in accordance with the terms thereof. Each obligation of the Issuer required to be undertaken pursuant to the Bond Resolution, the Issuer Documents and the Bonds is binding upon the Issuer.

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ARTICLE XI

REMARKETING AGENT AND REMARKETING

Section 11.01 Remarketing Agent. The Issuer hereby appoints the Remarketing Agent as remarketing agent for the Bonds, subject to the conditions set forth in Section 11.02 here-of. The Remarketing Agent shall designate to the Issuer and the Trustee its principal office and signify its acceptance of the duties and obligations imposed upon it hereunder by execution of the Remarketing Agreement. The Remarketing Agent shall, and shall agree in the Remarketing Agreement to, do each of the following:

- (a) act as agent for Bondholders in receiving and holding moneys to pay the Purchase Price of Bonds tendered for remarketing, and act as agent for the Issuer in all other matters;
- (b) notify the Trustee of the Reset Rate determined in accordance with Section 3.09 hereof, each such notification to be in writing or by telex or telecopier or other communication device which produces a written record thereof, or by telephone confirmed within one Business Day by any such written communication; and upon request by the Issuer, submit copies of any such notices to the Issuer;
- (c) hold all moneys delivered to it hereunder for the purchase of Bonds in trust for the benefit of the Person which shall have so delivered such moneys or deliver such moneys to the Trustee for their benefit until the bonds purchased with such moneys shall have been delivered to or for the account of such Person, and not commingle such moneys with other funds of the Remarketing Agent;
- (d) keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer, the Trustee, the Developer and the Bank at all reasonable times; and
- (e) perform the duties and comply with the provisions set forth in Section 11.02 through 11.05 hereof, inclusive.
- Section 11.02 Qualifications of Remarketing Agent.

 (a) The Remarketing Agent shall at all times be a national banking association or a member of the National Association of Securities Dealers, Inc., or a nationally recognized security exchange, the Dealers of the New York, New York, and a capitalization of having an office in New York, New York, and a capitalization of at least \$15,000,000 and authorized by law to perform all the duties imposed upon it by this Indenture and the Remarketing Agreement.

- (b) The Remarketing Agent may at any time resign and be discharged of the duties and obligations created by this Indenture by giving at least sixty (60) days' written notice to the Issuer, the Developer, the Bank and the Trustee, but any such resignation shall not be effective until a successor is appointed.
- (c) The Remarketing Agent may be removed at any time, and a successor Remarketing Agent appointed, with the consent of the Bank, at the direction of the Issuer, upon receipt by the Trustee of an instrument directing such removal and appointment, signed by the Issuer and filed with the Developer, the Remarketing Agent, the Bank and the Trustee. Within thirty (30) days after receipt of such filing, the Trustee shall confirm in writing to the successor Remarketing Agent, the Bank and the Developer that such removal has been approved and the successor Remarketing Agent has been appointed. No removal of the Remarketing Agent shall be effective until a successor is appointed and has accepted such appointment.
- (d) In the event of the resignation or removal of the Remarketing Agent, the Remarketing Agent shall pay over, assign and deliver any moneys and Bonds held by it in such capacity to its successor.

Section 11.03 Remarketing of Bonds. Upon the receipt by the Remarketing Agent of telephonic notice from the Trustee, confirmed in writing within one Business Day that any Bondholder has not delivered a Notice of Election pursuant to Section 3.10 hereof, the Remarketing Agent shall offer for sale and use its best efforts to market the Bonds owned by such Bondholder at a price of 100% of the principal amount thereof, in accordance with the Remarketing Agreement; provided however, that the Remarketing Agent shall not offer for sale or sell such Bonds to the Issuer or the Developer; and provided, further, that the Remarketing Agent shall not offer for sale or sell such Bonds to any person if such remarketing activity will result in a violation of any provision of Federal Securities law or applicable state blue sky The Remarketing Agent shall give telegraphic or telephonic notice promptly confirmed in writing, to the Trustee and the Bank by 1:00 p.m., New York City time, not less than forty-eight hours (or such lesser period of time as to which the Trustee shall agree) prior to each Reset Date (the "Remarketing Date") specifying the names, addresses, and taxpayer identification numbers of the purchasers of, and the principal amount and denominations of, such Bonds, if any, for which it has found purchasers as of such Remarketing Date, and the Purchase Price at which the Bonds are Upon receipt by the Trustee, pursuant to Section 3.10 hereof, of the Bonds tendered for purchase, at or prior to 9:30 a.m. New York City time on such Reset Date, the Remarketing Agent will instruct the Trustee, as Bond Registrar, to transfer the registered ownership of the Bonds to the respective purchasers,

and to deliver replacement Bonds in the appropriate form, specifying the new Reset Rate and the next succeeding Reset Date, if applicable, to such purchasers. The Remarketing Agent shall remit the Purchase Price of such Bonds to the Trustee.

The Issuer hereby agrees that it will not purchase any Bonds from the Remarketing Agent.

If the Section 11.04 Purchase of Bonds Not Remarketed. Trustee receives from the Remarketing Agent, on or before the Remarketing Date, notice that the Remarketing Agent has not remarketed the entire amount of the Bonds for which a Notice of Election has not been timely or properly delivered, the Trustee shall promptly thereafter give the Bank telephonic or telegraphic notice of the receipt of such notice from the Remarketing Agent; provided, however, that such notice from the Trustee to the Bank shall have been given no later than ll a.m., New York City time, on the date on which a drawing under the Letter of Credit is to be made with respect to such Bonds. In the event that proceeds of the remarketing of any bond have not been received on or prior to the Reset Date, the Trustee shall, on or before the Reset Date, draw on the Letter of Credit in an amount sufficient to enable the Trustee to pay the Purchase Price of such Bond on the Upon receipt by the Trustee of the Purchase Price of the remarketed Bonds from the Remarketing Agent and upon receipt of the Bonds tendered for purchase pursuant to Section 3.10 hereof, the Trustee shall pay the Purchase Price to the registered owners thereof. Any amounts drawn under the Letter of Credit by the Trustee shall, if requested in writing by the Bank, be used to purchase Bonds for the account of the Bank. Amounts drawn under the Letter of Credit which are not used to purchase Bonds pursuant to this Section 11.04 or are not used to provide for the purchase of untendered Bonds pursuant to Section 3.10 hereof, shall be remitted by the Trustee to the Bank on the Business Day after each Reset Date.

Section 11.05 Delivery of Purchased Bonds.

- (a) Bonds remarketed by the Remarketing Agent pursuant to Section 11.03 hereof shall be cancelled by the Trustee and new Bonds in a like aggregate principal amount shall be registered by the Trustee in the names and shall be in the denominations set forth in the written notice given to the Trustee by the Remarketing Agent pursuant to Section 11.03 hereof, and the Trustee shall deliver such Bonds to the purchasers thereof.
- (b) Bonds purchased for the account of the Bank pursuant to Section 11.04 hereof shall be registered by the Trustee in the name of the Bank and shall be delivered by the Trustee to the Bank. So long as any Bonds are registered in the name of the Bank or any nominee thereof, they shall be subordinate to all

other Bonds outstanding hereunder and may not be tendered for purchase pursuant to Section 3.10 hereof.

Section 11.06 Dealing in Bonds. The Bank, the Trustee or the Remarketing Agent, in its individual capacity, may in good faith buy, sell, own, hold and deal in any of the Bonds, and may join in any action which any Bondholder may be entitled to take join in any action which any Bondholder may be entitled to take with like effect as if it did not act in any capacity hereunder. The Trustee, the Bank or the Remarketing Agent, in its individual capacity, either as principal or agent, may also engage in or be interested in any financial or other transaction with the Issuer or the Bank, and may act as depositary, trustee or agent for any committee or body of Bondholders secured hereby or other obligations of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions of the Issuer as freely as if it did not act in any capactions are also as a conduit and the Issuer as freely as if it did not act in any capactions are also as a conduit as a conduit as a conduit and the Issuer as a conduit as a con

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ARTICLE XII

MISCELLANEOUS

Section 12.01 <u>Instruments of Bondholders</u>. Any consent, request, direction, approval, objection or other instrument required by this Indenture to be signed and executed by the Bondholders may be in any number of concurrent writings of similar tenor and may be signed or executed by such Bondholders in person or by agent appointed in writing. Proof of the execution of any such consent, request, direction, approval, objection or other instrument or of the writing appointing any such agent and of the ownership of Bonds, if made in the following manner shall be sufficient for any of the purposes of this Indenture, and shall be conclusive in favor of the Trustee with regard to any action taken under such request or other instrument, namely:

- (a) The fact and date or the execution by any person of any such writing may be proved by the certificate of any officer in any jurisdiction, who by law has power to take acknowledgments within that jurisdiction, that the person signing the writing acknowledged before such officer the execution thereof, or by affidavit of any witness to such execution.
- (b) The fact of ownership of Bonds shall be proved by the Bond Register maintained by the Trustee as Bond Registrar.

Nothing contained herein shall be construed as limiting the Trustee to the proof referred to in paragraph (a). It is intended that the Trustee may accept any other evidence of the matters herein stated which it deems to be sufficient. Any request or consent of the holder of any Bond shall bind every future holder of the same Bond, in respect to anything done or suffered to be done by the Issuer, or any Fiduciary in pursuance of such request or consent.

Section 12.02 <u>Limitation of Rights</u>. With the exception of rights expressly conferred in this Indenture, nothing expressed or mentioned in or to be implied from this Indenture or the Bonds is intended or shall be construed to give to any person other than the parties hereto, the Developer, the Bank, and the holders of the Bonds, any legal or equitable right, remedy or claim under or in respect to this Indenture or any covenants, conditions and provisions contained herein. This Indenture and all of those covenants, conditions and provisions are intended to be and are for the sole and exclusive benefit of the parties hereto, the Developer, the Bank and the holders of the Bonds as herein provided.

Section 12.03 Severability. In case any section or provision of this Indenture, or any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Indenture, or any application thereof, is for any reason held to be illegal or invalid, or is at any time inoperable, such illegality or invalidity or inoperability shall not affect the remainder thereof or any other section or provision of this Indenture, or any other covenant, stipulation, obligation, agreement act or action, or part thereof, made, assumed, entered into or taken under this Indenture, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained therein. Any such illegality or invalidity or inoperability or any application thereof shall not affect any legal and valid and operable application thereof, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part threof, shall be deemed to be effective, operative, made, entered into to taken in the manner and to the full extent from time to time permitted by law.

Section 12.04 Notices. It shall be sufficient service or giving of any notice, request, complaint, demand or other paper if the same shall be duly mailed by first class mail addressed to the respective set forth herein addresses. The parties may, by notice given hereunder, designate any further or different addresses to which subsequent notices, certificates or other communications shall be sent.

Issuer: Housing Finance Authority of

St. Johns County c/o Clerk of Courts

St. Johns County Courthouse, St. Augustine, Florida 32084

Trustee: Sun Bank, National Association

255 South Orange Avenue Orlando, Florida 32801

Attention: Corporate Trust Department

Bank: Empire of America Federal

Savings Bank One Main Place

Buffalo, New York 14202

Attention: Letter of Credit Desk Securities Investment Department Collateral Agent: Irving Trust Company
1 Wall Street
New York, New York 10015
Attention:

Jacksonville Ventures, Inc.

Section 12.05 Payments Due on Business Days. In any case where an Interest Payment Date or the date of maturity of the principal of any Bonds or the date fixed for redemption of any Bonds shall not be a Business Day, then payment of Bond service charges need not be made by that Paying Agent on that date but may be made on the next succeeding Business Day on which that Paying Agent is open for business with the same force and effect Paying Agent is open for business with the same force and effect as if made on the date of maturity or the date fixed for redemption, and no interest shall accrue for the period after that date.

Section 12.06 Priority of this Indenture. It is intended that this Indenture shall be superior to any liens which may be placed upon the Revenues or any other funds or accounts created pursuant to this Indenture.

Section 12.07 Extent of Covenants; No Personal Liability. No provision, covenant or agreement contained in this Indenture or in the Bonds, or any obligations herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability or a charge upon its general credit or taxing powers or a pecuniary liability upon a member of the Issuer or upon the officers, agents and employees of the Issuer nor shall they be liable personally on the Bonds or for any act or omission related to the authorization and issuance of the Bonds. In making the agreements, provisions and covenants set forth in this Indenture, the Issuer has not obligated itself except with respect to the application of the revenues and income derived by or for the account of the Issuer from or for the account of the Developer pursuant to the Bonds and the Basic Documents but excluding any amounts that may have been derived by or for the Issuer for its own account. Notwithstanding anything to the contrary contained herein or in any of the Bonds or the Agreement, or in any other instrument or document executed by or on behalf of the Issuer in connection herewith, no stipulation, covenant, agreement or obligation contained herein or therein shall be deemed or construed to be a stipulation, covenant, agreement or obligaton of any present or future member, commissioner, officer, employee or agent of the Issuer, or of any member, commissioner, officer, employee or agent of any successor to the Issuer, in any such person's individual capacity, and no such person, in his or her individual capacity, shall be

liable personally for any breach or non-observance of or for any failure to perform, fulfill or comply with any such stipulations, covenants, agreements or obligations, nor shall any recourse be had for the payment of the principal of, premium, if any, or interest on any of the Bonds or for any claim based thereon or on any such stipulation, covenant, agreement or obligation, against any such person, in his or her individual capacity, either directly or through the Issuer or any successor to the Issuer, 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 person, in his or her individual capacity, is hereby expressly waived and released.

Section 12.08 Binding Effect. This instrument shall inure to the benefit of and shall be binding upon the Issuer and the Trustee and their respective successors and assigns, subject, however, to the limitations contained in this Indenture.

Section 12.09 Counterparts. This Indenture may be executed in any number of counterparts, each of which shall be regarded as an original and all of which shall constitute but one and the same instrument.

Section 12.10 <u>Captions</u>. The captions or headings in this Indenture shall be solely for convenience of reference and in no way define, limit or describe the scope or intent of any provisions or Sections of this Indenture.

Section 12.11 Governing Law. This Indenture and the Bonds shall be deemed to be contracts made under the laws of the State and for all purposes shall be governed by and construed in accordance with the laws of the State.

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed in its name and on its behalf by its duly authorized officer; and the Trustee, in token of its acceptance of the

trusts and duties created hereunder, has caused this Indenture to be executed in its name by its duly authorized officer, all as of the day and year first above written.

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

| | Ву |
|-------------|--------------------------------|
| (Seal) | Title |
| Attest: | SUN BANK, NATIONAL ASSOCIATION |
| | Ву |
| (Seal) | Title |
| Attest: | |
| GT3SRPTI1/2 | |

EXHIBIT A

FORM OF BOND DELIVERED BEFORE FINAL RESET DATE

(Front of Bond)

| No. | | \$ |
|-----|--|----|
| | | |

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

MULTIFAMILY HOUSING REFUNDING REVENUE BOND (REMINGTON AT PONTE VEDRA PROJECT)

MATURITY DATE MANDATORY TENDER DATE DATED DATE INTEREST

RATE

CUSIP

REGISTERED OWNER:

PRINCIPAL SUM:

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "Authority"), a public body corporate and politic of the State of Florida (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received, promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner (named above) or registered assigns, on the Maturity Date (stated above), the Principal Amount (stated above), unless redeemed or purchased prior thereto as hereinafter provided, upon presentation and surrender of this Bond at the principal corporate trust office of Sun Bank, National Association, Orlando, Florida, as trustee, bond registrar and paying agent (the "Trustee" or the "Bond Registrar," as its capacity may indicate), pursuant to an Indenture (the "Indenture") dated as of May 15, 1987 between the Authority and the Trustee, as supplemented and amended from time to time, and to pay, but only from the sources and as hereinafter provided, interest on such Principal Amount (computed on the basis of a 360-day year of twelve 30-day months), at the Interest Rate (stated above), from the Dated Date hereof semi-annually on June 1 and December 1 of each year commencing December 1, 1987 (the "Interest Payment Dates"), until the Mandatory Tender Date (stated above), and to pay interest on overdue principal and, to the extent permitted by law, on overdue interest at the rate borne by this Bond on the date on which such principal or such interest became due and payable.

THIS BOND IS REQUIRED TO BE TENDERED FOR PAYMENT ON THE MANDATORY TENDER DATE, BUT ONLY FROM THE SOURCES PROVIDED IN THE INDENTURE, AS MORE FULLY DESCRIBED HEREIN, EXCEPT UNDER THE CIRCUMSTANCES SET FORTH HEREIN.

Principal of, premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee, provided, however, that payment of the interest alone on an Interest Payment Date shall be made to the Registered Owner hereof as of the Regular Record Date (as defined in the Indenture) with respect to such Interest Payment Date and shall be paid (i) by check or draft mailed to such Registered Owner hereof at such Owner's address as it appears on the registration books of the Authority maintained by the Trustee as Bond Registrar (the "Bond Register") or at such other address as is furnished in writing by such Registered Owner to the Trustee as Bond Registrar, or (ii) by wire transfer to the Registered Owner of \$1,000,000 or more in aggregate principal amount of the Bonds, as herein defined, upon written notice by such Owner to the Trustee given not less than fifteen (15) days prior to such Interest Payment Date, all as more fully provided for in the Indenture; except in each case, that, if and to the extent there shall be a default in the payment of interest due on such Interest Payment Date, such defaulted interest shall be paid to the Owners in whose name any such Bonds are registered at the close of business on a special record date established for the payment of such defaulted interest; provided, however, that in no event shall the interest rate on this Bond exceed the maximum non-usurious rate of interest allowed from time to time by applicable law.

THE BONDS ARE SPECIAL AND LIMITED OBLIGATIONS OF THE AUTHORITY AND ARE PAYABLE BY THE AUTHORITY SOLELY FROM THE LOAN PAYMENTS AND OTHER REVENUES AND PROCEEDS PLEDGED THEREFOR AS PRO-VIDED IN THE INDENTURE, THE LOAN AGREEMENT AND THE OTHER BASIC DOCUMENTS AS SUCH TERMS ARE DEFINED IN THE INDENTURE. THE BONI THE BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT, LIABILITY OR OBLI-GATION OF THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE STATE OF FLORIDA, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUB-DIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST OR PREMIUM, IF ANY, HEREON AND THE HOLDERS OR OWNERS OF THE BONDS SHALL NOT HAVE ANY RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, TO ENFORCE THE BONDS SHALL NOT CREATE A PECUNIARY LIABILITY NOR CONSTITUTE A LIEN UPON NOR BE PAYABLE FROM ANY PROPERTY OR FUNDS OWNED BY THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY'S INTEREST IN THE NOTE, THE MORTGAGE AND THE LOAN

AGREEMENT AND THE PROPERTY RIGHTS, RECEIPTS, REVENUES AND PROCEEDS DERIVED UNDER THE BASIC DOCUMENTS AND PLEDGED THEREFOR UNDER AND AS PROVIDED IN THE INDENTURE.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF FULLY SET FORTH IN THIS PLACE.

The Bonds have been issued by the Authority to refund and redeem the Authority's Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project), dated August 1, 1985, in the aggregate principal amount of \$12,000,000 (the "Refunded Bonds"), which Refunded Bonds were issued to assist in providing financing which Refunded Bonds were issued to alleviate the shortage of of a qualifying housing development to alleviate the shortage of housing in St. Johns County, Florida.

It is hereby certified, recited and declared that all acts and conditions required to be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond have been performed in due time, form and manner as this Bond have been performed in due time, form and does not exrequired by law; and that the issuance of this Bond does not exceed or violate any constitutional or statutory limitation of the State of Florida.

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

The Bonds were validated by final judgment of the Circuit Court of the Seventh Judicial Circuit, in and for St. Johns County, Florida, rendered on ______, 1987.

IN WITNESS WHEREOF, the Housing Finance Authority of St. Johns County, Florida, has caused this Bond to be executed in its name by the manual or facsimile signature of its Chairman and its corporate seal (or a facsimile thereof) to be hereunto affixed,

| imprinted, engraved manual or facsimile | Signacure 0- | reproduced and attested by the its Secretary. |
|---|---------------------------|---|
| (SEAL) | HOUGING | ; FINANCE AUTHORITY OF INS COUNTY, FLORIDA |
| ATTEST: | Ву | Chairman |
| Secretary | | |
| [Form | of Certifica | te of Authentication] |
| | | F AUTHENTICATION |
| This Bond the within mentions | is one of thed Indenture. | e Bonds of the issue described in |
| Date of Authenticat and Registration | tion St | IN BANK, NATIONAL ASSOCIATION as Trustee |
| | В | y: Authorized Officer |

(FORM OF REVERSE SIDE OF BOND)

This Bond is one of a duly authorized issue of bonds of the Authority designated "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project)" issued by the Authority in the aggregate principal amount of \$12,000,000 (the "Bonds"), under and pursuant to (i) Part IV of Chapter 159 of the Florida Statutes, as amended (the "Act"), (ii) the Indenture, and (iii) resolutions duly adopted by the Authority, authorizing the execution and delivery of the Indenture and the issuance of the Bonds. The Bonds are issuable as fully registered Bonds in denominations of \$5,000, or any integral multiple thereof. The Bonds are issued for the purpose of refunding the Refunded Bonds, which Refunded Bonds were issued by the Authority to finance qualified multifamily rental housing units for rental primarily to low and moderate income persons and families in St. Johns County, Florida (the "Project").

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR ANY CLAIM BASED THEREON OR UPON ANY OBLIGATION, COVENANT OR AGREEMENT CONTAINED IN THE BONDS, THE INDENTURE, THE LOAN AGREEMENT OR THE OTHER BASIC DOCUMENTS AGAINST ANY PAST, PRESENT OR FUTURE INCORPORATOR, MEMBER, COUNCILMAN, COMMISSIONER, DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY, OR OF ANY SUCCESSOR OF THE AUTHORITY, 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 INCORPORATOR, MEMBER, COUNCILMAN, COMMISSIONER, DIRECTOR, OFFICER OR EMPLOYEE, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE EXECUTION OF THE INDENTURE AND THE ISSUANCE OF THE BONDS.

The Bonds are all secured by and entitled to the protection of the Indenture, pursuant to which the Authority has pledged and assigned to the Trustee all of its rights in and to the Loan Agreement and the Note (hereinafter defined) (except rights to indemnification, reimbursement, and certain enforcement and procedural rights) and certain other Loan Documents (hereinafter defined) in order to secure payment of the principal of, premium, if any, and interest on the Bonds.

Pursuant to a Loan Agreement (the "Original Loan Agreement") dated as of August 1, 1985, by and between the Authority and Gene Branscome, an individual ("Branscome"), the Authority loaned the proceeds from the sale of the Refunded Bonds to Branscome, and as evidence of the loan Branscome executed and delivered a note dated as of August 1, 1985 (the "Original Note") in the principal amount of \$12,000,000. For the purposes of modifying the terms of the Original Loan Agreement and the Original Note to

provide, among other things, for the payment of the principal of, premium, if any, and interest on the Bonds, Jacksonville Ventures Inc., a Delaware corporation duly authorized to transact business in the State (hereinafter the "Developer"), as successor to Branscome in interest in the Project, executed an Amended and Restated Loan Agreement dated as of May 15, 1987, amending and restating the Original Loan Agreement (hereinafter, together with the Original Loan Agreement, the "Loan Agreement) and an Amended and Restated Developer Note dated as of May 15, 1987, amending and restating the Original Note (hereinafter, together with the Original Note, the "Note"). The Bonds are all issued under the Indenture and equally and ratably secured and entitled to the security of a pledge and assignment of the revenues and receipts derived by the Authority pursuant to the Loan Agreement and the Note assigned to the Trustee and certain other documents evidencing and securing the obligations of the Developer under the Loan Agreement (herein, together with the Loan Agreement and the Note, referred to as the "Loan Documents"), and from any other moneys held by the Trustee under the Indenture for such purpose (the "Trust Estate"), and there shall be no other recourse against the Authority or any property now or hereafter owned by it.

THE OBLIGATIONS OF THE DEVELOPER UNDER THE LOAN AGREE-MENT, THE NOTE AND THE OTHER LOAN DOCUMENTS ARE NON-RECOURSE OBLIGATIONS ENFORCEABLE SOLELY AGAINST THE FROJECT and the revenues therefrom, subject to the right of the Developer to collect and dispose of such revenues prior to the occurrence of an Event of Default under the Loan Agreement. Subordinated mortgage liens and other security interests in and to the Project and the revenues therefrom may be granted to secure the obligations of the Developer to any issuers of any hereinafter defined Letter of Credit and other indebtedness of the Developer approved by the issuers of the Letter of Credit without the necessity of obtaining the consent of the Authority, the Trustee or the Registered The Project and the rights and obligations of the Developer under the Loan Agreement and the other Loan Documents may be conveyed and transferred, subject to the lien and security interests of the Loan Documents, upon certain conditions, without the necessity of obtaining the consent of the Authority, the Trustee or the Registered Owners.

This Bond is transferable by the Registered Owner hereof in person or by such Owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of any authorized denomination or denominations, of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor.

(the "Mandatory Tender Date" and the "Reset Date"), the rate of interest borne by the Bonds shall be established at a new rate (the "Reset Rate"), determined in accordance with the procedures set forth in the Indenture, as the rate which would be required, but would not exceed the rate which would be required, to be borne by the Bonds in order for the market value of the Bonds on the date of such determination to be 100% of the principal amount thereof (disregarding accrued interest). In no event shall the rate of interest on any Bond exceed fifteen percent (15%) per annum or any different rate which may then be prohibited under the laws of the State. Not later than thirty days before the Reset Date the Trustee is required to give notice that a Reset Rate will become effective on the Reset Date. This Bond will be required to be surrendered to the Trustee on the date specified in the notice for purchase on the Mandatory Tender Date, and whether or not timely surrendered will thereafter cease to accrue interest, unless the Registered Owner hereof delivers to the Trustee, at least twenty days before the Mandatory Tender Date, a written executed instrument in the form prescribed by the Indenture (a "Notice of Election"), directing the Trustee not to purchase this Bond on the Mandatory Tender If the Registered Owner hereof timely delivers a Notice of Election to the Trustee, such Owner must surrender this Bond to the Trustee on or before the Mandatory Tender Date to be exchanged for a new Bond bearing the Reset Rate and stating the next succeeding Reset Date, if applicable.

The Developer has caused to be delivered to the Trustee an irrevocable letter of credit (the "Letter of Credit") of having its principal administrative office in institution herein referred to as the "Bank"), which Letter of Credit expires by its terms on (the "Tettor of (the "Letter of Credit"). The Letter of Credit, which may be in the form of a bond insurance policy, surety bond, letter of credit or other credit facility, shall insure or otherwise provide for the payment of (i) principal and interest (but not premium) becoming due on the Bonds by maturity, acceleration or redemption at least through the next Reset Date and (ii) the purchase price payable upon the tender of the Bonds on at least the next Reset Date. Except as otherwise provided in the Indenture, all Bonds are reguired to be tendered to the Trustee for purchase on the Interest Payment Date next preceding the expiration of the Letter of Credit, provided that Bonds with respect to which the Trustee shall have received directions not to purchase the same in accordance with the Indenture shall be exchanged for Bonds bearing the Reset Rate and stating the next succeeding Reset Date, if applicable.

The Developer and the Bank have entered into a Letter of Credit and Reimbursement Agreement, dated as of (the "Letter of Credit Agreement"), regarding the obligations of

the Developer to the Bank with respect to the Letter of Credit.
[The Bank and the Trustee have entered into a Collateral Agreement, dated as of the "Collateral Agreement"), pursuant to which the Bank has pledged to the Trustee, as security for its obligation under the Letter of Credit, a first perfected security interest in certain certificates, securities and notes in the manner, form and amount set forth in the Collateral Agreement (the "Eligible Collateral"). Under the Collateral Agreement, the Bank is required to deliver to _______,

Collateral consisting of Cash, Government Securities or Conventional Pass Through Certificates, or to an Administrator appointed pursuant to the Collateral Agreement (the "Administrator"), with respect to Collateral consisting of Mortgage Collateral for the benefit of the Trustee, the Eligible Collateral, which shall be maintained until expiration of the Letter of Credit (as such terms are defined in the Collateral Agreement). In the event the Bank fails to honor or draw upon the Letter of Credit, the Trustee is authorized to liquidate the Eligible Collateral and to apply the proceeds of such liquidation to pay any amounts the Bank has failed to pay under the Letter of Credit.]

The Authority shall execute and the Trustee shall authenticate and deliver new certificates in exchange for the certificates representing the Bonds outstanding on each Reset Date identifying the Reset Rate, and the next Reset Date, if applicable. A copy of the Letter of Credit in effect with respect to the Bonds at any time shall be available for inspection at the principal corporate trust office of the Trustee.

The Bonds are subject to optional redemption prior to maturity by the Authority, at the direction of the Developer, with the consent of the Bank, in whole or in part, on May 15 of each of the years 1993, 1996, 2000 and 2004, in each case at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date.

The Bonds are subject to mandatory redemption by the Authority, in whole or in part, on any Interest Payment Date prior to maturity at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date (in increments of \$5,000) from moneys deposited in the Bond Fund from insurance or condemnation proceeds in the event of damage, destruction or condemnation of the Project, representing the unused portion of any insurance proceeds or condemnation award following completion by the Developer of any repair, restoration, modification or improvement of the Project with such moneys or the election by the Developer to apply such moneys to the redemption of Bonds. Such redemption shall be made

on the first Interest Payment Date for which notice of redemption may be timely given by the Trustee following transfer of such moneys to the Bond Fund.

The Bonds are also subject to mandatory redemption by the Authority in whole at any time at a redemption price equal to 100% of the principal amount thereof plus accrued interest to the redemption date upon receipt of written notice by the Trustee from the Bank of a default under the Letter of Credit Agreement, or upon a default under the Letter of Credit [or a Collateral Agreement Event of Default.]

The Bonds are also subject to mandatory redemption by the Authority on any Mandatory Tender Date, in whole if the conditions for establishment of the Reset Rate have not been satisfied, or in part to the extent the Bonds are not remarketed on such Mandatory Tender Date, in each case at a price equal to the principal amount thereof plus interest accrued thereon to the date fixed for redemption.

The Bonds are also subject to mandatory redemption by the Authority in whole or in part on any Interest Payment Date in the event the Developer fails, taking into account applicable cure provisions, to comply with certain covenants contained in the Land Use Restrictions (as defined in the Indenture); provided, however, that no redemption shall be required pursuant to this paragraph if the Bank shall be in the process of exercising remedies available to it to cure such noncompliance.

The Bonds are also subject to mandatory redemption by the Authority in whole at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, at the earliest practicable Interest Payment Date following receipt by the Trustee of notice of the occurrence of a Determination of Taxability (as defined in the Indenture).

[The Bonds are also subject to mandatory redemption from Available Moneys (as defined in the Indenture) derived by the Trustee, pursuant to the terms of the sinking fund, as set forth in the Indenture, from the mandatory prepayment of the Developer's obligations under the Loan Agreement on May 15 of each year shown below:

| Year | Amount | <u>Year</u> | Amount |
|------|--------|-------------|--------|
| 1988 | \$ | 1999 \$ | |
| 1989 | | 2000 | |
| 1990 | | 2001 | |
| 1991 | | 2002 | |
| 1992 | | 2003 | |
| 1993 | | 2004 | |
| 1994 | | 2005 | |
| 1995 | | 2006 | |
| 1996 | | 2007 | |
| 1997 | | 2008* | |
| 1998 | | | |

* Final Maturity]

In the event any of the Bonds or portions thereof (which shall be \$5,000 or any integral multiple thereof) are called for redemption as aforesaid, notice thereof identifying the Bonds or portions thereof to be redeemed will be given by the Trustee by mailing a copy of the redemption notice by first class mail at least thirty (30) days prior to the date fixed for redemption to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the Bond Register. All Bonds or portions thereof so called for redemption will cease to bear interest on the specified redemption date provided funds for their redemption are on deposit at the principal place of payment at that time, and shall no longer be protected by the Indenture and shall not be outstanding under the provisions of the Indenture.

The Registered Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute any action to enforce the covenants therein, or to take any action with respect to any Event of Default (as defined in the Indenture) under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default occurs and is continuing, the principal of all Bonds then outstanding issued under the Indenture may be declared due and payable upon the conditions and in the manner and with the effect provided in the Indenture. The Bank or the owners of a majority in aggregate principal amount of Bonds then outstanding shall have the right at any time, by an instrument or instruments delivered in writing to the Trustee, to direct the method and place of conducting all proceedings in connection with the enforcement of terms of the Indenture, provided that (i) such direction shall not be otherwise than in accordance with the provisions of the Indenture, (ii) the Trustee shall be indemnified as provided in the Indenture and (iii) the Trustee may take any other action not inconsistent with such direction. In the event of a conflict between the directions of the Bank and the Bondowners (other than that

involving a default under the Letter of Credit [or the Collateral Agreement]) the directions of the Bank shall prevail over those of the Bondowners.

The Authority, the Trustee, any paying agent and any agent of the Authority may treat the person in whose name this Bond is registered on the Bond Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond shall be overdue, and neither the Authority, the Trustee nor any such agent shall be affected by notice to the contrary.

The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall be deemed to be paid, shall cease to bear interest and shall no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of registration and exchange of Bonds and of such payment, including a provision that the Bonds shall be deemed to be paid if either moneys or direct obligations of the United States of America maturing as to principal and interest in such amounts and at such times, as shall insure the availability of sufficient moneys to pay the principal of, premium, if any, and interest on, the Bonds and all necessary and proper fees, compensation and expenses of the Trustee and any paying agent, shall have been deposited with the Trustee.

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

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or regulations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of suvivorship
and not as tenants in common

| UNIF | GIFT | MIN | ACT - | | Cust | odia | | |
|------|------|-----|-------|---------|-------|------|-------|-------|
| | | | _ | (Cust) | | | (M | (inor |
| | | | under | Uniform | Gifts | to M | inors | Act |
| | | | | | (Stat | :e) | | |

Exhibit A-11

ASSIGNMENT

| FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto |
|--|
| PLEASE INSERT SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER OF TRANSFEREE |
| (Disease selection to page and address |
| (Please print or typewrite name and address, including zip code of Transferee) |
| the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints |
| to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises. |
| Dated: |
| Signature Guaranteed: |

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange, American Stock Exchange, the National Association of Securities Dealers or a commercial bank or trust company. Registered Owner
(NOTE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this bond in every particular, without alteration or enlargement or any change whatsoever.)

* * * *

EXHIBIT B

FORM OF BOND DELIVERED AFTER FINAL RESET DATE

(Front of Bond)

| No. | \$ | |
|-----|----|--|
| | | |

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA

MULTIFAMILY HOUSING REFUNDING REVENUE BOND (REMINGTON AT PONTE VEDRA PROJECT)

MATURITY DATE DATED DATE INTEREST RATE

CUSIP

REGISTERED OWNER:

PRINCIPAL SUM:

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "Authority"), a public body corporate and politic of the State of Florida (the "State"), created and existing by virtue of the laws of the State, acknowledges itself indebted and for value received, promises to pay, but only from the sources and as hereinafter provided, to the Registered Owner (named above) or registered assigns, on the Maturity Date (stated above), the Principal Amount (stated above), unless redeemed prior thereto as hereinafter provided, upon presentation and surrender of this Bond at the principal corporate trust office of Sun Bank, National Association, Orlando, Florida, as trustee, bond registrar and paying agent (the "Trustee" or the "Bond Registrar," as its capacity may indicate), pursuant to an Indenture (the "Indenture") dated as of May 15, 1987 between the Authority and the Trustee, as supplemented and amended from time to time, and to pay, but only from the sources and as hereinafter provided, interest on such Principal Amount (computed on the basis of a 360-day year of twelve 30-day months), at the Interest Rate (stated above), from the Dated Date hereof semi-annually on June 1 and December 1 of each year commencing December 1, 1987 (the "Interest Payment Dates"), until such Principal Amount is paid, and to pay interest on overdue principal and, to the extent permitted by law, on overdue interest at the rate borne by this Bond on the date on which such principal or such interest became due and payable.

Principal of, premium, if any, and interest on this Bond shall be payable in lawful money of the United States of America at the principal corporate trust office of the Trustee, provided,

however, that payment of the interest alone on an Interest Payment Date shall be made to the Registered Owner hereof as of the Regular Record Date (as defined in the Indenture) with respect to such Interest Payment Date and shall be paid (i) by check or draft mailed to such Registered Owner hereof at such Owner's address as it appears on the registration books of the Authority maintained by the Trustee as Bond Registrar (the "Bond Register") or at such other address as is furnished in writing by such Registered Owner to the Trustee as Bond Registrar or (ii) by wire transfer to the Registered Owner of \$1,000,000 or more in aggregate principal amount of the Bonds, as herein defined, upon written notice by such Owner to the Trustee given not less than fifteen (15) days prior to such Interest Payment Date, all as more fully provided for in the Indenture; except in each case, that, if and to the extent there shall be a default in the payment of interest due on such Interest Payment Date, such defaulted interest shall be paid to the Owners in whose name any such Bonds are registered at the close of business on a special record date established for the payment of such defaulted interest; provided, however, that in no event shall the interest rate on this Bond exceed the maximum non-usurious rate of interest allowed from time to time by applicable law.

THE BONDS ARE SPECIAL AND LIMITED OBLIGATIONS OF THE AUTHORITY AND ARE PAYABLE BY THE AUTHORITY SOLELY FROM THE LOAN PAYMENTS AND OTHER REVENUES AND PROCEEDS PLEDGED THEREFOR AS PRO-VIDED IN THE INDENTURE, THE LOAN AGREEMENT AND THE OTHER BASIC DOCUMENTS AS SUCH TERMS ARE DEFINED IN THE INDENTURE. THE BONDS DO NOT NOW AND SHALL NEVER CONSTITUTE A DEBT, LIABILITY OR OBLI-GATION OF THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, WITHIN THE MEANING OF THE CONSTITUTION AND LAWS OF THE STATE OF FLORIDA, AND NEITHER THE FAITH AND CREDIT NOR THE TAXING POWER OF THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUB-DIVISION THEREOF, IS PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST OR PREMIUM, IF ANY, HEREON AND THE HOLDERS OR OWNERS OF THE BONDS SHALL NOT HAVE ANY RIGHT TO COMPEL ANY EXERCISE OF THE TAXING POWER OF THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, TO ENFORCE THE BONDS SHALL NOT CREATE A PECUNIARY LIABILITY SUCH PAYMENT. NOR CONSTITUTE A LIEN UPON NOR BE PAYABLE FROM ANY PROPERTY OR FUNDS OWNED BY THE AUTHORITY, ST. JOHNS COUNTY, THE STATE OF FLORIDA OR ANY OTHER POLITICAL SUBDIVISION THEREOF, OTHER THAN THE AUTHORITY'S INTEREST IN THE NOTE, THE MORTGAGE AND THE LOAN AGREEMENT AND THE PROPERTY RIGHTS, RECEIPTS, REVENUES AND PRO-CEEDS DERIVED UNDER THE BASIC DOCUMENTS AND PLEDGED THEREFOR UNDER AND AS PROVIDED IN THE INDENTURE.

REFERENCE IS HEREBY MADE TO FURTHER PROVISIONS OF THIS BOND SET FORTH ON THE REVERSE HEREOF WHICH FURTHER PROVISIONS SHALL FOR ALL PURPOSES HAVE THE SAME EFFECT AS IF FULLY SET FORTH IN THIS PLACE.

The Bonds have been issued by the Authority to refund and redeem the Authority's Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project), dated August 1, 1985, in the aggregate principal amount of \$12,000,000 (the "Refunded Bonds"), which Refunded Bonds were issued to assist in providing financing of a qualifying housing development to alleviate the shortage of housing in St. Johns County, Florida.

It is hereby certified, recited and declared that all acts and conditions required to be performed precedent to and in the execution and delivery of the Indenture and the issuance of this Bond have been performed in due time, form and manner as required by law; and that the issuance of this Bond does not exceed or violate any constitutional or statutory limitation of the State of Florida.

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

The Bonds were validated by final judgment of the Circuit Court of the Seventh Judicial Circuit, in and for St. Johns County, Florida, rendered on ______, 1987.

IN WITNESS WHEREOF, the Housing Finance Authority of St. Johns County, Florida, has caused this Bond to be executed in its name by the manual or facsimile signature of its Chairman and its corporate seal (or a facsimile thereof) to be hereunto affixed, imprinted, engraved or otherwise reproduced and attested by the manual or facsimile signature of its Secretary.

HOUSING FINANCE AUTHORITY OF

| | ST. JOHNS COUNTY, FLORIDA |
|-----------|---------------------------|
| ATTEST: | ByChairman |
| Secretary | |

(SEAL)

[Form of Certificate of Authentication] CERTIFICATE OF AUTHENTICATION

This Bond is one of the Bonds of the issue described in the within mentioned Indenture.

| Date of Authentication and Registration | SUN BANK, NATIONAL ASSOCIATION as Trustee |
|---|---|
| | By:Authorized Officer |

(FORM OF REVERSE SIDE OF BOND)

This Bond is one of a duly authorized issue of bonds of the Authority designated "Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project)" issued by the Authority in the aggregate principal amount of \$12,000,000 (the "Bonds"), under and pursuant to (i) Part IV of Chapter 159 of the Florida Statutes, as amended (the "Act"), (ii) the Indenture, and (iii) resolutions duly adopted by the Authority, authorizing the execution and delivery of the Indenture and the issuance of the Bonds. The Bonds are issuable as fully registered Bonds in denominations of \$5,000, or any integral multiple thereof. The Bonds are issued for the purpose of refunding the Refunded Bonds, which Refunded Bonds were issued by the Authority to finance qualified multifamily rental housing units for rental primarily to low and moderate income persons and families in St. Johns County, Florida (the "Project").

NO RECOURSE SHALL BE HAD FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR ANY CLAIM BASED THEREON OR UPON ANY OBLIGATION, COVENANT OR AGREEMENT CONTAINED IN THE BONDS, THE INDENTURE, THE LOAN AGREEMENT OR THE OTHER BASIC DOCUMENTS AGAINST ANY PAST, PRESENT OR FUTURE INCORPORATOR, MEMBER, COUNCILMAN, COMMISSIONER, DIRECTOR, OFFICER OR EMPLOYEE OF THE AUTHORITY, OR OF ANY SUCCESSOR OF THE AUTHORITY, 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 INCORPORATOR, MEMBER, COUNCILMAN, COMMISSIONER, DIRECTOR, OFFICER OR EMPLOYEE, AS SUCH, IS HEREBY EXPRESSLY WAIVED AND RELEASED AS A CONDITION OF AND IN CONSIDERATION FOR THE EXECUTION OF THE INDENTURE AND THE ISSUANCE OF THE BONDS.

The Bonds are all secured by and entitled to the protection of the Indenture, pursuant to which the Authority has pledged and assigned to the Trustee all of its rights in and to the Loan Agreement and the Note (hereinafter defined) (except rights to indemnification, reimbursement, and certain enforcement and procedural rights) and certain other Loan Documents (hereinafter defined) in order to secure payment of the principal of, premium, if any, and interest on the Bonds.

Pursuant to a Loan Agreement (the "Original Loan Agreement") dated as of August 1, 1985, by and between the Authority and Gene Branscome, an individual ("Branscome"), the Authority loaned the proceeds from the sale of the Refunded Bonds to Branscome, and as evidence of the loan Branscome executed and delivered a note dated as of August 1, 1985 (the "Original Note") in the principal amount of \$12,000,000. For the purposes of modifying the terms of the Original Loan Agreement and the Original Note to

provide, among other things, for the payment of the principal of, premium, if any, and interest on the Bonds, Jacksonville Ventures Inc., a Delaware corporation duly authorized to transact business in the State (hereinafter the "Developer"), as successor to Branscome in interest in the Project, executed an Amended and Restated Loan Agreement dated as of May 15, 1987, amending and restating the Original Loan Agreement (hereinafter, together with the Original Loan Agreement, the "Loan Agreement) and an Amended and Restated Developer Note dated as of May 15, 1987, amending and restating the Original Note (hereinafter, together with the Original Note, the "Note"). The Bonds are all issued under the Indenture and equally and ratably secured and entitled to the security of a pledge and assignment of the revenues and receipts derived by the Authority pursuant to the Loan Agreement and the Note assigned to the Trustee and certain other documents evidencing and securing the obligations of the Developer under the Loan Agreement (herein, together with the Loan Agreement and the Note, referred to as the "Loan Documents"), and from any other moneys held by the Trustee under the Indenture for such purpose (the "Trust Estate"), and there shall be no other recourse against the Authority or any property now or hereafter owned by it.

THE OBLIGATIONS OF THE DEVELOPER UNDER THE LOAN AGREE-MENT, THE NOTE AND THE OTHER LOAN DOCUMENTS ARE NON-RECOURSE OBLIGATIONS ENFORCEABLE SOLELY AGAINST THE FROJECT and the revenues therefrom, subject to the right of the Developer to collect and dispose of such revenues prior to the occurrence of an Event of Default under the Loan Agreement. Subordinated mortgage liens and other security interests in and to the Project and the revenues therefrom may be granted to secure the obligations of the Developer to any issuers of any hereinafter defined Letter of Credit and other indebtedness of the Developer approved by the issuers of the Letter of Credit without the necessity of obtaining the consent of the Authority, the Trustee or the Registered The Project and the rights and obligations of the Devel-Owners. oper under the Loan Agreement and the other Loan Documents may be conveyed and transferred, subject to the lien and security interests of the Loan Documents, upon certain conditions, without the necessity of obtaining the consent of the Authority, the Trustee or the Registered Owners.

This Bond is transferable by the Registered Owner hereof in person or by such Owner's attorney duly authorized in writing at the principal corporate trust office of the Trustee but only in the manner, subject to the limitations and upon payment of the charges provided in the Indenture, and upon surrender and cancellation of this Bond. Upon such transfer a new registered Bond or Bonds, of any authorized denomination or denominations, of the same maturity and for the same aggregate principal amount will be issued to the transferee in exchange herefor.

The Bonds are subject to optional redemption prior to maturity by the Authority, at the direction of the Developer, in whole or in part, on May 15 of each of the years 1993, 1996, 2000 and 2004, in each case at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date.

The Bonds are subject to mandatory redemption by the Authority, in whole or in part, on any Interest Payment Date prior to maturity at a redemption price equal to 100% of the principal amount thereof plus accrued interest, if any, to the redemption date (in increments of \$5,000) from moneys deposited in the Bond Fund from insurance or condemnation proceeds in the event of damage, destruction or condemnation of the Project, representing the unused portion of any insurance proceeds or condemnation award following completion by the Developer of any repair, restoration, modification or improvement of the Project with such moneys or the election by the Developer to apply such moneys to the redemption of Bonds. Such redemption shall be made on the first Interest Payment Date for which notice of redemption may be timely given by the Trustee following transfer of such moneys to the Bond Fund.

The Bonds are also subject to mandatory redemption by the Authority in whole or in part on any Interest Payment Date in the event the Developer fails, taking into account applicable cure provisions, to comply with certain covenants contained in the Land Use Restrictions (as defined in the Indenture); provided, however, that no redemption shall be required pursuant to this paragraph if the Developer or the Trustee shall be in the process of exercising remedies available to it to cure such noncompliance.

The Bonds are also subject to mandatory redemption by the Authority in whole at a redemption price equal to the principal amount thereof, plus accrued interest to the redemption date, at the earliest practicable Interest Payment Date following receipt by the Trustee of notice of the occurrence of a Determination of Taxability (as defined in the Indenture).

[The Bonds are also subject to mandatory redemption from Available Moneys (as defined in the Indenture) derived by the Trustee, pursuant to the terms of the sinking fund, as set forth in the Indenture, from the mandatory prepayment of the Developer's obligations under the Loan Agreement on May 15 of each year shown below:

| <u>Year</u> | Amount | <u>Year</u> | Amount |
|--------------|--------|--------------|--------|
| 1988 | \$ | 1999 2000 | \$ |
| 1989 1990 | | 2001 | |
| 1991 | | 2002 | |
| 1992 | | 2003 | |
| 1993 | | 2004 | |
| 1994 | | 2005 | |
| 1995 | | 2006 | |
| 1996 | | 2007 | |
| 1997 | | 2008* | |
| 1998 | | | |

* Final Maturity]

In the event any of the Bonds or portions thereof (which shall be \$5,000 or any integral multiple thereof) are called for redemption as aforesaid, notice thereof identifying the Bonds or portions thereof to be redeemed will be given by the Trustee by mailing a copy of the redemption notice by first class mail at least thirty (30) days prior to the date fixed for redemption to the Registered Owner of each Bond to be redeemed in whole or in part at the address shown on the Bond Register. All Bonds or portions thereof so called for redemption will cease to bear interest on the specified redemption date provided funds for their redemption are on deposit at the principal place of payment at that time, and shall no longer be protected by the Indenture and shall not be outstanding under the provisions of the Indenture.

The Registered Owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute any action to enforce the covenants therein, or to take any action with respect to any Event of Default (as defined in the Indenture) under the Indenture, or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture. If an Event of Default occurs and is continuing, the principal of all Bonds then outstanding issued under the Indenture may be declared due and payable upon the conditions and in the manner and with the effect provided in the Indenture. The owners of a majority in aggregate principal amount of Bonds then outstanding shall have the right at any time, by an instrument or instruments delivered in writing to the Trustee, to direct the method and place of conducting all proceedings in connection with the enforcement of terms of the Indenture, provided that (i) such direction shall not be otherwise than in accordance with the provisions of the Indenture, (ii) the Trustee shall be indemnified as provided in the Indenture and (iii) the Trustee may take any other action not inconsistent with such direction.

The Authority, the Trustee, any paying agent and any agent of the Authority may treat the person in whose name this Bond is registered on the Bond Register as the owner hereof for the purpose of receiving payment as herein provided and for all other purposes, whether or not this Bond shall be overdue, and neither the Authority, the Trustee nor any such agent shall be affected by notice to the contrary.

The Indenture prescribes the manner in which it may be discharged and after which the Bonds shall be deemed to be paid, shall cease to bear interest and shall no longer be secured by or entitled to the benefits of the Indenture, except for the purposes of registration and exchange of Bonds and of such payment, including a provision that the Bonds shall be deemed to be paid if either moneys or direct obligations of the United States of America maturing as to principal and interest in such amounts and at such times, as shall insure the availability of sufficient moneys to pay the principal of, premium, if any, and interest on, the Bonds and all necessary and proper fees, compensation and expenses of the Trustee and any paying agent, shall have been deposited with the Trustee.

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

The following abbreviations, when used in the inscription on the face of this certificate, shall be construed as though they were written out in full according to applicable laws or requlations:

TEN COM - as tenants in common

TEN ENT - as tenants by the entireties

JT TEN - as joint tenants with right of suvivorship and not as tenants in common

| UNIF | GIFT | MIN | ACT - | | Cust | :odi | |
|------|------|-----|-------|---------|-------|------|------------|
| | | | | (Cust) | | | (Minor) |
| | | | under | Uniform | Gifts | to | Minors Act |
| | | | | | (Stat | te) | |

ASSIGNMENT

| FOR VALUE RECEIVED, the undersigned hereby sells, assigns and transfers unto |
|--|
| PLEASE INSERT SOCIAL SECURITY OR TAXPAYER IDENTIFICATION NUMBER OF TRANSFEREE |
| (Please print or typewrite name and address, including zip code of Transferee) |
| the within bond and all rights thereunder, and hereby irrevocably constitutes and appoints |
| to transfer the within bond on the books kept for registration thereof, with full power of substitution in the premises. |
| Dated: |
| Signature Guaranteed: |

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange, American Stock Exchange, the National Association of Securities Dealers or a commercial bank or trust company. Registered Owner
(NOTE: The signature above must correspond with the name of the Registered Owner as it appears upon the front of this bond in every particular, without alteration or enlargement or any change whatsoever.)

* * * *

EXHIBIT C

FORM OF NOTICE OF ELECTION

Notice of Election Not to Tender Bonds

To: Sun Bank, National Association 255 South Orange Avenue Orlando, FL 32801 Attention: Corporate Trust Division

The undersigned is the registered owner of Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bond(s) (Remington at Ponte Vedra Project), (the "Bonds") issued pursuant No(s). to the Indenture dated as of May 15, 1987 (the "Indenture"), between the Housing Finance Authority of St. Johns County, Florida (the "Issuer"), and Sun Bank, National Association, as Trustee (the "Trustee"). The undersigned hereby acknowledges (i) that the interest rate on the Bonds will be established at a new rate (the "Manda-(the "Reset Rate"), effective on tory Tender Date"); (ii) that the Reset Rate will be determined pursuant to the procedure set forth in the Indenture, and that such Reset Rate may be less than any expected minimum of which the undersigned has received notice; (iii) that the expiration date of the current Letter of Credit (as defined ; (iv) that after in the Indenture), if any, is the Mandatory Tender Date the Bonds will be secured by and [the rating to be assigned to the Bonds as the Mandatory Tender Date shall be] [no rating will be assigned to the Bonds as of the Mandatory Tender Date]; (v) the next Mandatory Tender Date for the Bonds will be ; (vi) that if the conditions to establishment of the Reset Rate are not satisfied, the Bonds will be redeemed on the Mandatory Tender Date including Bonds for which this Notice of Election is delivered; (vii) that if the Bonds are not tendered for purchase on or before the Mandatory Tender Date, they will be deemed to have been so tendered unless the undersigned delivers this Notice of Election to the Trustee on or before (which is twenty days before the Mandatory Tender Date); (viii) that the Bonds must either be surrendered to the Trustee for purchase or delivered to the Trustee for exchange for new Bonds stating the Reset Rate and the next Mandatory Tender Date, if applicable, in each case not later than the Mandatory Tender Date; and (ix) Bonds not timely tendered for purchase or delivered for exchange will cease to accrue interest on the Mandatory Tender Date.

The undersigned hereby directs the Trustee not to purchase \$\(\) in aggregate principal amount of the Bonds, and hereby acknowledges that such direction is irrevocable and binding on subsequent holders of such principal amount of the Bonds.

The Trustee is further directed, after the Mandatory Tender Date, to cause to be prepared new Bonds bearing the Reset Rate in the following denominations (which must be \$5,000 or any integral multiple thereof):

[SPECIFY DENOMINATIONS]

The undersigned will deliver the Bonds to the Trustee not later than the Mandatory Tender Date for exchange for the new Bonds stating the Reset Rate and the next Mandatory Tender Date, if applicable.

| | (Name of Registered Owner) |
|-------|----------------------------|
| Date: | Authorized Signature |

GT3SRPTI1/2

AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

Dated as of May 15, 1987

From

JACKSONVILLE VENTURES, INC., as Mortgagor

to

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, as Mortgagee

Amending and Restating that certain Mortgage and Security Agreement from Gene Branscome, as Mortgagor, to the Mortgagee, dated as of August 1, 1985, recorded under Clerk's No. 85-17683 on August 15, 1985, in Official Records Book 681, Pages 775-808, public records of St. Johns County, Florida; and recorded under Clerk's No. 85-75273 on August 16, 1985, in Official Records Volume 6000, Pages 1981-2014, public records of Duval County, Florida.

Relating to:

HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA MULTIFAMILY HOUSING REFUNDING REVENUE BONDS (REMINGTON AT PONTE VEDRA PROJECT)

Notice of Assignment:

All rights and interest of the Housing Finance Authority of St. Johns County, Florida, under this Amended and Restated Mortgage and Security Agreement have been assigned to Sun Bank, National Association, a national banking association, Orlando, Florida, as trustee under an Indenture of even date herewith.

This Instrument Prepared By and Should Be Returned to:

THIS INSTRUMENT EXEMPT FROM ALL FLORIDA TAXES

THIS INSTRUMENT SECURES FUURE ADVANCES AS HEREIN PROVIDED Thomas B. Slade, III, Attorney Foley & Lardner 1700 First Union Bank Building 200 West Forsyth Street P.O. Box 1290 Jacksonville, Florida 32201-1290 (904) 356-2029

EXHIBIT III

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AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT

This AMENDED AND RESTATED MORTGAGE AND SECURITY AGREEMENT made and entered into as of May 15, 1987, by JACKSONVILLE VENTURES, INC., a Delaware corporation duly authorized to transact business in the State of Florida (herein called the "Developer"), to the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, a public body corporate and politic of the State of Florida (herein called the "Issuer"), amending and restating that certain Mortgage and Security Agreement from Gene Branscome, an individual, to the Issuer, dated as of August 1, 1985, recorded under Clerk's No. 85-17683 on August 15, 1985, in Official Records Book 681, Pages 775-808, public records of St. Johns County, Florida; and recorded under Clerk's No. 85-75273 on August 16, 1985, in Official Records Volume 6000, Pages 1981-2014, public records of Duval County, Florida (the capitalized terms used in the recitals below having the meanings set forth in Article I below);

WITNESSETH:

WHEREAS, by resolution duly adopted by the Issuer on October 3, 1984, as amended and supplemented, the Issuer authorized the issuance and sale of the Refunded Bonds in the original principal amount of \$12,000,000; and on August 15, 1985, in furtherance of the purposes for which the Issuer was created, the Issuer issued the Refunded Bonds under and pursuant to the Refunded Bonds Indenture for the purpose of financing a part of the cost of acquiring and constructing the Project; and

WHEREAS, the proceeds derived from the sale of the Refunded Bonds were loaned to Branscome under the Original Loan Agreement, pursuant to which Branscome agreed to acquire, construct and install the Project and to make Loan payments sufficient to pay the principal of, premium, if any, and interest on the Refunded Bonds; and as evidence of the Loan, Branscome executed and delivered the Original Note in the principal amount of \$12,000,000; and

which encumbers the Project and is recorded in the current public records of St. Johns County, Florida; the Issuer pledged and assigned the Original Loan Agreement (except for the right to enforce certain limited provisions of the Original Loan Agreement), the Original Note and the Original Mortgage to the Refunded Bonds Trustee as security for the Refunded Bonds; and the use of the

Project is governed and restricted by the Land Use Restrictions, which are recorded in the current public records of St. Johns County, Florida; and

WHEREAS, payment of the principal of and interest on the Refunded Bonds is secured by the Letter of Credit, pursuant to the Empire Letter of Credit Agreement, in favor of the Refunded Bonds Trustee; and

WHEREAS, subsequent to the issuance of the Refunded Bonds, and with the prior written consent of the Issuer, Empire and the Refunded Bonds Trustee, Branscome sold the Project to Country View; and under and pursuant to an Assumption Agreement dated August 15, 1985, by and between Country View and the Issuer, Country View assumed the obligations of Branscome under the Land Use Restrictions, the Original Loan Agreement, the Original Note and the Original Mortgage; and

whereas, on April ___, 1987, with the prior written consent of the Issuer, Empire and the Refunded Bonds Trustee, Country View sold the Project to the Developer; and under and pursuant to an Assumption Agreement dated April ___, 1987, by and between the Developer and the Issuer, the Developer assumed the obligations of Branscome and Country View under the Land Use Restrictions, the Original Loan Agreement, the Original Note and the Original Mortgage; and

WHEREAS, the Refunded Bonds are subject to mandatory redemption by the Issuer in whole at the earliest practicable date, at a redemption price of par plus accrued interest to the redemption date, upon receipt of written notice by the Refunded Bonds Trustee from Empire of a default under the Empire Letter of Credit Agreement, and Empire has advised the Refunded Bonds Trustee that Empire shall deliver on the Delivery Date (as defined in the Indenture) such written notice to the Refunded Bonds Trustee of such a default under the Empire Letter of Credit Agreement; and

WHEREAS, the Developer has requested the Issuer to issue the Bonds in the aggregate principal amount of \$12,000,000 for the purpose of refunding the Refunded Bonds; and the Issuer has determined that the refunding of the Refunded Bonds in the manner provided in the Indenture, the Loan Agreement and the Escrow Deposit Agreement will advance the public purposes expressed in the Act; and

WHEREAS, in connection with the issuance of the Bonds, the Issuer has determined that it is necessary and appropriate

that the Original Mortgage, the Original Loan Agreement and the Original Note be amended and restated for the purpose of providing for the payment of the principal of, premium, if any, and interest on the Bonds;

NOW, THEREFORE, THIS MORTGAGE FURTHER WITNESSETH:

[The next page is One-1]

ARTICLE I

DEFINITIONS AND USES OF PHRASES

Section 1.1 <u>Definitions</u>. As used in this Mortgage, the following terms shall have the following meanings.

"Act" means Chapter 159, Part IV, Florida Statutes, as amended from time to time.

"Amended and Restated Loan Agreement" means the Amended and Restated Loan Agreement dated as of the date hereof, by and between the Issuer and the Developer, amending and restating the Original Loan Agreement.

"Amended and Restated Mortgage" means this Amended and Restated Mortgage and Security Agreement dated as of the date hereof, from the Developer to the Issuer (and to be assigned without recourse by the Issuer to the Trustee), amending and restating the Original Mortgage for the purpose of providing mortgage, security interest or other collateral security for the payment of the Bonds and the performance of the Developer's obligations under the Loan Agreement.

"Amended and Restated Note" means the Amended and Restated Developer Note dated as of the date hereof, made by the Developer, payable to the order of the Issuer (and to be assigned without recourse by the Issuer to the Trustee), in a principal amount equal to the principal amount of the Bonds, amending and restating the Original Note and evidencing the Developer's indebtedness and obligation to repay the Loan made by the Issuer pursuant to the Loan Agreement, in the amounts and at the times required for the payment of the principal of, premium, if any, and interest on the Bonds when and as the same become due and payable and evidencing the Developer's indebtedness and obligations to pay its related and additional obligations pursuant to Article III of the Loan Agreement.

"Authorized Officer of the Developer" means the President or any Vice President of the Developer, or any additional substitute or other person who at the time may be designated as such by the Developer.

"Bank" means Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York, as issuer of the Letter of Credit, its successors and assigns, and any issuer of any Alternate Credit Facility (as defined in the Indenture).

"Bonds" means the Issuer's Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project), issued under the Indenture in the aggregate principal amount of \$12,000,000.

"Branscome" means Gene Branscome, an individual.

"Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations thereunder, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"1954 Code" means the Internal Revenue Code of 1954, as amended and in effect on the date of issuance of the Refunded Bonds, and the regulations thereunder as of the date of issuance of the Refunded Bonds, whether proposed, temporary or final, promulgated by the Department of the Treasury, Internal Revenue Service.

"Collateral" has the meaning assigned to such term in Article I of the Indenture.

"Country View" means Country View Property, Ltd., a Texas limited partnership the general partners of which are Daseke Properties Corporation, a Texas corporation, and Daseke Associates Limited, a Texas limited partnership.

"Developer" means Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida, and any successor, surviving, resulting or transferee Person as provided in the Loan Agreement.

"Developer's Address" means the address which the Developer designates for the delivery of notices hereunder. Until changed by notice from an Authorized Officer of the Developer to the Issuer, the Bank and the Trustee, the Developer's address shall be:

| Jacksonville | Ventures, | Inc. |
|--------------|-----------|------|
| | | |
| | | |

"Developer's Certificate" means a certificate signed by an Authorized Officer of the Developer on behalf of the Developer and delivered to the Issuer, the Bank and the Trustee.

"Empire" means Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York as issuer of the Empire Letter of Credit.

- "Empire Letter of Credit" means the irrevocable transferable letter of credit issued by Empire pursuant to the Empire Letter of Credit Agreement, securing the Refunded Bonds.
- "Empire Letter of Credit Agreement" means the Letter of Credit and Reimbursement Agreement, dated as of August 1, 1985, between Empire and Branscome.
- "Escrow Deposit Agreement" means the Escrow Deposit Agreement dated as of the date hereof, by and among the Issuer, the Escrow Holder, the Refunded Bonds Trustee and the Developer.
- "Escrow Holder" means
 national banking association with its principal offices in
 , Florida, and its successors and assigns.
- "Event of Default" has the meaning assigned to it in Section 6.1 of this Mortgage.
- "Indenture" means the Indenture from the Issuer to the Trustee, dated as of the date hereof, under which the Bonds are issued, as amended and supplemented from time to time by Supplemental Indentures.
- "Independent Counsel" means any attorney or firm of attorneys who or which shall be acceptable to the Trustee and who or which is not an employee of the Developer or the Issuer.
- "Independent Engineer" means an engineer registered and qualified to practice the profession of engineering in the State, who shall be acceptable to the Trustee and who is not an employee of the Developer or the Issuer.
- "Insurance and Condemnation Proceeds Fund" has the meaning assigned to such term in Article I of the Indenture.
- "Issuer" means the Housing Finance Authority of St.
 Johns County, Florida, a public body corporate and politic duly created and existing under and by virtue of the Act, its successors and assigns.
- "Land Use Restrictions" means the Land Use Restrictions, dated as of August 1, 1985, by and among the Issuer, Branscome and the Trustee, recorded under Clerk's No. 85-17682 on August 15, 1985, in Official Records Book 681, pages 751-774, public records of St. Johns County, Florida.
- "Letter of Credit" means the irrevocable Letter of Credit, dated the initial date of the Bonds, issued by the Bank and delivered to the Trustee.

"Letter of Credit Agreement" means the Letter of Credit and Reimbursement Agreement dated as of the date hereof, by and between the Bank and the Developer.

"Loan" means the loan made by the Issuer pursuant to the Original Loan Agreement, as assumed by the Developer pursuant to the Assumption Agreement dated as of April ___, 1987, by and between the Developer and the Issuer, and the Amended and Restated Loan Agreement to finance a part of the cost of the acquisition, construction and installation of the Project.

"Loan Agreement" means the Original Loan Agreement, as amended and restated by the Amended and Restated Loan Agreement, and as amended and supplemented from time to time by Supplemental Loan Agreements.

"Loan Amount" means \$12,000,000, which is both the principal amount of the Bond issue and the amount of the Loan.

"Mortgage" means the Original Mortgage, as amended and restated by the Amended and Restated Mortgage, and as amended and supplemented from time to time in accordance with Article VIII of the Indenture.

"Mortgaged Equipment" has the meaning assigned to it in Section 3.1 hereof.

"Mortgaged Property" means collectively the Mortgaged Real Estate and the Mortgaged Equipment.

"Mortgaged Real Estate" has the meaning assigned to it in Section 2.1 hereof.

"Note" means the Original Note, as amended and restated by the Amended and Restated Note.

"Original Loan Agreement" means the Loan Agreement dated as of August 1, 1985, by and between the Issuer and Branscome.

"Original Mortgage" means the Mortgage and Security
Agreement dated as of August 1, 1985, from Branscome, as Mortgagor, to the Issuer, as Mortgagee (and assigned without recourse
by the Issuer to the Refunded Bonds Trustee), recorded under
Clerk's No. 85-17683 on August 15, 1985, in Official Records Book
681, pages 775-808, public records of St. Johns County, Florida.

"Original Note" means the Developer Note dated as of August 1, 1985, made by Branscome, payable to the order of the Issuer (and assigned without recourse by the Issuer to the Refunded Bonds Trustee), in the principal amount of \$12,000,000.

"Permitted Encumbrances" means, as of any particular time (i) liens for ad valorem taxes and assessments not then delinquent, (ii) utility, licenses, access and other easements and rights-of-way, restrictions and exceptions that will not interfere with or impair the operations being conducted or to be conducted with the Mortgaged Property pursuant to Section 5.1 hereof, (iii) such minor defects, irregularities, encumbrances and clouds on title as normally exist with respect to properties similar in character to the Mortgaged Property and as do not, in the opinion of an Independent Counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Developer, (iv) municipal ordinances, zoning ordinances and laws that do not, in the opinion of an Independent Counsel, materially impair the property affected thereby for the purpose for which it was acquired or is held by the Developer, (v) construction liens and other undetermined or inchoate liens and charges that have not at the time been filed and perfected in the manner prescribed by law, and (vi) the Indenture, the Land Use Restrictions, this Mortgage and the Second Mortgage.

"Person" means an individual, a partnership, a joint venture, an association, a joint-stock company, a corporation, a trust, a limited liability company, an unincorporated organization and a government or any department, agency or political subdivision thereof.

"Program Guidelines" means the Program Guidelines for the operation of the Project approved by the Board of County Commissioners of St. Johns County, Florida, in the form attached to the Loan Agreement as Exhibit B.

"Project" means the project described in Exhibit A to the Loan Agreement which has been or is to be acquired, constructed and installed in the County.

"Refunded Bonds" means the Issuer's Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project) dated as of August 1, 1985, issued on August 15, 1985 in the aggregate principal amount of \$12,000,000 under and pursuant to the Refunded Bonds Indenture.

"Refunded Bonds Indenture" means the Indenture dated as of August 1, 1985, by and between the Issuer and the Trustee, under and pursuant to which the Refunded Bonds were issued.

"Refunded Bonds Trustee" means Sun Bank, National Association, Orlando, Florida, the national banking association acting as trustee under the Refunded Bonds Indenture.

"Second Mortgage" means the Second Mortgage and Security Agreement, dated as of the date hereof, from the Developer to the Bank, delivered to the Bank for the purpose of providing mortgage, security interest or other collateral security for the performance of the Developer's obligations under the Letter of Credit Agreement.

"Self-Administered Amount" means \$50,000 in Article IV hereof and \$10,000 in Article V hereof.

"State" means the State of Florida.

"Supplemental Indenture" means any supplement to or amendment of the Indenture entered into in accordance with Article VIII of the Indenture.

"Supplemental Loan Agreement" means any supplement to or amendment of the Loan Agreement entered into in accordance with Article VIII of the Indenture.

"Title Insurance Amount" means \$12,000,000.

"Trustee" means Sun Bank, National Association, a national banking association, Orlando, Florida, as trustee under the Indenture, and any successor banking corporation, banking association or trust company at the time serving as corporate trustee under the Indenture.

Section 1.2 <u>Use of Phrases</u>. The following provisions shall be applied wherever appropriate herein:

The definitions set forth in Section 1.1 hereof shall be deemed applicable whether the words defined are herein used in the singular or the plural.

Wherever used herein, any pronoun or pronouns shall be deemed to include both the singular and plural and to cover all genders.

[The next page is Two-1]

ARTICLE II

REAL ESTATE MORTGAGE

Section 2.1 Mortgage. To secure the due and timely payment of the principal of, premium, if any, and interest on the Note and to secure the Developer's performance and observance of each and every term, covenant, agreement and condition contained herein, in the Note, in the Land Use Restrictions, in the Program Guidelines and in the Loan Agreement, now existing or hereafter incurred or arising, the Developer has granted, bargained, sold, aliened, released, remised, transferred, mortgaged and conveyed and by these presents does hereby grant, bargain, sell, alien, release, remise, transfer, mortgage and convey unto the Issuer, and its successors and assigns forever, all and singular the following described properties (herein collectively called the "Mortgaged Real Estate"), to wit:

- (a) All right, title and interest of the Developer in and to the parcel of real estate described in Exhibit A attached hereto and hereby made a part of the Mortgage;
- (b) All right, title and interest of the Developer, now or at any time hereafter existing, in and to all highways, roads, streets, alleys and other public thoroughfares, bordering on or adjacent to any and all real estate covered or intended to be covered by the Mortgage, together with all right, title and interest of the Developer to the land lying within such highways, roads, streets, alleys and other public thoroughfares, and together with all heretofore or hereafter vacated highways, roads, streets, alleys and public thoroughfares and all strips and gores adjoining or within such real estate or any part thereof;
- (c) All right, title and interest of the Developer, now or at any time hereafter existing, in and to all buildings, structures, railroad spur tracks and sidings, and real property improvements, now or at any time hereafter located on any or all of the real estate covered or intended to be covered by the Mortgage, and without any further act all extensions, additions, betterments and replacements thereof;
- (d) All right, title and interest of the Developer in and to all fixtures of every kind and description, now or at any time hereafter, installed or located on or used or intended to be installed, located on or used in connection with the real estate covered or intended to be covered by the Mortgage or the buildings and improvements situated on such real estate, whether such items of property are now owned or hereafter acquired by the Developer, including but not limited to, all lighting, heating,

cooling, ventilating, air-conditioning, humidifying, dehumidifying, plumbing, sprinkling, incinerating, refrigerating, air-cooling, lifting, fire extinguishing, cleaning, communicating and electrical systems (as well as all machinery, appliances, fix-tures and equipment pertaining to or necessary for the operation of the foregoing), and all awnings, carpeting, drapes, screens, storm doors and windows, shades, floor coverings, built-in ranges, ovens, refrigerators and other appliances, wallbeds, cabinets, partitions, conduits, ducts and compressors; provided that so-called "trade fixtures," which can be removed without damage to the buildings covered hereby, are not intended to be covered by this Section 2.1;

- (e) All rights, privileges, licenses, easements, tenements, hereditaments and appurtenances now or at any time hereafter belonging to or in any way appertaining to the real estate covered or intended to be covered by the Mortgage, or to any property now or at any time hereafter comprising a part of the property subject to the Mortgage; and all right, title and interest of the Developer, whether now or at any time hereafter existing, in all reversions and remainders to such real estate and other property now or hereafter comprising a part of the property subject to the Mortgage;
- (f) Any and all real estate and other property, whether now owned or hereafter acquired by the Developer, which may, from time to time after the execution of the Mortgage, by delivery or by writing of any kind, for the purposes hereof, be conveyed, mortgaged, pledged, assigned or transferred by the Developer, or by anyone in its behalf or with its consent, as and for additional security for the purposes hereof;
- (g) Any and all proceeds of the conversion, whether voluntary or involuntary, of all or any part of the foregoing property into cash or liquidated claims, including without limitation by reason of specification, proceeds of casualty and title insurance and condemnation awards; and
- (h) With respect to the property described in paragraphs (a) through (g) above, all leases, rents, issues and profits thereof, and the tenements, hereditaments, easements and appurtenances thereto.

Any reference herein to the "Mortgaged Real Estate" shall be deemed to apply to all the properties expressed in the foregoing subparagraphs (a) through (h), unless the context shall require otherwise. It is understood that all the properties hereby granted, bargained, sold, aliened, released, remised, transferred, mortgaged and conveyed are intended so to be as a unit and are hereby understood, agreed, and declared to form a part

and parcel of the Mortgaged Real Estate and to be appropriated to the use of the Mortgaged Real Estate, and shall for the purposes of the Mortgage, so far as permitted by law, be deemed to be real estate and covered by the lien of the Mortgage, and as to the balance of the properties as aforesaid, the Mortgage is hereby deemed to be as well a security agreement for the purpose of creating a security interest in said properties, which security interest the Developer hereby grants to the Issuer as security for the obligations aforesaid.

SUBJECT, HOWEVER, to Permitted Encumbrances.

TO HAVE AND TO HOLD, all and singular, whether now owned or hereafter acquired, unto the Issuer and its successors and assigns forever.

provided, however, that the Mortgage is on the express condition that if all the principal of, premium, if any, and interest on the Note shall be paid and discharged in accordance with the terms and conditions pertaining thereto, and if all other agreements and obligations of the Developer under the Note, the Loan Agreement, the Land Use Restrictions and the Mortgage shall be discharged in accordance with the terms and conditions therein and herein expressed, then these presents shall cease, determine and be void, otherwise to remain in full force and effect.

Section 2.2 Remedies Upon Event of Default. Subject to the provisions of Section 7.7 hereof, if an Event of Default occurs, the Issuer shall have the following remedies, in addition to any other remedies then provided by law or in equity:

(a) The Issuer may, by written notice to the Developer, declare the then outstanding principal of the Note and all payments described in Section 3.5 of the Loan Agreement to be forthwith due and payable, and upon such declaration the payments described in Section 3.5 of the Loan Agreement and the principal of the Note, together with interest accrued thereon, shall become due and payable forthwith at the place of payment specified. In addition, the Issuer may proceed to protect and enforce its rights under the Mortgage by foreclosure proceedings or by other suit in equity, action at law, or other appropriate proceedings, including actions for the specific performance of any covenant or agreement contained in the Mortgage or in the Loan Agreement, or in the Land Use Restrictions, or in aid of the exercise of any power granted in the Mortgage or in the Loan Agreement, or may proceed in any other manner to enforce the payment of the Note and the payments described in Section 3.5 of the Loan Agreement and any other legal or equitable right of the Issuer. The Developer expressly understands and agrees that on the bringing of any suit to foreclose the Mortgage, or to enforce any other remedy of the

Issuer hereunder, the Issuer shall be entitled as a matter of right, without notice and without giving bond to the Developer, or anyone claiming through, by or under it, and without regard to the value of the Mortgaged Property and/or the adequacy of the collateral for the Note or the payments described in Section 3.5 of the Loan Agreement to have a receiver appointed of all or any part of the Mortgaged Property and of the earnings, income, rents, issues and profits thereof, pending such proceedings, with such powers as the court making such appointment shall confer. receiver shall, in addition to all rights and powers normally granted to a receiver, have the right to complete construction of the buildings and improvements which the Developer is obligated to construct under the Loan Agreement, the Developer hereby confirming that the only way to preserve the value of the time, money, talent, labor and materials invested and incorporated into partially completed buildings and improvements is to complete the same. The Developer does hereby irrevocably consent to such appointment.

- (b) To the extent permitted by law, the Issuer, either by itself or by its agents or attorneys, may, in its discretion, enter upon and take possession of the Mortgaged Property, or any part or parts thereof, and may exclude the Developer and its agents and servants wholly therefrom, and having and holding the same, the Issuer may use, operate, manage and control the Mortgaged Property or any part thereof, demand and receive all rents, issues and profits thereof, and conduct the business thereof, either personally or by superintendents, managers, agents, servants and attorneys and from time to time, by purchase, repair or construction, may maintain and restore and may insure and keep insured, the buildings, structures, improvements, fixtures and other property comprising the Mortgaged Property. The Issuer may cause construction of the buildings and improvements to be completed and the Issuer for such purpose may use all available materials and equipment at the Mortgaged Real Estate and acquire all other necessary materials and equipment and employ contractors and other employees. All sums expended by the Issuer for such purpose shall constitute disbursements pursuant to the Loan Agreement and shall be secured by the Mortgage and shall forthwith be due and payable by the Developer to the Issuer, together with interest thereon at the Late Payment Rate (as such term is defined in the Loan Agreement) from the date of disbursement until paid. The authority and agency conferred hereby upon the Issuer shall be deemed to create a power coupled with an interest and shall be irrevocable.
- (c) To the extent permitted by law, and without limiting or restricting any of the other remedies herein, the Issuer in

its discretion may, with or without entry, personally or by attorney, by foreclosure or otherwise as permitted by law, sell or cause to be sold to the highest bidder all or any part of the Mortgaged Property, and all right, title, interest, claim and demand therein, and the right of redemption thereof, in one lot as an entirety, or in separate lots, as the Issuer may elect, and in one sale or in any number of separate sales held at one time or at any number of times, which such sale or sales shall be made at public auction at such place(s) in the county in which the Mortgaged Property to be sold is situated and at such time and upon such terms as may be fixed by the Issuer and briefly specified in the notice of such sale or sales, or otherwise as required by law. Any sale by the Issuer may nevertheless, at its option, be made at such other place or places, and in such other manner, as may now or hereafter be authorized by law. Notice of any sale by the Issuer pursuant to the provisions hereof shall state the time and place when and where the same is to be made and shall contain a brief general description of the property to be sold and shall be sufficiently given if given in the manner provided by law. The Trustee, any Bondholder (as defined in the Indenture) or the Issuer may bid on and purchase the Mortgaged Property. Upon completion of any sales or sales, as specified above, the Issuer shall transfer and deliver, or cause to be transferred and delivered, to the accepted purchaser or purchasers, the property so sold, and, to the extent permitted by law, the Issuer is hereby irrevocably appointed the true and lawful attorney-in-fact of the Developer, in its name and stead, to make all necessary transfers of property thus sold, and for that purpose the Issuer may execute and deliver, for and in the name of the Developer all necessary instruments of assignment and transfer, the Developer hereby ratifying and confirming all that its said attorney-in-fact shall lawfully do by virtue hereof.

(d) The Developer agrees that to the extent permitted by law, the Mortgage may be foreclosed by the Issuer, at its option.

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ARTICLE III

SECURITY AGREEMENT

Section 3.1 <u>Security Interest</u>. To secure payment of the principal of, premium, if any, and interest on the Note and to secure the performance and observance by the Developer of each and every term, covenant, agreement and condition contained herein, in the Note, in the Land Use Restrictions, in the Program Guidelines and in the Loan Agreement, whether now existing or hereafter existing, the Developer hereby grants the Issuer a security interest in the following described properties now existing or hereafter acquired (herein collectively called the "Mortgaged Equipment"), to wit:

- (a) The machinery, equipment, fixtures and other property, if any, described in Exhibit B attached hereto and hereby made a part of the Mortgage and any other property acquired with proceeds of the Bonds; and
- (b) All so called "trade fixtures" which can be removed without damage to the buildings covered under Section 2.1 hereof; and
- (c) All revenues, securities and funds held by the Trustee pursuant to the Indenture; and
- (d) All additions, accessions, substitutions, products and proceeds to, for or of any of the property described in paragraphs (a), (b) and (c) above.

Section 3.2 Remedies Upon Event of Default. Subject to the provisions of Section 7.7 hereof, if an Event of Default occurs, the Developer shall have the rights and duties of a debtor under the Uniform Commercial Code of the State and the Issuer shall have the duties, rights, remedies and options of a secured party under such Code with respect to the Mortgaged Equipment and may exercise any or all such remedies as it may deem proper. In exercising any such remedies, the Issuer may sell all the Mortgaged Equipment as a unit even though the sales price thereof may exceed the amount remaining unpaid on the Note or under Section 3.5 of the Loan Agreement. The Issuer, the Trustee or any Bondholder (as defined in the Indenture) may purchase the Mortgaged Equipment or any part thereof at any sale or sales. Any requirement of said Uniform Commercial Code as to reasonable notice shall be met by mailing written notice to the Developer, at the Developer's Address, ten days prior to any such sale.

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ARTICLE IV

COVENANTS

Section 4.1 Payment and Performance. The Developer shall duly and punctually pay the principal of, premium, if any, and interest on the Note when and as the same shall become due and payable in accordance with their terms and shall duly and punctually perform and observe all of the terms, covenants and conditions to be performed or observed by the Developer herein and in the Loan Agreement, in the Note, in the Land Use Restrictions and in the Program Guidelines.

Section 4.2 Maintenance and Improvement of Properties. The Developer covenants that it shall maintain the Mortgaged Property in good condition and repair and not permit its value to be impaired by waste or neglect. Subject to the provisions of Article V hereof and to the provisions of the Loan Agreement, the Developer shall have the right to make any additions, alterations or improvements to the Mortgaged Property which will not impair its value.

- Section 4.3 <u>Insurance</u>. Without limiting the generality of the requirements of Section of the Letter of Credit Agreement, the Developer agrees that it shall take out and continuously maintain in effect insurance policies meeting the following minimum specifications:
- (a) Insurance to the extent of the full replacement value of the Mortgaged Property against loss or damage by fire, with standard extended coverage endorsements and with loss payable endorsements in favor of the Issuer and the Trustee as their interests may appear; and
- (b) Insurance against liability for personal injury including the death of persons resulting from injuries occurring on or in any way related to the Mortgaged Property in the minimum amount of \$1,000,000 per occurrence and for damage to property occurring on or in any way relating to the Mortgaged Property, in the minimum amount of \$500,000 per occurrence, with endorsements naming the Issuer and the Trustee as additional insureds.
- (c) Flood insurance, if available, on the Mortgaged Property to the extent required by federal law and regulations of the Comptroller of the Currency relating to loans by national banking associations.
- (d) The insurance required under the terms of the Letter of Credit.

All insurance policies required under this Section 4.3 shall be under the New York standard mortgagee clause and be taken out and maintained with generally recognized responsible insurance companies, qualified under the laws of the State to assume the respective risks undertaken and may be written with deductible amounts, co-insurance features and exceptions and exclusions comparable to those on similar policies carried by other companies similarly situated. All policies evidencing the insurance required by this Section 4.3 shall be deposited with the Trustee, or in lieu thereof the Developer may deposit with the Trustee a certificate or certificates of the respective insurers attesting the fact that such insurance is in force and effect. The Developer shall, upon request of the Issuer or the Trustee, make available for inspection by representatives of the Issuer or the Trustee the original insurance policies herein required. Each policy of insurance required by this Section 4.3 shall contain a provision that it is noncancellable by the insurer except upon at least 30 days' prior written notice to the Developer, the Trustee and the Issuer. Prior to the expiration or cancellation of any policy required by this Section 4.3, the Developer will furnish to the Trustee satisfactory evidence that such policy has been renewed or replaced by another policy or policies which cover the Mortgaged Property, which policies may contain comparable deductible amounts, co-insurance features and exceptions and exclusions to those permitted above.

Section 4.4 <u>Title Insurance</u>. As soon as possible after the delivery of the Mortgage, the Developer shall deliver to the Issuer a standard form American Land Title Association loan policy of title insurance in respect of the Mortgaged Real Estate in the Title Insurance Amount insuring the Issuer and the Trustee as their interests may appear. Such policy shall show fee simple title to the Mortgaged Real Estate in the Developer subject to the Mortgage, but subject to no additional or prior liens, encumbrances or clouds on title other than Permitted Encumbrances and those exceptions and exclusions from coverage which are standard in such forms of loan policies of title insurance. All net proceeds of claims made under said policy shall be paid to the Trustee for deposit into the Insurance and Condemnation Proceeds Fund.

Section 4.5 Minor Damage to Mortgaged Property. If the Mortgaged Property or any portion of it shall be damaged by fire, flood, windstorm or other casualty, and the claim for loss resulting from such damage is not greater than the Self-Administered Amount, the insurance proceeds shall be paid to the Developer, and the Developer shall promptly repair, rebuild or restore the property damaged or destroyed with such changes, alterations and modifications (including the substitution and addition of other

property) as may be desired by the Developer and as will not impair the character, structural integrity or operating unity of the Mortgaged Property.

Section 4.6 Major Damage to Mortgaged Property. Unless the Developer shall have elected to apply the hereinafter described proceeds to the redemption of Bonds prior to maturity pursuant to the provisions of Sections 4.01(b)(1) and 5.07(b) of the Indenture, if the Mortgaged Property or any portion of it shall be damaged or partially or totally destroyed by fire, flood, windstorm or other casualty to such extent that the claim for loss resulting from such destruction or damage exceeds the Self-Administered Amount, the Developer shall promptly give written notice thereof to the Issuer and the Trustee. In such event, all net proceeds of insurance policies resulting from claims for such losses shall be paid to the Trustee for deposit into the Insurance and Condemnation Proceeds Fund whereupon the Developer shall proceed to repair, restore, replace or rebuild the property damaged or destroyed with such changes, alterations and modifications (including the substitution and addition of other property) to the extent necessary to restore (i) the efficiency and operating unity of the Mortgaged Property, and (ii) the structural integrity of the Mortgaged Property; if said net proceeds are insufficient to pay in full the costs of such repair, restoration, replacement or rebuilding, the Developer shall nevertheless complete the work thereof and provide for the full payment of the cost thereof.

The moneys so deposited into the Insurance and Condemnation Proceeds Fund shall be disbursed by the Trustee in accordance with and subject to the conditions of Section 5.06 of the Indenture.

And property purchased with moneys from the Insurance and Condemnation Proceeds Fund shall be made subject to the lien of the Mortgage subject to no liens or encumbrances other than Permitted Encumbrances. Any property replaced may be released from the lien of the Mortgage if the salvage value or proceeds of other disposition thereof (whichever is greater) are paid to the Trustee for deposit into the Insurance and Condemnation Proceeds Fund.

Section 4.7 Eminent Domain. Unless the Developer shall have elected to apply the hereinafter described proceeds to the redemption of Bonds prior to maturity pursuant to the provisions of Sections 4.01(b)(1) and 5.07(b) of the Indenture, if title to or the temporary use of the Mortgaged Property or any part of it shall be taken under the exercise of the power of eminent domain by any governmental body or by any person, firm or corporation acting under governmental authority, all net proceeds received

from any award made in such eminent domain proceedings shall be paid to the Trustee for deposit into the Insurance and Condemnation Proceeds Fund whereupon the Developer shall proceed to restore or replace the property so taken (including the substitution and addition of other property located within St. Johns County, Florida) to the extent necessary to restore (i) the efficiency and operating unity of the Mortgaged Property, and (ii) the structural integrity of the Mortgaged Property; if said net proceeds are insufficient to pay in full the costs of such restoration or replacement, the Developer shall nevertheless complete such restoration or replacement and provide for the full payment of the cost thereof.

The moneys so deposited into the Insurance and Condemnation Proceeds Fund shall be disbursed by the Trustee in accordance with and subject to the conditions of Section 5.06 of the Indenture.

Any property purchased with moneys from the Insurance and Condemnation Proceeds Fund shall be made subject to the lien of the Mortgage subject to no liens or encumbrances other than Permitted Encumbrances. Any property taken by eminent domain or replaced as a consequence thereof may be released from the lien of the Mortgage if the salvage value or proceeds of other disposition thereof (whichever is greater) are paid to the Trustee for deposit into the Insurance and Condemnation Proceeds Fund.

Maintenance of Lien. The Developer represents and warrants that it has good and marketable title in fee simple to the property described in Exhibit A hereto, subject to no liens, security interests or encumbrances other than Permitted Encumbrances. The Developer represents and warrants that it has or will acquire within thirty days of placement upon the Mortgaged Real Estate good and marketable title to the properties described in Exhibit B hereon and will have, upon acquisition, marketable title to other personal property which is collateral hereunder, subject to no liens, security interests or encumbrances.

The Developer agrees that it shall not create or permit to exist any liens, security interests or encumbrances on the Mortgaged Property except Permitted Encumbrances.

The Developer shall have the right in good faith and by appropriate proceeding to dispute or contest the validity or amount of any tax lien or construction lien on the Mortgaged Property, and during the pendency of any such dispute or contest the Developer shall not be deemed to be in default under this Section 4.8 if it shall have furnished a bond or made other arrangements

satisfactory to the Trustee for the discharge of such lien in the event the dispute or contest is resolved adversely to the Developer.

The Developer agrees that it shall take such actions as are reasonably necessary (including all actions reasonably required of it by the Trustee) to perfect, protect and maintain the mortgage lien and security interest priority of the Mortgage, including all filings and continuation statements under the Uniform Commercial Code.

The Developer agrees that the Issuer shall have the right to cure any defaults of the Developer hereunder and any advances made to cure such defaults or reasonably required to protect the title to or value of the Mortgaged Property shall be reimbursed to the Issuer on demand, together with interest thereon at the Late Payment Rate (as defined in the Loan Agreement) from the date of disbursement until paid, and all such payments shall be secured by the Mortgage.

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ARTICLE V

RELEASE OF MORTGAGED PROPERTY

Section 5.1 Granting of Easements on Mortgaged Real Estate. If no Event of Default shall have happened and be continuing, the Developer may at any time or times grant easements, licenses, rights-of-way and other rights or privileges in the nature of easements with respect to the Mortgaged Real Estate, free from the lien of the Mortgage, or the Developer may release existing easements, licenses, rights-of-way and other rights or privileges with or without consideration, and the Issuer will (at the Developer's expense) execute and deliver and will cause and direct the Trustee to execute and deliver any instrument necessary or appropriate to confirm and grant or release any such easement, license, right-of-way or privilege upon receipt of:

- (a) a copy of the instrument of grant or release; and
- (b) a Developer's Certificate stating (i) that such grant or release is not detrimental to the proper conduct of Developer's business, and (ii) that such grant or release will not impair the effective use or interfere with the operation of the Mortgaged Property and will not impair the operating unity of the Mortgaged Property; and
- (c) in the case of any such grant, an opinion of Independent Counsel to the effect that such grant constitutes a Permitted Encumbrance.

Mortgaged Property. If no Event of Default shall have happened and be continuing, the Developer may, at its own expense, connect or "tie-in" walls (including use of existing walls for the support of future adjacent building) and utilities and other facilities located on the Mortgaged Real Estate to other facilities erected on real property adjacent to or near the Mortgaged Real Estate or partly on such adjacent real property and partly on the Mortgaged Real Estate, or in connection with the expansion or the improvement of any building on the Mortgaged Real Estate, tear down any wall of such building and build an addition to such building (either on the Mortgaged Real Estate or on real property adjacent thereto), if the Developer:

- (a) furnishes the Issuer and the Trustee an opinion of an Independent Engineer to the effect that such expansion, addition or connection and the "tie-in" of walls, utilities and other facilities will not impair the structural integrity of the Mortgaged Property; and
- (b) at its option, either (i) subjects the real property on which such expansion or addition is built to the mortgage lien of the Mortgage subject to no prior liens or encumbrances other than Permitted Encumbrances; (ii) deposits in escrow with the Trustee (under a separate agreement containing terms not inconsistent herewith) sufficient moneys to restore the Mortgaged Real Estate substantially to its original condition, if necessary; (iii) deposits with the Trustee a surety bond equal to the estimated cost of restoration for the restoration of said Mortgaged Real Estate substantially to its original condition, if necessary; or (iv) takes such other action as may be satisfactory to the Issuer and the Trustee assuring that the Mortgaged Real Estate will, if necessary, be restored substantially to its original condition.

Section 5.3 <u>Instruments of Transfer</u>. The Issuer and the Developer agree to execute and deliver such documents (if any) as the Issuer or the Developer or the Trustee may reasonably request in connection with any action taken by the Issuer or Developer under this Article V.

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ARTICLE VI

EVENTS OF DEFAULT

Section 6.1 Events of Default. If any one or more of the following events occur, it is hereby defined as and declared to be an "Event of Default" under the Mortgage:

- (a) Default in the due and punctual payment of any installment of principal or interest on the Note;
- (b) A court of competent jurisdiction shall render a judgment of foreclosure or its equivalent in respect of the Mortgaged Real Estate or any part thereof;
- (c) Default in the performance or observance of any other of the covenants, agreements or conditions on the part of the Developer in the Mortgage contained and the continuance thereof for a period of 30 days after receipt by the Developer of written notice from the Issuer, the Trustee or the owners of at least 25% in aggregate principal amount of the Bonds then outstanding specifying such default and requesting that it be corrected;
- (d) An "event of default" (as defined therein) shall occur under the Loan Agreement, the Land Use Restrictions or the Indenture; or
- (e) Default in the performance or observance of any of the covenants, agreements or conditions on the part of the Developer contained in the Land Use Restrictions or the Program Guidelines and the continuance thereof for the period and after the notice specified in Section 7 of the Land Use Restrictions.

Section 6.2 Cross Default With Loan Agreement. The Developer agrees that an "Event of Default" hereunder shall constitute an "event of default" (as defined therein) under the Loan Agreement and that an "event of default" (as defined therein) under the Loan Agreement or a default under the Land Use Restrictions (regardless how or by whom caused) shall constitute an Event of Default hereunder.

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ARTICLE VII

MISCELLANEOUS

Section 7.1 Remedies Not Exclusive. No remedy herein conferred on or otherwise available to the Issuer is intended to be or shall be construed to be exclusive of any other remedy or remedies; but each and every such remedy shall be cumulative and shall be in addition to every other remedy given hereunder, or now or hereafter existing at law or in equity or by statute. delay or omission to exercise any right or power accruing upon any default shall impair any such right or power, or shall be construed to be a waiver of any such default, or an acquiescence therein; nor shall the giving, taking or enforcement of any other or additional security or collateral for the payment of the indebtedness secured under the Mortgage operate to prejudice, waive or affect the security of the Mortgage or any rights, powers or remedies hereunder; nor shall the Issuer be required to first look to, enforce or exhaust such other or additional security or collateral. To the greatest extent permitted by law, the Developer hereby waives all rights to require marshalling of assets by the Issuer.

Section 7.2 Effect of Extensions, Forbearances, Etc. If the Issuer (i) grants any extension of time or forebearance with respect to the payment of any indebtedness secured by the Mortgage; (ii) takes other or additional security for the payment thereof; (iii) waives or fails to exercise any right granted herein or in the Loan Agreement; (iv) grants any release, with or without consideration, of the whole or any part of the security held for the payment of the debt secured hereby or the release of any person liable for payment of such debt; (v) amends or modifies in any respect with the consent of the Developer any of the terms and provisions hereof or of the Loan Agreement or the Note; then and in any such event, such act or omission to act shall not release the Developer, or any co-makers or sureties of the Mortgage or of the Note, nor preclude the Issuer from exercising any right, remedy, power or privilege herein granted or intended to be granted in the event of any other default then made or any subsequent default and without in any way impairing or affecting the lien or priority of the Mortgage.

Section 7.3 <u>Subrogation</u>. The Issuer shall be subrogated to all liens, although released of record, which are paid out of the proceeds of any loans secured by the Mortgage.

Section 7.4 Severability. If any provision of the Mortgage shall be held or deemed to be or shall, in fact, be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in

all cases because it conflicts with any other provision or provisions hereof or any constitution or statute or rule of public policy, or for any other reason, such circumstance shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or circumstance, or of rendering any other provision or provisions herein contained invalid, inoperative or unenforceable to any extent whatever. The invalidity of any one or more phrases, sentences, clauses or Sections contained in the Mortgage, shall not affect the remaining portions of the Mortgage, or any part thereof.

Section 7.5 Governing Law. The laws of the State shall govern the Mortgage.

Section 7.6 <u>Binding Effect</u>. All the covenants and conditions hereof shall run with the land and shall be binding upon the successors, heirs, personal representatives and assigns of Developer.

Section 7.7 Nonrecourse Obligations. It is hereby acknowledged that the covenants and obligations of the Developer secured hereby are and shall be nonrecourse obligations, which shall mean that the Developer's liability in connection with any judgment for the payment of said obligations shall be limited to the collateral and assets of the Developer pledged or granted to the Issuer as security for said obligations, namely, the Mortgaged Property, the insurance thereon and any other asset or collateral now or hereafter given by the Developer as security for said obligations. No recourse, in order to satisfy any deficiency judgment following any action brought to foreclose under or otherwise to enforce the Mortgage, may be had against those assets of the Developer, if any, that remain unpledged to the Issuer for the obligations secured hereby; provided, however, that nothing herein shall limit the Issuer's ability to exercise any right or remedy which it may have with respect to any property pledged or granted to the Issuer or to exercise any right against the Developer or any other person or entity on account of any claim for fraud or deceit. Furthermore, the Developer shall be fully liable for the misapplication of (i) proceeds paid prior to any foreclosure under any and all insurance policies by reason of damage, loss or destruction to any portion of the Mortgaged Property and the Collateral, to the full extent of such proceeds, (ii) proceeds or awards resulting from the condemnation, or other taking in lieu of condemnation, prior to any foreclosure of any portion of the Mortgaged Property and the Collateral, to the full extent of such proceeds and awards, (iii) rents, issues, profits and revenues received or applicable to a period subsequent to the occurrence of a default under any of the documents executed by the Developer for the benefit of the Issuer in connection herewith but prior to the foreclosure, and (iv) proceeds from the sale of all or any

part of the Mortgaged Property and the Collateral. The limit on the Developer's liability set forth in this Section shall not, however, be construed, and is not intended in any way, to constitute a release, in whole or in part, of the indebtedness evidenced by the Loan Agreement or the Note or a release, in whole or in part, or an impairment of the lien and security interest of any of the documents executed by the Developer for the benefit of the Issuer in connection herewith upon the properties described therein, or to preclude the Issuer from foreclosing the documents executed by the Developer for the benefit of the Issuer in connection herewith in case of any default or enforcing any other right of the Issuer or to alter, limit or affect the liability of any person or party who may now or hereafter guarantee, or pledge, grant or assign its assets or collateral as security for, the obligations of the Developer under any of the documents executed by the Developer for the benefit of the Issuer in connection herewith.

Section 7.8 Assignment to Trustee; Application of Pro-The Issuer has assigned all its right, title and interest in, under and to the Mortgage (and the mortgage liens and security interests created hereby) to the Trustee in trust as security for payment of the Bonds. So long as any Bonds shall be outstanding, the Issuer shall take no action to enforce the Mortgage other than for violations of the Land Use Restrictions and the Program Guidelines without the prior written consent of the Trus-The Developer consents to such assignment and expressly agrees that the Trustee shall be entitled to each and every right, option and privilege of the Issuer hereunder, including without limitation, the right to enforce any or all remedies herein, at law or in equity granted to the Issuer for the enforcement of the Mortgage. All proceeds realized upon resort to the collateral security described in Articles II and III hereof shall be applied by the Trustee in accordance with Section 7.06 of the Indenture.

JACKSONVILLE VENTURES, INC. Signed, sealed and delivered in the presence of: By______Title: (Witnesses as to Developer) Attest: Title: (Seal) STATE OF ____ COUNTY OF____ The foregoing instrument was acknowledged before me this day of _____, 1987, by _____ and ____, the _____ and ____, respectively, of Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida, on behalf of said corporation. Notary Public, in the State as aforesaid My Commission Expires: (NOTARIAL SEAL)

IN WITNESS WHEREOF, the Developer has executed these

presents, under seal, as of the day and year first above written.

ASSIGNMENT

FOR VALUE RECEIVED, the undersigned Housing Finance Authority of St. Johns County, Florida, hereby assigns, without recourse, its right, title and interest in and to the above Mortgage to Sun Bank, National Association, a national banking association, Orlando, Florida, as trustee, and to its successors, as trustee, pursuant to and under the terms and conditions of that certain Indenture, dated as of May 15, 1987, by and between the undersigned and said Trustee, securing the Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) issued under said Indenture.

Dated May 15, 1987.

| Signed, sealed and delivered in the presence of: | HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA | |
|--|--|--|
| | By | |
| (Witnesses as to Issuer) | Attest: Secretary | |
| | (SEAL OF ISSUER) | |

STATE OF FLORIDA

COUNTY OF ST. JOHNS

| day of August, 1987, b , the Chairman Housing Finance Authority of | rument was acknowledged before me this and and the Secretary, respectively, of the of St. Johns County, Florida, a public of the State of Florida, on behalf of |
|--|---|
| | Notary Public, State of Florida, at Large |
| (NOTARIAL SEAL) | My Commission Expires: |
| AC7SRPMG1 | |

DESCRIPTION OF MORTGAGED REAL ESTATE

The Mortgaged Real Estate referred to in this Mortgage is the following real estate situated in St. Johns County, Florida:

That certain piece, parcel or tract of land situate, lying and being in the County of St. Johns, State of Florida, to wit:

PARCEL IL

A part of Government Lots 3 and 4, Section 16, together with a part of the William Hart Grant, Section 55, all in Township 3 South, Range 29 East, St. Johns County, Florida, more particularly described as follows: For a point of beginning commence at the Northeast corner of said Government Lot 3, said corner being on the dividing line between St. Johns County and Duval County, Plorids; thence S. 01 deg. 06' 36" E., along the East line of said Government Lot 3, a distance of 1245.38 feet to a point, said point being on a curve concave Northeasterly having a radius of 650.00 feet; thence Morthwesterly along the arc of said curve, a chord bearing of M. 58 deg. 40' 40' W., and a chord distance of 443.57 feet to the Point of Tangency of said curve; thence M. 38 deg. 43' 37" W., a distance of 71.08 feet to the Point of Curve of a curve concave southwesterly having a radius of 859.13 feet; thence Morthwesterly along the arc of said curve, a chord bearing of M. 64 deg. 56' 38" W., and a chord distance of 759.09 feet to the Point of Tagency of said curve; thence 8. 88 deg. 50' 21" W., a distance of 100.00 feet to the Point of Curve of a curve concave Northerly having a radius of 550.00 feet thence Westerly along the arc of said curve, a chord bearing of W. 84 deg. 56' 30° W., and a chord distance of 119.17 feet to a point of compound curve; thence Morthwesterly along the arc of a curve concave Mortheasterly having a radius of \$12.57 feet and a chord bearing of N. 51 deg. 11' 12" W., and a chord distance of 751.24 feet; thence No. 89 deg. 09' 52° E., along a line parallel with and 100 feet South of, when measured at right angles to aforementioned dividing line between St. Johns County and Daval County, a distance of 737.72 feet; thence N. 44 deg. 09' 52° B., a distance of 145.28 feet; thence N. 87 deg. 38' 31° B., along said dividing line between St. Johns County and Duval County, a distance of 1053.02 feet of the Point of Beginning.

PARCEL II:

A non-exclusive easement for ingress and egress over and across the lands described in Official Record Book 587, Page 247; Official Record Book 647, Page 58 and Official Record Book 656, Page 899 as corrected and re-recorded in Official Record Book 681, Page 193 of the Public Records of St. Johns County, Plorida, and recorded in Official Record Book 5864, Page 946 of the Public Records of Duval County, Plorida.

DESCRIPTION OF MORTGAGED EQUIPMENT

All machinery, equipment, fixtures and other personal property now or hereafter acquired, with the proceeds of the sale of the \$12,000,000 principal amount of Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project), issued under that certain Indenture dated as of August 1, 1985, by and between the Housing Finance Authority of St. Johns County, Florida, and Sun Bank, National Association, a national banking association, Orlando, Florida, as trustee and all additions, accessions, substitutions, products and proceeds to, for or of any of the foregoing, all such machinery, equipment, fixtures and other personal property and all such additions, accessions, substitutions, products and proceeds located on or to be located on the real property described in Exhibit A hereto; said real property may also be described as being located in St. Johns County, Florida, at Ponte Vedra Beach, at 611 Ponte Vedra Lakes Boulevard, northeast of the intersection of TPC Boulevard and Ponte Vedra Lakes Boulevard.

AC7SRPMG1

F&L/TBS DRAFT OF 4/16/87

AMENDED AND RESTATED DEVELOPER NOTE

\$12,000,000

May 15, 1987

Jacksonville Ventures, Inc., a Delaware corporation duly authorized to transact business in the State of Florida (the "Developer") FOR VALUE RECEIVED, promises to pay to the order of the Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic of the State of Florida (the "Issuer"), at the principal place of business in Orlando, Florida of Sun Bank, National Association (the "Trustee"), or any successor trustee acting as such under that certain Indenture dated as of May 15, 1987, between the Issuer and the Trustee (the "Indenture") in lawful money of the United States of America, and in immediately available funds, the principal sum of TWELVE MILLION DOLLARS (\$12,000,000), and to pay interest on the unpaid principal balance owing hereunder from the date hereof (being the date of delivery of the Bonds issued pursuant to the Indenture) at such place of business in the amounts and at the rates specified below.

All capitalized terms used in this Note shall have the meanings assigned to such terms in the Indenture.

All sums paid hereon shall be applied first to the satisfaction of accrued interest and the balance to the unpaid principal. Interest shall be calculated on the same basis as is provided for payment of interest on the Bonds.

Payments of interest on this Note shall be paid on each May 15 and November 15, beginning November 15, 1987, until maturity or redemption of the Bonds. Payment of principal shall be made on May 15, 2008, or such other date as may be set forth pursuant to the Indenture.

Notwithstanding the foregoing, if on any Interest Payment Date or Bond redemption date, the amount held in the Bond Fund is not sufficient to pay Bond service charges when due, the Developer shall forthwith pay or cause to be paid the amount of such deficiency to the Trustee.

Draws made under the Letter of Credit or proceeds from the liquidation of Collateral to pay Bond service charges shall constitute payments made hereunder. Reimbursement shall be had by the Bank therefor pursuant to the Letter of Credit Agreement or the Collateral Agreement. This Note is subject to mandatory prepayment at the times and under the circumstances and to the extent provided in the Indenture for mandatory redemption of Bonds at the percentage of principal amount specified for the corresponding Bond redemption plus interest hereon to the date set for the corresponding Bond redemption.

If default is made in the payment of any installment of interest or principal on this Note and the same is placed in the hands of an attorney for collection, or if suit is filed hereon, or proceedings are had in bankruptcy, probate, receivership, reorganization, arrangement or other judicial proceedings for the establishment or collection of any amounts called for hereunder, or any amount payable or to be payable hereunder is collected through any such proceedings, the Developer agrees to pay to the holder of this Note all reasonable attorneys' fees and related expenses.

This Note and the Developer's obligations under the Loan Agreement are secured by the Mortgage, which Mortgage and assignment are or will be recorded in the public records of St. Johns County, Florida. The Developer irrevocably and unconditionally agrees to make payments hereunder sufficient to pay all of the principal of, premium, if any, and interest on the Bonds when and as the same become due, and to timely pay all other sums required to be paid by the Developer under the terms and provisions of the Loan Agreement, the Mortgage and the Indenture. This Note is subject to acceleration and to prepayment in whole or in part as the Trustee may deem necessary to redeem or purchase the Bonds in accordance with their terms or the terms of the Indenture. Note is entitled to the security and benefits of the Loan Agreement and the Mortgage. Reference is hereby made to the Loan Agreement, the Mortgage and the Indenture for a statement of the terms and conditions on which the loan evidenced hereby was made, for a description of the circumstances under which there shall be credits allowed against the installments of principal and interest on this Note, for a description of the terms and conditions under which this Note will be in default, and for a description of the terms and conditions upon which this Note may be prepaid or its maturity accelerated.

This Note is a contract issued, executed and delivered in the State of Florida and shall be construed in accordance with and governed by the laws of the State of Florida.

| hereby | Demand, waived. | presentment, | notice of | dishonor, | and prote | st are |
|----------------------------|--|--|---|---|---|---|
| | | | JACKS | ONVILLE VE | NTURES, IN | C. |
| [SEAL] | | | _ | | | |
| ATTEST | : | | By Pre | sident | | |
| Secret | ary | | | | | |
| Inc. a | per Note d nd pavable | ENT dated May ated May 15, to the order , Florida (th | 1987, made of the Ho | by Jacksousing Fina | nville Ven | itures, |
| ant to scribe of goo | ove Note t the terms d in the N d title an | ersigned Hous o the Trustee and under th ote, without d warranty th other than t mount thereof | named in e condition recourse of at the Issue the Trustee | the Note, ins of the ir warranty uer has no is and that | in trust, Indenture except wa t assigned the entire | pursu- de- irranty l the ini- |
| | | | | NG FINANCE . JOHNS CO | | |
| | | | By Čha | irman | | |

SS8SRPNT1

ESCROW DEPOSIT AGREEMENT

THIS ESCROW DEPOSIT AGREEMENT, dated as of May 15, 1987, by and between the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, a public body corporate and politic of the State of Florida (the "Authority"), JACKSONVILLE VENTURES, INC., a Delaware corporation duly authorized to transact business in the State of Florida (the "Developer"), SUN BANK, NATIONAL ASSOCIATION, a national banking association duly organized and existing under and by virtue of the laws of the United States of America (the "Refunded Bonds Trustee"), as trustee under the Indenture from the Authority dated August 1, 1985 (the "Refunded Bonds Indenture"), and _______, a national banking association duly organized and existing under and by virtue of the laws of the United States of America, as Escrow Holder hereunder (the "Escrow Holder");

WITNESSETH:

WHEREAS, the Authority has heretofore issued its Multi-family Housing Revenue Bonds (Remington at Ponte Vedra Project) in the aggregate principal amount of \$12,000,000, dated August 1, 1985, of which bonds \$12,000,000 in principal amount remain outstanding (the "Outstanding Bonds"), for the purpose of financing a part of the cost of the acquisition and construction of a qualifying housing development located in St. Johns County, Florida (the "Project"); and

WHEREAS, the proceeds of the Outstanding Bonds were loaned to Gene Branscome, an individual ("Branscome"), pursuant to a certain Loan Agreement, by and between the Authority and Branscome, dated as of August 1, 1985 (the "Loan Agreement"); and

WHEREAS, the Loan Agreement was secured by a certain Mortgage and Security Agreement from Branscome to the Authority, dated as of August 1, 1985, encumbering, among other assets, the Project (the "Mortgage"), and by a pledge of the Developer Note (as defined in the Loan Agreement); and

WHEREAS, the Developer has succeeded Branscome in interest in the Project; and

WHEREAS, payment of the principal of and interest on the Outstanding Bonds is secured by an irrevocable transferrable letter of credit (the "Letter of Credit") issued by Empire of America Federal Savings Bank, a federally chartered savings bank, Buffalo, New York ("Empire"), pursuant to a Letter of Credit Agreement (as defined in the Refunded Bonds Indenture, the "Letter of Credit Agreement"), in favor of the Refunded Bonds Trustee; and

WHEREAS, pursuant to Section 4.01(b)(3) of the Refunded Bonds Indenture the Outstanding Bonds are subject to mandatory redemption by the Authority in whole at the earliest practicable date, at a redemption price of par plus accrued interest to the redemption date, upon receipt of written notice by the Refunded Bonds Trustee from Empire of a default under the Letter of Credit Agreement, and pursuant to said Section of the Refunded Bonds Indenture the Refunded Bonds Trustee has received written notice from Empire of such a default under the Letter of Credit Agreement; and

whereas, the Authority has determined to refund the Outstanding Bonds by depositing with the Escrow Holder sufficient funds to purchase direct and general obligations of the United States of America (the "Government Obligations") that do not permit the redemption thereof at the option of the issuer or any person other than the holder thereof in the aggregate principal amount of \$\frac{1}{2}\$, and the Government Obligations to be so deposited and listed in Exhibit A hereto will mature in principal amounts and bear interest at such times so that sufficient moneys will be available, together with other funds held hereunder, from such maturing principal and interest payments to pay all principal of and interest on the Outstanding Bonds on ________, 1987, when the Outstanding Bonds shall be called for redemption; and

WHEREAS, there will always be, on any date of calculation, sufficient principal amounts of and interest payments on the Government Obligations and cash in the hereinafter created Escrow Account to pay all principal of and interest on the Outstanding Bonds; and

WHEREAS, in order to obtain moneys to purchase the Government Obligations listed in Exhibit A, the Authority has issued its \$12,000,000 principal amount of Housing Finance Authority of St. Johns County, Florida, Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) (the "Refunding Bonds") pursuant to a Resolution of the Authority adopted April 20, 1987, as amended and supplemented (the "Resolution"); and

whereas, upon receipt of such written notice from Empire of such a default under the Letter of Credit Agreement the Refunded Bonds Trustee made a draw under the Letter of Credit in the amount of \$ _____, which is the amount necessary to pay accrued interest on the Outstanding Bonds through the redemption date,

and caused such moneys to be paid to the Escrow Holder to be applied to the payment of the interest on the Outstanding Bonds; and

WHEREAS, simultaneously with such draw under the Letter of Credit the Authority issued the Refunding Bonds as aforesaid and caused proceeds derived from the sale thereof in the amount of \$12,000,000 to be paid to the Escrow Holder to be applied to the payment of the principal of the Outstanding Bonds; and

WHEREAS, pursuant to the Resolution the Authority has provided for the redemption of the Outstanding Bonds on _______, 1987; and

WHEREAS, the Authority hereby irrevocably instructs the Escrow Holder to give notice of such mandatory redemption pursuant to and in the manner required by Section 4.05 of the Refunded Bonds Indenture;

NOW, THEREFORE, in consideration of the foregoing and of the mutual covenants hereinafter set forth, the parties hereto agree as follows:

- 1. Receipt of true and correct copies of the Resolution and the Refunded Bonds Indenture are hereby acknowledged by the Escrow Holder, and reference herein to or citation herein of any provision of said documents shall be deemed to incorporate the same as a part hereof in the same manner and with the same effect as if both were fully set forth herein.
- 2. There is hereby created and established with the Escrow Holder a special irrevocable escrow account designated the "Remington at Ponte Vedra Project Escrow Account" (the "Escrow Account") to be held in the custody of the Escrow Agent.

There will always be, on any date of calculation, sufficient principal amounts of and interest income from the Government Obligations and cash in the Escrow Account to pay all principal of and interest on the Outstanding Bonds.

3. Concurrently with the execution of this Escrow Deposit Agreement (the "Agreement"), the Authority herewith irrevocably deposits or causes to be deposited with the Escrow Holder and the Escrow Holder acknowledges receipt of immediately available moneys in the amount of \$\infty\$, consisting of \$12,000,000 of proceeds of the Refunding Bonds and \$\infty\$ of moneys drawn by the Refunded Bonds Trustee under the Letter of Credit pursuant to Section 4.01(b) of the Refunded Bonds Indenture. Such moneys will be sufficient to purchase, in the Escrow Holder's own name, on behalf of the Authority, \$\infty\$ principal

amount of Government Obligations, listed on Exhibit A. The Developer represents that all charges and expenses of the Trustee and the Paying Agent specified in Section 9.1 of the Refunded Bonds Indenture have been paid as of the date hereof. Concurrently with the execution of this Agreement, the Escrow Holder shall apply \$\frac{1}{2}\$ to the purchase of the Government Obligations described in Exhibit A, such amounts being the cost of the Government Obligations. Such obligations shall then be deposited in the Escrow Account.

Concurrently with the deposit with the Escrow Holder of the Government Obligations, the Escrow Holder shall (i) cancel the Refunded Bonds Indenture; (ii) file appropriate UCC Termination Statements; and (iii) deliver to the Developer any moneys held pursuant to the Refunded Bonds Indenture, other than moneys required for the payment of the Outstanding Bonds.

- 4. The escrow created hereby shall be irrevocable. The holders of the Outstanding Bonds shall have an express lien on all cash and on all securities, equal to the principal amount of the Government Obligations, in the Escrow Account until used and applied in accordance with this Agreement. All such amounts, including matured principal of and interest income from the Government Obligations, shall be applied solely for the payment of the principal of and interest on the Outstanding Bonds, except as herein expressly provided.
- 5. (a) Except as otherwise expressly provided in this Section 5, the Escrow Holder shall have no power or duty to invest any moneys held hereunder or to sell, transfer or otherwise dispose of the Government Obligations listed on Exhibit A.
- , 1987, the Escrow On or before (b) Holder shall cause notice of redemption of the Outstanding Bonds to be given in accordance with Section 4.05 of the Refunded Bonds , 1987, the Escrow Holder shall with-Indenture, and on draw from the amounts held hereunder, including matured principal of and interest income on the Government Obligations, an amount equal to the principal of and interest on the Outstanding Bonds _, 19**8**7, by reason of such becoming due and payable on redemption and pay such amounts to the bank or banks at which such Outstanding Bonds are payable in accordance with their terms. The liability of the Escrow Holder to make the payments required by this Section 5(b) shall be limited to the moneys and Government Obligations in the Escrow Account.
- (c) Notwithstanding any other provision of this Agreement, the Authority hereby directs that no part of the proceeds of the Refunding Bonds or of the moneys or funds in the Escrow Account shall be used, at any time directly or indirectly in a manner which, if such use had been reasonably anticipated on the date of issuance of the Refunding Bonds would have caused any

of such Refunding Bonds to be an "arbitrage bond" under Section 148 of the Internal Revenue Code of 1986 (herein called the "Code"), as amended, and the regulations of the Treasury Department thereunder proposed or in effect at the time of such use and applicable to obligations issued on the date of issuance of the Refunding Bonds.

- (d) At the written request of the Authority and upon compliance with the condition hereinafter stated the Escrow Holder shall have the power to sell, transfer or otherwise dispose of or request the redemption of the Government Obligations acquired hereunder and to substitute for the Government Obligations other Government Obligations (the "Substituted Obligations"), which are not subject to redemption prior to maturity except at the option of the holder thereof. The Authority hereby covenants and agrees that it will not request the Escrow Holder to exercise any of the powers described in the preceding sentence unless (i) an independent certified public accountant shall certify that after such transaction the principal amount of and interest income on the Substituted Obligations will, together with any other moneys available for the purpose, be sufficient to pay, as the same __, 1987, all principal of become due at redemption on and interest on the Outstanding Bonds which have not been paid previously; (ii) the amounts and dates of the anticipated transfers from the Escrow Account to the bank or banks at which such Outstanding Bonds are payable in accordance with their terms will not be diminished or postponed thereby; and (iii) the Escrow Holder shall receive an unqualified opinion of nationally recognized attorneys on the subject of municipal bonds to the effect that such disposition and substitution or purchase would not cause any of such Refunding Bonds to be an "arbitrage bond" within the meaning of Section 148 of the Code and the regulations thereunder in effect on the date of such disposition, substitution or purchase and applicable to obligations issued on the date of issuance of the Refunding Bonds.
- 6. All Government Obligations, together with any income and interest thereon, remaining in the Escrow Account after all the Outstanding Bonds have been duly paid in full according to their terms shall be transferred to Empire.
- 7. (a) The Escrow Holder shall not be liable for any loss resulting from any investment made pursuant to this Agreement in compliance with the provisions hereof. The Escrow Holder shall have no lien whatsoever on any of the moneys on deposit in the Escrow Account for the payment of fees and expenses for services rendered by the Escrow Holder under this Agreement or otherwise, or any right of offset with respect thereto. The fees and charges of the Escrow Holder for performing its services required by this Agreement and the fees and expenses of the Trustee and Paying Agent for the Outstanding Bonds until the payment thereof

will be \$\frac{1}{2} and will be separately paid by the Developer on the date of the delivery of the Refunding Bonds.

- (b) In the event of the Escrow Holder's failure to account for any of the Government Obligations or moneys received by it, said Government Obligations or moneys shall be and remain the property of the Authority in trust for the holders of the Outstanding Bonds, as herein provided, and if for any reason such Government Obligations or moneys are not applied as herein provided, the assets of the Escrow Holder shall be impressed with a trust for the amount thereof until the required application shall be made.
- 8. This Agreement shall terminate when all transfers required to be made by the Escrow Holder under the provisions hereof shall have been made.
- g. The Escrow Holder shall not be liable for the accuracy of the calculations as to the sufficiency of the Government Obligations and other moneys available for such purpose to pay the Outstanding Bonds. So long as the Escrow Holder applies the Government Obligations and moneys as provided herein, and complies fully with the terms of this Agreement, the Escrow Holder shall not be liable for any deficiencies in the amounts necessary to pay the Outstanding Bonds caused by such calculations. Any deficiencies shall immediately be paid by the Developer.
- 10. This Escrow Deposit Agreement shall constitute irrevocable instructions of the Authority to call all of the Outstanding Bonds on ______, 1987, pursuant to the mandatory redemption of the Outstanding Bonds under Section 4.01(b)(3) of the Refunded Bonds Indenture.
- ll. If any one or more of the covenants or agreements provided in this Agreement should be determined by a court of competent jurisdiction to be contrary to law, such covenant or agreement shall be deemed and construed to be severable from the remaining covenants and agreements herein contained and shall in no way affect the validity of the remaining provisions of this Agreement.
- 12. All the covenants, promises and agreements contained in this Agreement shall bind and inure to the benefit of the successors and assigns of the parties hereto, whether so expressed or not.
- 13. This Agreement shall be governed by the applicable laws of the State of Florida.

14. This Agreement may be executed in several counterparts, all or any of which shall be regarded for all purposes as one original and shall constitute and be but one and the same instrument.

IN WITNESS WHEREOF, the parties hereto have each caused this Agreement to be executed by their duly authorized officers or elected officials and their corporate seals to be hereunder affixed and attested as of the date first above written.

| (SEAL) | HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA |
|-----------|---|
| Attest: | |
| Secretary | By |
| (SEAL) | JACKSONVILLE VENTURES, INC. |
| Attest: | |
| Secretary | By President |
| (SEAL) | as Escrow Holder |
| Attest: | |
| Title: | Title |
| (SEAL) | SUN BANK, NATIONAL ASSOCIATION, as Trustee under the Refunded Bonds Indenture |
| Attest: | |
| Secretary | By |
| Secretary | 11010 |

EXHIBIT A

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| | |
| 2 3 | LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT |
| 4 | by and between |
| 5 | JACKSONVILLE VENTURES, INC. |
| 6 | and |
| 7 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| | |
| 8 | Dated as of June 1, 1987 |
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| | |
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| | · |
| | |
| 9 | |
| 10 | \$12,000,000 |
| 11 | HOUSING FINANCE AUTHORITY |
| 12 | OF ST. JOHNS COUNTY, FLORIDA |
| 13 | Multifamily Housing Refunding Revenue Bonds |

(Remington at Ponte Vedra Project)

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THIS LETTER OF CREDIT AND REIMBURSEMENT AGREEMENT dated as of 75 June 1, 1987 (the "Credit Agreement") by and between JACKSONVILE 76 VENTURES, INC., a Delaware Corporation having an office at 77 Building 6, Rotterdam Industrial Park, Rotterdam, New York 13206 78 (the "Company), and EMPIRE OF AMERICA FEDERAL SAVINGS BANK, a 79 stock savings bank organized and existing under the laws of the 80 United States with its home office at One Main Place, Buffalo, New 81 York 14202 (the "Bank"). 82

WITNESSETH:

WHEREAS, the Company has requested the Housing Finance Authority of St. Johns County, Florida (the "Issuer") to undertake a Project (the "Project") consisting of (a) the issuance of \$12,000,000 aggregate principal amount of the Issuer's Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) (the "Bonds") pursuant to the Indenture dated as of June 1, 1987 between the Issuer and Sun Bank, National Association, as Trustee (the "Trustee") (the "Inde are") and (b) the lending of the proceeds thereof to the Company to facilitate the refinance of a 92 facility consisting of a 344 unit apartment complex and related 93 amenities located at Ponte Vedra Lakes Boulevard, Ponte Vedra 94 Beach, Florida (the "Facility"); and

WHEREAS, the Company has requested the Bank to issue its 96 irrevocable, transferable, collateralized letter of credit in 97 favor of the Trustee in the amount of \$ 98 "Letter of Credit") to secure repayment of the Bonds, thereby 99 enhancing the marketability thereof; and 100

WHEREAS, the Bank has agreed to issue the Letter of Credit 101 subject to the terms and conditions hereof; and 102

WHEREAS, as security for the reimbursement to the Bank of 103 amounts drawn under the Letter of Credit, and any expenses 104 incurred by the Bank in connection therewith, the Company will 105 grant to the Bank a subordinate mortgage lien upon the Facility 106 pursuant to the Mortgage, Security Agreement and Assignment of 107 Rents and Leases dated as of June 1, 1987 (the "Bank Mortgage"); 108 109 and

WHEREAS, the Company has agreed to enter into this Agreement 110 with the Bank in order to make provision for the terms and 111 conditions governing issuance of the Letter of Credit. 112

NOW, THEREFORE, the Company and the Bank hereby agree as 113 114 follows:

- 1.01 Certain Defined Terms. As used in this Agreement, the 116 following terms shall have the following meanings (such meanings 117
- to be equally applicable to both the singular and plural forms of 118
- the terms defined). Any capitalized terms not defined herein 119
- shall have the meanings assigned to them in the Indenture and the 120
- Loan Agreement: 121
- Account shall mean the bank account opened at the Main Office 122
- of the Bank at Buffalo, New York, for the purpose of receiving and 123
- holding certain advance payments to be made by the Company 124
- pursuant to Section 3.02, hereof. 125
- Advance shall mean each amount drawn pursuant to the Letter 126
- of Credit. 127
- Anniversary Date shall mean June 1 of each year. 128
- Bank Mortgage shall mean the Mortgage, Security Agreement and 129
- Assignment of Rents and Leases dated as of June 1, 1987, from the 130
- Company to the Bank, securing the obligations of the Company under 131
- the Demand Note. 132
- Bank Rate shall mean a rate of interest which is two (2%) 133
- percent above the Prime Rate (defined below), provided, however, 134
- that if such Bank Rate should at any time exceed the maximum 135
- interest rate allowed by law, the Bank Rate shall be such maximum 136
- interest rate as is allowed by law. 137
- Bond or Bonds shall mean any one or more, as the case may be, 138
- of the Issuer's Multifamily Housing Refunding Revenue Bonds, 139
- (Remington at Ponte Vedra Project) which are issued under and 140
- secured by the Indenture. 141
- Bond Fund shall mean the Bond Fund established pursuant to 142
- 143 the Indenture.
- Bond Resolution shall mean the bond resolution adopted by the 144
- Issuer, authorizing the issuance and sale of the Bonds, as the 145
- same may be amended, modified or supplemented from time to time. 146
- Business Day shall mean any day of the year other than a 147
- Saturday, Sunday or a day on which banks located in the States of 148
- New York or Florida are required or authorized to remain closed. 149
- Closing Date shall mean the date of delivery of the Bonds to 150
- the initial purchasers thereof pursuant to the Indenture and the 151
- delivery to the Trustee of the Letter of Credit. 152
- Code shall mean the Internal Revenue Code of 1986, as 153
- amended, and the applicable regulations of the Treasury Department 154
- 155 thereunder.

Collateral shall mean the securities or mortgages delivered to the Collateral Agent and pledged by the Bank to the Trustee for the purpose of securing the obligations of the Bank under the

159 Letter of Credit.

Collateral Agent shall mean Manufacturers and Traders Trust
Company, Buffalo, New York, as custodian of the Collateral
pursuant to the terms of the Depository Agreement, or any
successor thereto appointed in accordance with the Collateral
Agreement.

Collateral Agreement shall mean the Collateral and Reimbursement Agreement dated as of June 1, 1987, between the Bank and the Trustee, pursuant to which the Bank has undertaken to pledge the Collateral, and governing the rights of the Trustee therein.

170 <u>Company</u> shall mean Jacksonville Ventures, Inc., a Delaware 171 Corporation.

Demand Loan shall mean such amounts of Advances, related charges and expenses for which, in the aggregate, the Company is indebted to the Bank from time to time pursuant to this Credit Agreement.

Demand Note shall mean the promissory note executed by the Company in favor of the Bank, in substantially the form of Exhibit 178 "B" annexed hereto.

Depository Agreement shall mean the Depository Agreement dated as of June 1, 1987, among the Bank, the Trustee and the Depository, pursuant to which the Depository agrees to act as custodian of the Collateral.

183 <u>Event of Default</u> shall mean any of the circumstances 184 described in Section 7.01 hereof.

185 Expiration Date shall mean _____, or such earlier 186 date on which the Letter of Credit expires in accordance with its 187 terms and Section 2.01 hereof.

188 <u>Final Draft</u> shall mean a draft under the Letter of Credit for 189 the purpose of paying the entire outstanding balance of principal 190 and/or interest payable on account of the Bonds.

Financing Documents shall mean the Bonds, the Indenture, the
Letter of Credit, the Letter of Credit Documents, the Loan
Agreement, the Note, the Mortgage, and any other document now or
hereafter executed by the Issuer, the Company, the Bank, or
Trustee in favor of or for the benefit of the holders of the Bonds
which affects the rights of the holders of the Bonds in or to the
Facility, in whole or in part, or which secures or guarantees any
sum due under the Bonds or any other Financing Document.

- 199 <u>Indenture</u> shall mean the Indenture dated as of June 1, 1987 200 between the Issuer and the Trustee, pursuant to which the Bonds 201 are authorized to be issued and secured, as the same may be 202 amended from time to time.
- Interest <u>Draft</u> shall mean a draft under the Letter of Credit for the purpose of paying an installment of interest payable on account of the Bonds and the Administrative Fees payable concurrently therewith.
- Interest Payment Date shall mean any one or more, as the case 208 may be, of each June 1 and December 1 after the date hereof 209 beginning December 1, 1987, as long as the Bonds are outstanding.
- 210 <u>Issuer</u> shall mean the Housing Finance Authority of St. Johns 211 County, Florida.
- LC Fee Agreement shall mean the Letter of Credit Fee
 Agreement dated as of June 1, 1987, by and among the Bank, the
 Company and High Point Dallas Ventures, Inc., Remington Hill
 Ventures, Inc. and Winridge Aurora Ventures, Inc., a copy of which
 is annexed hereto as Exhibit C, which sets forth the Letter of
 Credit Fees payable by the Company in consideration of the Letter
 of Credit.
- Letter of Credit shall mean the Letter of Credit issued by 220 the Bank on behalf of the Company in favor of the Trustee, 221 substantially in the form of Exhibit A annexed hereto.
- Letter of Credit Documents shall mean this Credit Agreement, and the Demand Note.
- Letter of Credit Fee shall mean the annual fee payable to the 225 Bank on account of its issuance of the Letter of Credit, as 226 described in Section 2.02.
- Loan shall mean the loan to the Company by the Issuer of the proceeds of the Loan Fund pursuant to the terms of the Loan Agreement.
- Loan Agreement shall mean the Amended and Restated Loan Agreement dated as of June 1, 1987 by and between the Issuer and the Company.
- 233 <u>Loan Fund</u> shall mean the Mortgage Loan Fund created pursuant 234 to the Indenture.
- Mortgage shall mean the Mortgage, Security Agreement and Assignment of Rents and Leases) dated as of June 1, 1987, from the Company to the Issuer constituting a first mortgage lien and security interest upon the Facility.

Mortgage Note shall mean the promissory note executed by the 240 Company in favor of the Issuer pursuant to the Loan Agreement for the purpose of evidencing the Loan.

Official Statement shall mean the Official Statement dated June __, 1987 relating to the sale of the Bonds to the initial purchasers thereof.

Outstanding, when used with reference to the Bonds, shall have the meaning assigned thereto in the Indenture.

Person shall mean an individual, partnership, corporation (including a business trust), joint stock company, trust, unincorporated association, joint venture or other entity, or a foreign state or political subdivision thereof or any agency of such state or subdivision.

252 <u>Prime Rate</u> shall mean a fluctuating interest rate per annum 253 equal at all times to the rate of interest announced publicly from 254 time to time by Citibank, N.A. in New York, New York, is its prime 255 rate.

256 <u>Principal Draft</u> shall mean a draft under the Letter of Credit 257 for the purpose of paying an installment of principal payable on 258 account of the Bonds.

Qualified Account Investments shall mean

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(i) Government Obligations; or

- (ii) time deposits in or certificates of deposit issued by any bank located within the United States having combined capital, surplus and undivided profits of at least \$10,000,000, the deposits of which are insured by the Federal Deposit Insurance Corporation, or any successor agency (the "FDIC"), or time deposits in or certificates of deposit issued by any savings and loan association located within the United States (including the Bank), the deposits of which are insured by the Federal Savings and Loan Insurance Corporation, or any successor agency (the "FSLIC"), but only to the extent that such time deposits or certificates of deposit are fully insured by the FDIC or the FSLIC; or
- (iii) obligations, debentures, notes or other evidences of indebtedness issued or guaranteed, directly or indirectly, by any of the following: Association for Cooperatives, Federal Home Loan Association System; Export-Import Association of the United States; Federal Land Banks; Federal National Mortgage Association (senior or collateralized debt only); Federal Home Loan Mortgage Corporation; Farmers' Home Administration; Tennessee Valley Authority; Federal Farm Credit System; the Government National Mortgage Association; or other successor agencies; or

- (iv) uncollateralized certificates of deposit of or investment agreements with any bank or bank holding company with undivided capital and surplus of at least \$50,000,000, the unsecured debt of which or of its parent holding company, if any, is rated in one of the two highest letter rating categories by a nationally recognized securities credit rating agency; or
- (v) money market obligations customarily invested in by
 the Bank upon a one-time written approval of each such
 obligation by the Bank.

Redemption Draft shall mean a draft under the Letter of Credit for the purpose of paying the amount of any mandatory or optional prepayment of principal and interest on account of the Bonds.

Replacement Letter of Credit shall mean an irrevocable,
direct-pay letter of credit substantially in the form of the
Letter of Credit, satisfactory to the Trustee, the term of which
shall commence on or before the Expiration Date of the Letter of
Credit, and which is referred to in the Indenture as an Alternate
Security.

Stated Amount shall mean the maximum amount available to be drawn under the Letter of Credit, which shall be, as of any date, an amount equal to the principal amount of the Bonds then outstanding, plus 210 days' interest on the Bonds then outstanding calculated from the Closing Date to and including the Expiration Date at the interest rate payable on account of the Bonds.

Trustee shall mean Sun Bank, National Association, a national banking association having its principal corporate trust office at 311 Fort Worth, Texas, as Trustee under the Indenture.

1.02 <u>Accounting Terms</u>. All accounting terms not specifically defined herein shall be construed in accordance with generally accepted accounting principles consistently applied, except as otherwise stated herein.

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ARTICLE II THE LETTER OF CREDIT

2.01 The Letter of Credit. The Bank agrees, on the terms and 317 conditions hereinafter set forth, and at the request of the 318 Company and for the account of the Company, to open its 319 irrevocable, transferable, collateralized Letter of Credit, with 320 an Expiration Date which is the earliest of (i) June 15, 19_; 321 (ii) the date of the funding of the Final Draft presented under 322 the Letter of Credit; (iii) the date of receipt by the Bank from 323 the Trustee of a certificate stating that the entire principal of 324 and interest due on the Bonds and all other amounts secured by the 325 Letter of Credit have been paid in full or duly provided for in 326

accordance with the Indenture; or (iv) receipt by the Bank from the Trustee of a certificate stating that the Company has caused a Replacement Letter of Credit to be delivered to the Trustee and that the Replacement Letter of Credit is in effect as of the date of the certificate.

- 2.02 Amount of the Letter of Credit. The Letter of Credit shall be issued from the Closing Date to and including the Expiration Date in the amount of \$ "Stated Amount"). The Stated Amount shall be, as of any date, an amount equal to the principal amount of the Bonds then Outstanding (as defined in the Indenture) plus 210 days interest thereon calculated at the rate of ____ % per annum. The Stated Amount shall be subject to automatic reduction, from time to time, following the Closing Date on account of periodic redemption of the Bonds, without the necessity of any written amendment thereof. The Letter of Credit will be available to the Trustee for the purpose of making draws thereon to pay, from time to time, principal and interest on account of the Bonds, when and as such amounts are payable pursuant to the Indenture and the Loan Agreement.
- 2.03 Letter of Credit Draws. Under the terms of the Letter of Credit, the Trustee shall be entitled to make draws against the Letter of Credit, on such dates as are appropriate to permit the Trustee to obtain funds to pay in a timely manner those amounts which are payable from time to time in accordance with the Indenture, as follows:

- (a) Semi-annually, thirty three (33) days prior to each Interest Payment Date, (unless such draw is required by the terms of the Indenture to be made ninety-three (93) days prior to such date, in which event the draw will be made ninety-three (93) days in advance thereof), an Interest Draft in an amount equal to the amount of interest payable on account of the principal amount of the Bonds then Outstanding and the amount of Administrative Fees payable concurrently therewith.
- (b) Semi-annually, thirty-three (33) days prior to each scheduled mandatory prepayment of the principal of the Bonds in accordance with the Indenture, (unless such draw is required by the terms of the Indenture to be made ninety-three (93) days prior to such date, in which event the draw will be made ninety-three (93) days in advance thereof), a Principal Draft in an amount equal to the applicable principal prepayment then payable in accordance with the Indenture and the Loan Agreement.
- (c) Periodically, not more than thirty-three (33) days prior to each unscheduled mandatory or optional prepayment of principal of the Bonds pursuant to the Indenture and the Loan Agreement, if any, (unless such draw is required by the terms

- of the Indenture to be made ninety-three (93) days prior to 375 such date, in which event the draw will be made ninety-three 376 (93) days in advance thereof), a Redemption Draft in an 377 amount equal to the principal to be prepaid plus accrued 378 interest thereon. 379
 - (d) In a single drawing, thirty-three (33) days prior to the date on which the aggregate unpaid principal amount of, and unpaid interest on, all of the Bonds Outstanding are due and payable under the Indenture (at scheduled maturity upon acceleration or upon redemption as a whole), (unless such draw is required by the terms of the Indenture to be made ninety-three (93) days prior to such date, in which event the draw will be made ninety-three (93) days in advance thereof), a Final Draft in an amount equal to the entire principal balance of the Bonds then Outstanding, plus interest accrued thereon.

Simultaneously with the payment by the Bank of any amount drawn by the Trustee under the Letter of Credit, the Bank shall give the Company telephonic notice by telephone or telecopy, followed by written confirmation sent on the same Business Day as the date of payment, confirming the fact that such payment was made and the amount of such payment.

2.04 Letter of Credit Fees.

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The Company will pay or cause to be paid to the Bank with respect to the Letter of Credit throughout the term thereof, an annual Letter of Credit Fee, which Letter of Credit Fee shall be 400 calculated and paid in accordance with the LC Fee Agreement. 401 LC Fee Agreement provides for certain payments on account of the 402 403 Letter of Credit and also letters of credit issued by the Bank in connection with three other projects. A copy of the LC Fee 404 Agreement is annexed hereto as Exhibit C. 405

The Company shall also reimburse the Bank (or, at the request 406 of the Bank, pay directly) all costs and expenses related to the 407 maintenance of the Collateral by the Bank with the Collateral 408 Agent, including the fees and charges of the Collateral Agent and 409 410 all accounting and audit costs imposed in connection with the fulfillment of requirements of the rating agency providing the 411 412 rating for the Bonds, and any fees attributable to the valuation 413 of the Collateral, whether such valuations are made by the Bank or by an independent third party. 414

ARTICLE III REIMBURSEMENT OF ADVANCES

3.01 Reimbursement of Advances. 416

(a) Unless such amounts shall have been paid to the Bank by means of advance payments made in accordance with the provisions of Section 3.02, the Company will unconditionally pay to the Bank, in immediately available funds on the same Business Day as any amount is drawn under the Letter of Credit as an Advance for the purpose of paying principal and/or interest on account of the Bonds (i) without the necessity of notice or demand by the Bank, a sum equal to the amount which shall have been drawn under the Letter of Credit, (ii) upon notice and demand by the Bank, any and all reasonable out-of-pocket legal, management or accounting charges and expenses which the Bank may pay or incur relative to the Letter of Credit with respect to (aa) the collection of any amount not paid by the Company when due, or (bb) the management or he Facility, in the event the Bank exercises any rights relating thereto under the Bank Mortgage, and (iv) upon notice and demand from the Bank any amounts payable by the Bank in connection with Collateral Agreement or the Depository Agreement, all of which amounts described in this Section 3.01(a) shall constitute in the aggregate a Demand Loan until paid.

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- Any Demand Loan outstanding from time to time shall bear interest computed from and including the date of each Advance or the date on which any other amounts constituting a Demand Loan are incurred, to and including the date of payment in full thereof, at a fluctuating interest rate per annum (computed on the basis of a year of 365 or 366 days, with calculations based on the actual number of days elapsed) equal at all times to Bank Rate in effect from time to time, with each such change in the Bank Rate to take effect simultaneously with the corresponding change in the Prime Rate. In the event any Demand Loan is not repaid in full by the fifth (5th) Business Day after notice from the Bank and demand for payment, the interest rate thereon shall be increased from the date of such demand to a rate two (2.0%) percent above the Bank Rate (or such lower rate which is the maximum legally permissible rate at such time) until paid.
- (c) If any change in any law or regulation or in the interpretation thereof by any court or administrative or governmental authority charged with the administration thereof shall either (i) impose, modify or deem applicable any reserve, special deposit or similar requirement against letters of credit issued by, or assets held by, or deposits in or for the account of, the Bank (which would be applicable to the Letter of Credit), or (ii) impose on the Bank any other condition regarding this Credit Agreement, the Letter of Credit or any Collateral therefor, and the result of any event referred to in clause (i) or (ii) above shall be to increase the cost to the Bank of issuing or maintaining the Letter of Credit or of holding the Collateral therefor, then, upon demand by the Bank, the Company shall immediately pay to the Bank, from time to time as specified by the Bank, additional amounts which shall be sufficient to compensate

the Bank for such amounts actually incurred and from the date demanded until payment in full thereof such amounts shall bear interest at the Bank Rate. A certificate as to such increased cost incurred by the Bank as a result of any event mentioned in clause (i) or (ii) above, submitted by the Bank to the Company, shall be conclusive as to the amount thereof except for manifest error.

- (d) The obligation of the Company to make each payment under this Credit Agreement shall be absolute and unconditional and shall not be subject to any defense or be affected by any right of setoff, counterclaim or recoupment which the Company may now or hereafter have against the Issuer, the Trustee, the owner of any Bond, the Bank or any other Person for any reason whatsoever.
- 3.02 Advance Payments by the Company. In order to secure the repayment of the Advances to be made by the Bank to the Trustee pursuant to draws by the Trustee under the Letter of Credit, and as a further inducement to the Bank for its agreement that such drawings may be made on a "direct pay" basis to the Trustee, the Company agrees to make advance payments to the Bank, prior to drawings under the Letter of Credit by the Trustee, so as to assure that the Bank will have in its possession, on or prior to the date of any drawing under the Letter of Credit, all amounts which the Trustee will draw under the Letter of Credit, as follows:
 - (a) On the fifteenth (15th) day of each and every month during the term of the Letter of Credit, commencing on the fifteenth (15th) day of the sixth (6th) month preceding the Interest Payment Date on which first mandatory redemption of principal on account of the Bonds to be made in accordance with the terms of the Indenture, an amount equal to one-sixth (1/6th) of the amount of the next scheduled mandatory prepayment of principal as provided under the terms of the Indenture. In the event the first Interest Payment Date is less than six (6) months after the Closing Date, the advance monthly payments to be made prior to the first Interest Payment Date shall be in an amount equal to the amount of such payment due on the first Interest Payment Date, divided by the number of months preceding the first Interest Payment Date.
 - (b) On the fifteenth (15th) day of each and every month during the term of the Letter of Credit, commencing on the fifteenth (15th) day of the sixth (6th) month preceding the first Interest Payment Date, an amount equal to one-sixth (1/6) of the interest payment payable on account of the Bonds on the next succeeding Interest Payment Date and the Administrative Fees payable concurrently therewith. In the event the first Interest Payment Date is less than six (6) months after the Closing Date, the advance monthly payments

to be made prior to the first Interest Payment Date shall be in an amount equal to the amount of such payment due on the first Interest Payment Date, less accrued interest paid to the Trustee on the Closing Date, divided by the number of months preceding the first Interest Payment Date.

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- (c) Ten (10) Business Days in advance of any drawing under the Letter of Credit for purposes of a Redemption Draft to cover unscheduled mandatory or optional prepayment of principal an amount equal to any payment to be made under the terms of the Loan Agreement or the Indenture, such payments to the Bank to include the amount of principal to be prepaid, together with interest in such amount as is required under the Loan Agreement or Indenture (less the applicable portion of any amounts on deposit in the Account), to be made concurrently with such payment. In the event the applicable provisions of the Loan Agreement or the Indenture require the payment of a premium on account of such prepayment, the Company shall, concurrently with the payment of the other amounts described in this subparagraph, give the Bank satisfactory assurance of the payment to the Trustee of an amount equal to the am at of such premium.
- (d) Ten (10) Business Days prior to the Interest Payment Date immediately preceding the Expiration Date of the Letter of Credit, an amount equal to the principal balance of the Bonds then Outstanding (as defined in the Indenture) together with interest accrued thereon through the maturity date thereof and all Administrative Fees then payable (less the applicable portion of any amounts on deposit in the Account).
- (e) In the event any such payment is not made on the date specified in the preceding subparagraphs (a) through (d), the Bank may impose a penalty equal to four (4%) percent of the amount of such delinquent payment to defray additional costs incurred in servicing the transaction as a result of the delinquency.
- (f) The payments so made by or on behalf of the Company shall be deposited in a bank account (the "Account") to be maintained by the Bank at its Main Office, at Buffalo, New York. The Account shall be opened in the name of the Company and all amounts on deposit in the Account from time to time, including interest earned thereon, shall be owned by the Company. Withdrawals from the Account shall be restricted so that (i) the Bank shall be permitted to withdraw from the Account such amount as may be required to provide immediate reimbursement to the Bank for drawings made by the Trustee pursuant to the Letter of Credit (such withdrawals to be made without notice to the Company), and (ii) the Company may, from time to time, but no more frequently than semi-annually, with the consent of the Bank, which consent shall not be

withheld so long as no Event of Default exists under the terms of this Credit Agreement, withdraw interest earned on the amounts on deposit in the Account. The funds on deposit in the Account from time to time shall be invested by the Bank in Qualified Account Investments. The Company shall select the type or types of Qualified Account Investment to be purchased with funds on deposit in the Account provided the maturities thereof shall be selected so as to allow for the availability of sufficient amounts to reimburse the Bank in a timely manner for amounts to be advanced pursuant to drawings under the Letter of Credit.

- (g) In any case where the Loan Agreement or the Indenture require the prior consent of the Bank before the Company may make an optional prepayment of principal of the Mortgage Loan, the Bank shall give its consent thereto when the Company shall have deposited or caused to be deposited in the Account the entire amount of principal and accrued interest required in connection with such prepayment.
- (h) All payments described in this Section, as well as in installments of the annual Letter of Credit Fee described in Section 2.04(b), shall be id to the Bank on or before the applicable due date of each, by wire transfer to:

Irving Trust Company
New York, New York
ABA 0210-0067-8
For credit to:
Empire of America Federal Savings Bank
Buffalo, New York
Account No. 890-0025-247
Attention: Letter of Credit Desk
Securities Investments Department

Any such payment shall be deemed made when Irving Trust Company credits the payment to the Bank's account, and it shall be the duty of the Company to see to it that appropriate fund transfer arrangements are made to assure the proper initiation of each wire transfer to ensure timely credit thereof to such account. The late payment penalty described in Section 3.02(e) shall not be imposed in the event of a delinquency caused by delays in the wire transfer system, provided the Company shall have made arrangements sufficient in ordinary circumstances to assure timely transfer of the funds in question.

The Bank may, from time to time, by notice to the Company, given in accordance with the terms of this Credit Agreement, change the wire transfer instructions or require that payments be made in some other commercially acceptable manner.

The Company may, on any Anniversary Date commencing with the second Anniversary Date, and at the Company's option, elect to discontinue making the advance payments referred to in subparagraphs (a) and (b) above to the Bank, and instead to remit such amounts, on the same dates provided in subparagraphs (a) and (b) to the Trustee for deposit in the appropriate account of the Bond Fund under the Indenture. Such election shall be made by written notice to the Bank and the Trustee, such notice to be given within thirty days of the Anniversary Date as of which such change is to be effective.

Upon expiration of the Letter of Credit and satisfaction by the Company of all of its payment obligations to the Bank, or in the event the Company elects to make the advance payments referred to in this Section directly to the Trustee, any balance remaining in the Account shall be paid over to the Company.

3.03 Amounts Received from Trustee. Any amounts received by the Bank from the Trustee following redemption in full of the Bonds shall be applied first to pay all outstanding obligations of the Company to the Bank under the Credit Agreement, and any amounts remaining thereafter shall promptly be paid over to the Company.

ARTICLE IV CONDITIONS

- 4.01 <u>Issuance of the Letter of Credit</u>. The obligation of the Bank to issue the Letter of Credit and make the Advances pursuant thereto is subject to the receipt by the Bank of all of the following, each in form and substance satisfactory to the Bank and its counsel:
 - (a) the Demand Note, duly executed by the Company;
- (b) true copies of each of the Financing Documents, together with evidence of the due authorization thereof by the parties executing the same;
 - (c) evidence of satisfaction by the Company and all other parties thereto, as the case may be, of all conditions precedent to the effectiveness of the Financing Documents;
 - (d) a copy of the Bond Resolution, certified by an appropriate officer or official of the Issuer as a true and complete copy, which certificate shall state that the Bond Resolution in the form attached is in full force and effect on such date;
 - (e) a favorable opinion of Foley & Lardner, as Bond Counsel, to the effect that the issuance of the Bonds and the

execution thereof have been duly authorized, that all conditions precedent to the delivery thereof have been fulfilled, and that the interest on the Bonds will be exempt from federal income tax;

- (f) favorable opinions of counsel for the Company as to such matters as the Bank may reasonably request;
- (g) copies of all other opinions of counsel delivered in connection with the issuance of the Bonds, indicating, if the Bank shall so request, that it may rely thereon;
 - (h) a certificate of the Company stating that:
 - (i) the representations and warranties contained in Section 5.01 of this Agreement, and in Section 2.2 of the Loan Agreement are correct on and as of the Closing Date; and
 - (ii) no event has occurred and is continuing, or would result from issuance of the Letter of Credit or the making of any Advance thereunder, which constitutes an Event of Default or would constitute such an Event of Default, but for the requirements that notice be given or time elapse or both;
- (i) such financial statements of the Company, certified as being true and correct and having been prepared in accordance with generally accepted accounting principles consistently applied, as the Bank shall have requested;
- (j) evidence that all conditions precedent to the issuance and sale of the Bonds pursuant to the bond purchase agreement between the Issuer and the initial purchasers of the Bonds, dated June ___, 1987 (the "Bond Purchase Agreement") have been fulfilled without any waiver thereof except for a waiver consented to in writing by the Bank;
- (k) confirmation of the due execution and authentication of the Bonds in accordance with the Indenture and the Bond Purchase Agreement; and
- (1) such other documents, instruments, approvals (and, if requested, duplicate counterparts or certified duplicates of executed copies thereof), opinions and title evidence relative to the Facility as the Bank may reasonably request.

695 ARTICLE V

696 REPRESENTATIONS, WARRANTIES AND RATIFICATIONS

- 5.01 Representations and Warranties of the Company. The 698 Company represents and warrants that:
 - (a) The Company is a corporation duly organized and existing under the laws of the State of Delaware and duly qualified under the laws of the State of Florida, and has all requisite power, capacity and authority to conduct its business as now conducted and as presently contemplated, to incur the borrowings, including a Demand Loan hereunder, and to consummate the transactions contemplated hereby.
 - (b) The execution, delivery and performance by the Company of each of the Letter of Credit Documents to which it is or will be a party are within the Company's capacity and power and have been duly authorized by all necessary action by the Company and do not contravene (i) the Company's certificate of incorporation or by-laws, (ii) any contractual restriction, or, to the best of the Company's knowledge, any law, order or judgment binding on or affecting the Company or any of its property, and do not result in or require the creation of any lien, security interest or other charge or encumbrance (other than pursuant to or permitted by the Indenture or the Mortgage) upon or with respect to any of the Company's property.
 - (c) No authorization, permit or approval or other action by, and no notice to or filing with, any governmental authority or regulatory body is required for the due execution, delivery and performance by the Company of any Letter of Credit Document to which it is or will be a party.
 - (d) This Credit Agreement is, and each other Letter of Credit Document to which the Company will be a party, when executed and delivered hereunder will be, a legal, valid and binding obligation of the Company enforceable against the Company in accordance with their respective terms, subject to the limitations thereof by bankruptcy, insolvency or other laws affecting the rights of creditors.
 - (e) To the best of the Company's knowledge, there is no pending or threatened action or proceeding affecting the Company before any court, governmental agency or arbitrator, which may materially adversely affect the financial condition or operations of the Company.
- 736 (f) The principal office of the Company, as of the date of this Agreement, is located at Building 6, Rotterdam 738 Industrial Park, Rotterdam, NY 13206.

739 (g) There has been no material adverse change in the 740 financial condition of the Company since the period covered 741 by financial statements delivered to the Bank in connection 742 with the Company's application for the Letter of Credit.

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- The information concerning the Company contained in (h) the Official Statement and the application submitted by the Company to the Bank in connection with the issuance of the Letter of Credit is true and correct in all material respects. The Company agrees to indemnify and hold harmless the Bank from and against any and all claims, damages, losses, liabilities, costs or expenses whatsoever which the Bank may incur (or which may be claimed against the Bank by any entity or entities whatsoever) by reason of or in connection with (i) any untrue statement or alleged untrue statement of a material fact, or any omission to state a material fact necessary in order to make any such statements concerning the Company made, in the light of the circumstances under which they were made, not misleading, as contained in the Official Statement, or (ii) any other information or data provided by ...e Company submitted or distributed in connection therewith or in its application to the Bank in connection with the Letter of Credit.
- (i) The Company's representations set forth in Section 2.02 of the Loan Agreement are ratified, confirmed and restated, and shall survive the Closing Date and the execution and delivery of this Credit Agreement.
- 765 5.02 Ratification of Liens on and Security Interests in the 766 Facility. The Company hereby grants and mortgages to the Bank and 767 ratifies, confirms and acknowledges the Bank's rights, liens on 76**8** and security interests in the Facility pursuant to the Second 769 Mortgage, subject only to the prior rights, liens and security 770 interests of the Trustee arising by virtue of the Indenture. 771 payment by the Bank to the Trustee of an amount equal to the 772 entire Outstanding principal balance of the Bonds and accrued 773 interest payable pursuant to the Indenture and satisfaction of the 774 other obligations of the Company under the Loan Agreement, the 775 Bank shall succeed fully to the rights of the Issuer in the collateral secured by the Mortgage. The Company agrees to execute, at the Bank's request, such additional or further 776 777 security agreements and financing statements and other documents 778 779 in order more fully to perfect, preserve and protect such first 780 liens on and security interest in the Facility in favor of the 781 Bank.

ARTICLE VI COVENANTS OF THE COMPANY

783 6.01 Affirmative Covenants of the Company. So long as (i)
784 the Bank shall be committed to issue the Letter of Credit, (ii)
785 the Letter of Credit shall have been issued but shall not have

been terminated, (iii) any amount shall have been drawn under the Letter of Credit and shall not have been repaid, (iv) the Demand Note or any amount evidenced thereby shall remain unpaid or (v) the Bank shall have any obligation hereunder to the Company, the Trustee or the Issuer, the Company will, unless the Financing Documents shall otherwise permit or the Bank shall otherwise consent in writing:

- (a) <u>Preservation of Existence, etc.</u> Preserve and maintain its existence, rights, and privileges, and become or remain duly qualified as a corporation in each jurisdiction in which the character of the property owned or leased by it or in which the transaction of its business makes such qualification necessary, except as permitted in the Financing Documents.
- (b) Installation and Maintenance of the Facility. Cause the construction of the Improvements to be prosecuted with diligence and continuity so as to complete same in accordance with the provisions of the Disbursement Agreement and the Loan Agreement, free and clear of liens or claims for liens for materials supplied or labor or services performed in connection with construction of the Improvements, and thereafter maintain and preserve the Facility in good working order and condition, ordinary wear and tear excepted.
- (c) <u>Keeping of Records and Books of Account</u>. Keep adequate records and books of account in accordance with generally accepted accounting principles consistently applied, reflecting all of the Company's financial transactions.
- (d) <u>Inspection Rights</u>. At any reasonable time, and upon reasonable notice, permit the Bank or any of the Bank's agents or representatives to examine and make copies of and abstracts from its records and books of account, to visit and inspect the Facility and to discuss its affairs, finances and accounts with any of the employees or other representatives of the Company.
- (e) <u>Compliance with Laws, etc</u>. Comply in all material respects with all applicable laws, rules, regulations, licenses and permits, such compliance to include, without limitation, paying before the same become delinquent, all taxes, assessments and governmental charges imposed upon it or upon its property except to the extent contested in good faith, provided, in case of any such protest, adequate provision is made for reserves against such liability.
- (f) <u>Maintenance of Insurance</u>. Maintain the insurance required under the terms of the Loan Agreement and the Bank Mortgage, including, without limitation, builder's risk-all risk coverage and, upon completion of the construction of the

Improvements, hazard insurance, with extended coverage endorsement, all such insurance to be carried with responsible and reputable insurance companies or associations in such amounts and covering such risks as are usually insured by other companies engaged in businesses similar in size, character and other respects to those in which the Company is engaged.

- Reporting Requirements. Furnish to the Bank: as soon as available and in any event within 120 days after the end of each fiscal year of the Company a copy of the annual audited financial statements of each (including balance sheets as at the end of such year, and the related statements of income, earnings, retained earnings and changes in financial position) for such fiscal year, certified by a firm of independent certified public accountants reasonably acceptable to the Bank, annual operating statements for the Facility certified by the Company, such financial statements to be prepared in accordance with generally accepted accounting principles applied in a consistent manner; (ii) as soon as possible after the end of each fiscal year of the Company, but in any event within thirty (30) days after such date, a certificate of the Company, certifying that no event has occurred and is continuing which constitutes an Event of Default or which would constitute an Event of Default, but for the requirement that notice be given or time elapse or both; (iii) promptly after the commencement thereof, but in any event not later than ten (10) calendar days after service of process with respect thereto on the Company notice of all actions, suits or proceedings before any court or governmental department, commission, board, bureau, agency or instrumentality which could materially adversely affect the Company's financial condition or operations; and (iv) such other information with respect to the condition or operations, financial or otherwise, of the Company as the Bank may from time to time reasonably request.
- 6.02 Negative Covenants of the Company. So long as (i) the Bank shall be committed to issue the Letter of Credit, (ii) the Letter of Credit shall have been issued but shall not have expired, (iii) any amount shall have been drawn under the Letter of Credit and shall not have been repaid, (iv) the Demand Note or any amount evidenced thereby shall remain unpaid or (v) the Bank shall have any obligation to the Company, the Trustee or the Issuer, the Company will not, without the written consent of the Bank:
 - (a) <u>Liens etc</u>. Create or suffer to exist any lien, security interest or other charge or encumbrance, or any other type of preferential arrangement, upon or with respect to the Facility, whether now owned or hereafter acquired, or assign any right to receive income, in each case to secure any indebtedness of any person or entity, other than liens

existing as a result of the Financing Documents or permitted by the terms thereof or under the terms of the Loan Agreement and the Indenture. The Bank will consent to creation of any liens, security interests or encumbrances not prohibited by the Financing Documents.

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- (b) <u>Indebtedness</u>. Create or suffer to exist any indebtedness in connection with the Facility other than (i) indebtedness owing to the Bank hereunder or under the Demand Note, (ii) prior to the making of Final Draft under the Letter of Credit, indebtedness existing under or permitted under the terms of the Loan Agreement, (iii) indebtedness representing accounts payable of the Company incurred in the ordinary course of its business, (iv) indebtedness specifically permitted under the terms of the Indenture and the Loan Agreement, and (v) other unsecured indebtedness.
- (c) <u>Issuance of Additional Bonds</u>. Permit the issuance of any additional Bonds under the Indenture.
- (d) Amendment; Modification; Waiver; Consent. To the extent that the consent of the Company is required in connection therewith, permit the amendment, modification or waiver, or consent to the amendment, modification of waiver of any provision of the Indenture, the Bank Mortgage, the Loan Agreement or the Note.
- (e) <u>Dissolution</u>, <u>etc</u>. Dissolve, wind up, terminate, liquidate or reconstitute itself or convey, transfer, lease or otherwise dispose of (except in the ordinary course of business of the Company) (whether in one transaction or in a series of transactions) all or substantially all of its assets (whether now owned or hereafter acquired) to, or acquire all or substantially all of the assets of, any Person, except as permitted under the Loan Agreement or Section 9.14 hereof.
- (f) <u>Investments in Other Persons</u>. Make any loan or advance to any Person, except in the ordinary course of its business as presently contemplated in the Official Statement, or purchase or otherwise acquire, any capital stock, obligations or other securities of, make any capital contribution to, or otherwise invest in, any Person.
- (g) <u>Change in Nature of Business</u>. Make any material change in the nature of its business as described in the Official Statement.

ARTICLE VII EVENTS OF DEFAULT

- 7.01 Events of Default. If any of the following events 927 (individually, an "Event of Default"; collectively, "Events of 928 Default") shall occur and be continuing:
 - (a) the Company shall fail to pay any amount payable under the terms of this Credit Agreement within the time limits provided herein or, in the event of such failure, within ten (10) days notice of such failure given in accordance with Section 8.01 hereof; or
 - (b) the Company shall fail to pay any amount of principal of the Demand Note upon demand, any interest on the Demand Note or any other amount payable hereunder when due or, in the event of such failure, within ten (10) days notice of such failure given in accordance with Section 8.01 hereof;
 - (c) any representation or warranty material to the Bank's security made by the Company under or in connection with any Financing Document to which it is a party shall prove to have been incorrect in any material respect when made; or
 - (d) the Company shall fail to perform or observe any other term, covenant or agreement contained in this Credit Agreement or an Event of Default (as defined therein) shall occur under any Financing Document to which it is a party on its part to be performed or observed and any such failure shall remain unremedied for thirty (30) days after written notice thereof shall have been given to the Company by the Bank, provided that if such default cannot reasonably be cured within said thirty (30) day period, the Company shall have commenced action to cure the default within said thirty (30) day period shall be extended for so long as the Company shall require in the exercise of due diligence to cure the default; or
 - (e) the Company shall fail to pay any indebtedness, other than indebtedness evidenced by the Demand Note, or any interest or premium thereon, when due (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise) and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such indebtedness, if the effect of such default or event is to accelerate, or to permit the acceleration of, the maturity of such indebtedness, or if any such indebtedness shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment), prior to the stated maturity thereof provided, however, the foregoing circumstances shall not constitute an Event of Default so long as all payments with

respect to the Bonds and the Credit Agreement continue to be made on a timely basis, the Facility continues to be maintained in accordance with good standards of property management, and no other Event of Default hereunder exists; or

- the Company shall generally not pay its debts as such debts become due, or shall admit in writing its inability to pay its debts generally, or shall make a general assignment for the benefit of creditors; or any proceeding shall be instituted by or against the Company seeking to adjudicate it bankrupt or insolvent, or seeking liquidation, winding up, reorganization, arrangement, adjustment, protection, relief, or composition of it or its debts under any law relating to bankruptcy, insolvency or reorganization or relief of debtors, or seeking the entry of an order for relief of debtors, or seeking the entry of an order for relief or the appointment of a receiver, trustee, or other similar official for it or for any substantial part of its property (provided that with respect to any proceeding instituted against the Company, Company shall have sixty (60) days in which to obtain a dismissal of such proceeding); or the Company shall take any action to authorize any of the actions set forth above in this subsection (f); or
- (g) a final judgment or order for the payment of money which is enforceable against the Facility shall be rendered against the Company and either (i) enforcement proceedings shall have been commenced against the Facility by any creditor upon such judgment or order or (ii) a stay of enforcement of such judgment or order, by reason of a pending appeal or otherwise, shall not be in effect for any period of thirty-one (31) consecutive days; or
- (h) the Company shall fail duly and punctually to perform and observe all the terms, covenants and conditions contained in the Financing Documents on its part to be performed or observed and said failure shall result in a drawing on the Letter of Credit pursuant to the Final Draft; or
- (i) the Bank Mortgage after delivery thereof shall for any reason, except to the extent permitted by the terms thereof, cease to constitute a valid first lien in any of the collateral purported to be covered thereby, and the Company fails to take such action, after notice, as may be necessary to remedy such situation; or
- (j) the Company shall fail to pay when due any amounts incurred by the Bank in connection with the Collateral Agreement relating to the maintenance of the Collateral, within ten (10) days following notice of any demand therefor.

1018 7.02 Remedies. If any Event of Default shall have occurred 1019 and be continuing, the Bank may, in its sole discretion, (a) give 1020 notice to the Trustee of the occurrence such Event of Default; (b) 1021 request the Trustee pursuant to the Indenture to declare the principal of all Bonds then outstanding under the Indenture and 1022 1023 all interest accrued and unpaid thereon to be immediately due and 1024 payable; (c) declare all amounts due and payable under this Credit 1025 Agreement by the Company to be forthwith due and payable, and the same shall thereupon become immediately due and payable without 1026 1027 demand, presentment, protest or further notice of any kind, all of 1028 which are hereby expressly waived, or (d) take any other action 1029 permitted under this Credit Agreement or any Financing Document or 1030 at law or in equity. 7.03 Remedies not Exclusive. No remedy conferred upon or 1031 reserved by the Bank is intended to be exclusive to any other 1032 1033 available remedy, but each and every such remedy shall be 1034 cumulative and shall be in addition to every other remedy given 1035 hereunder or now or hereafter existing or at law or in equity. 1036 ARTICLE VIII 1037 NOTICE, SERVICE OF PROCESS, PLEADINGS AND OTHER PAPERS 1038 8.01 Notices, etc. All notices and other communications provided for hereunder shall be in writing and shall be deemed 1039 1040 given when mailed by registered or certified mail, postage 1041 prepaid, return receipt requested, or when sent by telegram or by 1042 nationally recognized overnight air courier service, addressed to 1043 the appropriate party, as follows: 1044 if to the Company, to: 1045 Jacksonville Ventures, Inc. 1046 Building 6 1047 Rotterdam Industrial Park 1048 Rotterdam, New York 12306 1049 Attention: 1050 and if to the Bank, to: 1051 Empire of America Federal Savings Bank 1052 One Main Place

1056 with copies of such notices to the Bank, to:

Buffalo, New York 14202

Attention:

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Letter of Credit Desk

Securities Investment Department

1057 Empire of America Federal Saving Bank 1058 One Main Place 1059 Buffalo, New York 14202 1060 Attention: Officer in Charge 1061 Commercial Mortgage Servicing Department 1062 with copies of such notices, so long as any Bonds are 1063 outstanding, mailed or telegraphed or delivered 1064 to the Issuer, to: 1065 Housing Finance Authority of 1066 St. Johns County, Florida 1067 c/o Clerk of Courts 1068 St. Augustine, Florida 32084 1069 to the Trustee, to: 1070 Sun Bank, National Association 1071 355 South Orange Avenue 1072 Orlando, Florida 32801 1073 Attention: Corporate Trust Department 1074 or, as to any such party, at such other address as shall be 1075 designated by such party in written notice to the other parties. 1076 8.02 Service of Process. The Company represents that it is 1077 subject to service of process in the State of New York and covenants that it will remain so subject so long as the Letter of 1078

1079 Credit or any obligations of the Company under this Credit Agreement are outstanding. If for any reason the Company should 1080 1081 cease to be so subject to service of process in the State of New York, the Company hereby designates and appoints without power of 1082 revocation, the Secretary of State of the State of New York as the 1083 1084 agent of the Company upon whom may be served all process, 1085 pleadings, notices or other papers which may be served upon the 1086 Company as a result of any of its obligations under this Credit 1087 Agreement; provided, however, that the serving of such process, 1088 pleadings, notices or other papers shall not constitute a 1089 condition to the Company's obligations hereunder. The Company 1090 agrees and consents that any service of process upon such agent and written notice of such service to the Company in the manner 1091 set forth in Section 8.01 hereof shall be taken and held to be 1092 1093 valid personal service upon the Company whether or not the Company 1094 shall then be doing, or at any time shall have done, business within the State of New York and that any such service of process 1095 1096 shall be of the same force and validity as if service were made 1097 upon it according to the laws governing the validity and 1098 requirements of such service in the State of New York. Such agent 1099 shall not have any power or authority to enter any appearance or

- to file any pleadings in connection with any suit, action or other legal proceedings against the Company or to conduct the defense of any such suit, action or any other legal proceeding except as expressly authorized.
- 1104 8.03 Consent to Jurisdiction The Company irrevocably and 1105 unconditionally (a) agrees that any suit, action or other legal 1106 proceeding arising out of this Credit Agreement and initiated by the Bank may be brought in the courts of record of the State of 1107 1108 New York in Erie County or the courts of the United States, 1109 Western District of New York; (b) consent to the jurisdiction of 1110 each such court in any such suit, action or proceeding; and (c) 1111 waive any objection which they may have to the laying of venue of 1112 any such suit, action or proceeding in any of such courts.
- The parties expressly exclude jurisdiction or venue elsewhere in accordance with their intent that the fora referred to above be the exclusive venues for any suit, action, or other legal proceeding arising out of this Credit Agreement.

1117 ARTICLE IX MISCELLANEOUS

- 1118 9.01 Payments and Computations. The Company shall make each 1119 payment hereunder and under the Demand Note and Demand Loan not later than 12:00 noon (Buffalo, New York time) on the day when due 1120 1121 in lawful money of the United States of America in immediately 1122 available funds to the Bank, at its address referred to in Section 1123 8.01, herein. (Such requirement shall be fulfilled by the Company 1124 upon payment of any such sums in accordance with Section 3.02 1125 hereof.) The Company hereby authorizes the Bank, if and to the 1126 extent payment is not made when due hereunder or under the Demand 1127 Note or Demand Loan, to charge from time to time against the 1128 Account any amount so due, together with additional interest of 1129 the Penalty Rate as provided in the Demand Note. All computations of interest under the Demand Note or Demand Loan and of any other 1130 1131 amount payable hereunder shall be made by the Bank on the basis of 1132 a year of 365 or 366 days, as the case may be, for the actual number of days (including the first day but excluding the last 1133 1134 day) elapsed.
- 9.02 Payment on Non-Business Days. Whenever any payment to be made hereunder or under the Note shall be stated to be due on a day which is not a Business Day, such payment may be made on the next succeeding Business Day, and such extension of time shall in such case be included in the computation of payment of interest or fee, as the case may be.
- 9.03 Amendments, etc. No amendment or waiver of any provision of this Credit Agreement or the Demand Note, nor consent to any departure by the Company therefrom, shall in any event be effective unless the same shall be in writing and signed by the Bank and then such waiver or consent shall be effective only in

1146 the specific instance and for the specific purpose for which 1147 given, and shall not be deemed to constitute a waiver or consent 1148 for any other purpose.

- 1149 9.04 No Waiver; Remedies. No failure on the part of the Bank 1150 to exercise, and no delay in exercising, any right under any Letter of Credit Document shall operate as a waiver thereof; nor 1151 1152 shall any single or partial exercise of any right under any Letter 1153 of Credit Document preclude any other or further exercise thereof 1154 or the exercise of any other right. The remedies provided in the Loan Documents are cumulative and not exclusive of any remedies 1155 1156 provided by law.
- 9.05 Transfer of the Letter of Credit. The Letter of Credit
 1158 may not be transferred except to a successor Trustee as provided
 1159 and in accordance with the Letter of Credit, pursuant to the terms
 1160 of the Indenture.
- 9.06 <u>Indemnification</u>. The Company hereby agrees to indemnify and hold harmless the Bank from and against any and all claims, 1161 1162 1163 damages, losses, liabilities, costs or expenses whatsoever which 1164 the Bank may incur (or which may be claimed against the Bank by any entity or entities whatsoever) by reason of or in connection 1165 with the execution and delivery or transfer of, or payment or 1166 1167 failure to make lawful payment under, the Letter of Credit; 1168 provided, however, that the Company shall not be required to indemnify the Bank pursuant to this Section 9.06 for (i) any 1169 1170 claims, damages, losses, liabilities, costs or expenses to the extent caused by the Bank's willful or negligent acts in 1171 1172 connection therewith, including the Bank's willful or negligent 1173 failure to make lawful payment under the Letter of Credit after the presentation to it by the Trustee or a successor trustee under 1174 1175 the Indenture of a draft and certificate complying with the terms and conditions of the Letter of Credit; or (ii) any claims, 1176 1177 damages, losses, liabilities, costs or expenses to the extent the 1178 same result from any untrue statement or alleged untrue statement of a material fact or omission to state a material fact in the 1179 1180 Official Statement other than with respect to or relating to the 1181 Company or the Facility.

1182 Subject to the provisions of Section 9.20, nothing in this 1183 Section 9.06 is intended to limit the Company's reimbursement obligations contained in Section 2.02 hereof. Without prejudice 1184 to the survival of any other obligation of the Company hereunder, 1185 1186 the indemnities and obligations of the Company contained in this 1187 Section 9.06 shall survive the payment in full of the Demand Loan and the Demand Note until the expiration of the applicable 1188 1189 statutes of limitations governing the assertion of any such claims 1190 against the Bank.

9.07 <u>Bank Not Liable</u>. The Company assumes all risks of the later acts or omissions of the Trustee or any transferee of the Letter of Credit with respect to its use of the Letter of Credit, except

1194 for willful negligence or gross misconduct. Neither the Bank nor 1195 any of its officers or directors shall be liable or responsible for: (a) the use which may be made of the Letter of Credit or for 1196 any acts or omissions of the Trustee or any transferee in 1197 1198 connection therewith; (b) the validity, sufficiency or genuineness of documents, or of any endorsement(s) thereon, even if such 1199 1200 documents should in fact prove to be in any way invalid, 1201 insufficient or not genuine; (c) payment by the Bank against 1202 presentation of documents which do not comply with the terms of the Letter of Credit, including failure of any documents to bear 1203 1204 any reference or adequate reference to the Letter of Credit; or 1205 (d) any other circumstances whatsoever in making or failing to 1206 make payment under the Letter of Credit, except only that the 1207 Company shall have a claim against the Bank, and the Bank shall be liable to the Company, to the extent, but only to the extent, of 1208 1209 any direct as opposed to consequential, damages suffered by the 1210 Company which the Company proves were caused by the Bank's willful 1211 or negligent failure to make lawful payment under the Letter of 1212 Credit after the presentation to it by the Trustee or a successor 1213 trustee under the Indenture of a draft and certificate complying with the terms and conditions of the Letter of Credit. In 1214 1215 furtherance and not in limitation of the foregoing, the Bank may 1216 accept documents that appear on their face to be in order, without 1217 responsibility for further investigation.

- 9.08 Obligations of the Company Absolute. The obligations of the Company under this Agreement, the Letter of Credit Documents and the Demand Loan shall be absolute and unconditional and irrevocable and shall be performed strictly in accordance with the terms of this Credit Agreement and the Demand Note, under all circumstances whatsoever, including, without limitation, the following circumstances:
- 1225 (a) any lack of validity or enforceability of any of 1226 the other Financing Documents or any other agreement or 1227 instrument relating thereto;

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- (b) any amendment or waiver of or any consent to departure from all or any of the Financing Documents;
- (c) any exchange, release or non-perfection of any collateral, or any release or amendment or waiver of or consent to departure from any guaranty;
- (d) the existence of any claim, set-off, defense or other right which the Company may have at any time against the Trustee, the Bank or any other person or entity, whether in connection with this Agreement, the Demand Note, any Financing Documents or any unrelated transaction;
- 1238 (e) any statement or any other document presented under 1239 the Letter of Credit proving to be forged, fraudulent, 1240 invalid or insufficient in any respect or any statement

- therein being untrue or inaccurate in any respect whatsoever; or
- 1243 (f) payment by the Bank under the Letter of Credit 1244 against presentation of a statement or draft which does not 1245 comply with the terms of the Letter of Credit (whether or not resulting from negligence or willful misconduct on the part 1246 of the Bank or its agents, officers or employees provided, 1247 1248 however, that the Company shall not be precluded from 1249 asserting a claim against the Bank on account of 1250 consequential damages arising as a result of any such payment 1251 which results from gross negligence or willful misconduct on 1252 the part of the Bank or its employees).
- 1253 9.09 Costs, Expenses and Taxes. The Company agrees to pay on 1254 demand all costs and expenses in connection with the 1255 administration of the Letter of Credit, this Credit Agreement, the 1256 Demand Note and the other Letter of Credit Documents and the other documents to be delivered under the Letter of Credit Documents, 1257 1258 including without limitation, the reasonable out-of-pocket 1259 expenses of the Bank, the reasonable fees and out-of-pocket 1260 expenses of counsel for the Bank, with respect thereto and with 1261 respect to advising the Bank as to its rights and responsibilities 1262 under the Letter of Credit, this Credit Agreement, the Demand Note and the other Letter of Credit Documents and the other documents 1263 to be delivered under the Financing Documents. In addition, the 1264 1265 Company shall pay any and all stamp and other taxes and fees payable or determined to be payable in connection with the 1266 1267 execution, delivery and filing of the Letter of Credit, this 1268 Credit Agreement, the Demand Note and the other Letter of Credit Documents, and also all amounts payable to the Collateral Agent, 1269 1270 and agrees to hold the Bank harmless from and indemnify it against 1271 any and all liabilities with respect to or resulting from any 1272 delay in paying or omission to pay such taxes and fees.
- 9.10 Amounts Due on Demand. Notwithstanding any provision hereof or any pattern of conduct or any circumstances whatsoever, it is hereby expressly agreed by the Company and the Bank that nothing in this Credit Agreement shall be construed to make or cause to make the obligations of the Company hereunder which are due on demand anything other than demand obligations.
- 1279 9.11 Binding Effect; Governing Law. This Credit Agreement shall be binding upon and enure to the benefit of the Company and 1280 1281 Bank and their respective successors and assigns, except that the 1282 Company shall not, except as provided in Section 9.13 hereof, have 1283 the right to assign its rights hereunder or any interest herein 1284 without the pri written consent of the Bank. This Credit 1285 Agreement, the Letter of Credit and the Demand Note shall be 1286 governed by, and construed in accordance with, the laws of the 1287 State of New York.

- 9.12 <u>Waiver of Right of Set-Off</u>. The Bank hereby waives any right it may have at law or in equity to set off and apply any deposits held and other indebtedness owing by the Bank to or for the credit or the account of the Company against any and all of the obligations of the Company existing under this Credit Agreement.
- 9.13 Assignment or Transfer of the Facility. The Company shall not transfer or convey title to the Facility or a controlling interest therein without the prior consent of the 1297 Bank.
- 1298 9.14 Consents Not to be Unreasonably Withheld. The Bank 1299 agrees that any consent which may be required to be given under 1300 this Agreement shall not be unreasonably withheld.
- 9.15 <u>Headings</u>. Section headings in this Credit Agreement are included herein for convenience of reference only and shall not constitute a part of this Credit Agreement for any other purpose.
- 9.16 <u>Severability</u>. If any provision of this Credit Agreement shall be held invalid by any court of competent jurisdiction, such holding shall not invalidate any other provision thereof.
- 9.17 Further Assurances. The Company will, at its own cost and expense, execute and deliver to the Bank all such other documents, instruments, and agreements and do all such other acts and things as may be reasonably requisite, in the opinion of the Bank, to enable the Bank to exercise and enforce its rights hereunder and under or in respect of the Financing Documents or any other documents, instruments and agreements required hereunder or thereunder.
- 9.18 <u>Counterparts</u>. This Credit Agreement may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.
- 1319 9.19 Rights of Trustee in Collateral. As long as any of the 1320 Bonds shall be Outstanding (as defined in the Indenture), and to the extent that the Bank holds any collateral to secure the 1321 1322 obligations of the Company hereunder with respect to which the 1323 Trustee does not have a direct interest for the benefit of the holders of the Bonds, the Bank shall accept any such collateral 1324 1325 and enforce any remedies granted thereon by this Credit Agreement 1326 for the joint benefit of the Trustee and the Bank in accordance 1327 with the terms of the Indenture, and the Trustee and the Bondholders shall have an equal and ratable security interest 1328 1329 therein.
- 9.20 <u>Limitation of Liability</u>. Notwithstanding any provision or obligation to the contrary hereinbefore or hereinafter set forth, (i) from and after the date of this Credit Agreement the liability of the Company hereunder shall be limited to the

| 1334 1335 1336 1337 1338 1339 1340 1341 1342 1343 | exclusively thereto, or to such other security as may from time to time be given for payment of the obligations hereunder, and any judgment rendered against the Company under this Credit Agreement shall be limited to the Facility and any other security so given for satisfaction thereof; and (ii) from and after the date of this Credit Agreement no deficiency or other personal judgment nor any order or decree of specific performance shall be sought or rendered against the Company in any action or proceeding arising out of this Credit Agreement, or any judgment, order or decree rendered pursuant to any such action or proceeding. |
|--|---|
| 1345 1346 1347 | IN WITNESS WHEREOF, the parties hereto have caused this |
| 1348 | JACKSONVILLE VENTURES, INC. |
| 1349 1350 1351 | By: |
| 1352 1353 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 1354 1355 -356 | By: G. Gary Berner |
| - 3 - 0 | Senior Vice President |

IRREVOCABLE TRANSFERABLE LETTER OF CREDIT

NO. C-____

June __, 1987

SUN BANK, NATIONAL ASSOCIATION
as Trustee
255 South Orange Avenue
Orlando, Florida 32801

Attention: Corporate Trust Department

11 Gentlemen:

We hereby establish at the request of and for the account of Jacksonville Ventures, Inc. <u>a Delaware Corporat n</u> (the "Company"), in your favor, as Trustee under an Indenture dated as of May 15, 1987, (collectively the "Indenture") between you and the Housing Finance Authority of St. Johns County, Florida (the "Issuer"), pursuant to which Twelve Million and 00/100 Dollars (\$12,000,000.00) of the Issuer's Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) (the "Bonds"), are being issued, our Irrevocable Letter of Credit No. C-_, in the amount of \$______; or such lesser amount which shall, as of any date, constitute the sum of the then outstanding principal of the Bonds and an amount equal to two hundred ten (210) days' interest accrued thereon (the "Stated Amount") effective immediately and expiring at the close of business on June 15, 19_ (the "Expiration Date").

We hereby irrevocably authorize you to draw on us, in accordance with the terms and conditions and subject to the reductions in the Stated Amount as hereinafter set forth, (a) in a single drawing (subject to the next following sentence) by your draft drawn on our One Main Place, Buffalo, New York office and payable three (3) Business Days after sight, accompanied by your written and completed certificate signed by you in substantially

SUN BANK, NATIONAL ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
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the form of Annex A attached hereto (each such draft accompanied 34 by such certificate being an "Interest Draft"), an amount not 35 exceeding \$__ ; (b) in one or more drawings in each instance by your draft drawn on our One Main Place, Buffalo, New 37 York office and payable three (3) Business Days after sight, accompanied by your written and completed certificate signed by 38 39 you in substantially the form of Annex B attached hereto (each 40 such draft accompanied by such certificate being a "Principal Draft"), an amount not exceeding in the aggregate \$12,000,000.00; (c) in one or more drawings by your draft drawn on our One Main 43 Place, Buffalo, New York office and payable three (3) Business Days after sight, accompanied by your written and completed 45 certificate signed by you in substantially the form of Annex C 46 attached hereto (each such draft accompanied by such certificate 47 being a "Redemption Draft"), an amount not exceeding the Stated 49 Amount; and (d) in a single drawing by your draft drawn on our 50 One Main Place, Buffalo, New York office and payable three (3) 51 Business Days after sight, accompanied by your written and 52 completed certificate signed by you in substantially the form of 53 Annex D attached hereto (such draft accompanied by such 54 certificate being a "Final Draft"), an amount not exceeding the Stated Amount. If you draw on us by your Interest Draft under 55 56 clause (a) above, your right to draw on us in a single drawing by an Interest Draft under clause (a) above shall be automatically 57 and irrevocably reinstated as of the Interest Payment Date 58 59 immediately following the date of our payment of such Interest 60 Draft and you shall again be authorized to draw on us by an Interest Draft in accordance with clause (a) above and the other 61 terms and conditions referred to or set forth in the immediately 62 preceding sentence. This automatic reinstatement of your right 63 to draw on us by an Interest Draft shall be applicable to successive drawings by an Interest Draft under clause (a) above 64 65 so long as this Letter of Credit shall not have terminated as set 67 forth below.

Funds under this Letter of Credit are available to you against (a) an Interest Draft, payable three (3) Business Days after sight, referring therein to the identification number of this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially the form of Annex A attached hereto; (b) a Principal Draft, payable three (3) Business Days after sight, referring therein identification number of this Letter of Credit and accompanied by written and completed certificate signed by you in substantially the form of Annex B attached hereto; Redemption Draft, payable three (3) Business Days after sight, referring therein to the identification number of this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially the form of Annex C attached SUN BANK, NATIONAL ASSOCIATION Irrevocable Letter of Credit No. C-June __, 1987 Page 3 of pages

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hereto; <code>Aand</code> (d) a <u>Final Draft</u>, payable three (3) Business Days 82 after sight, referring therein to the identification number of 83 this Letter of Credit and accompanied by your written and completed certificate signed by you in substantially the form of 85 Annex D attached hereto.

Each such draft and certificate shall be dated the date of its presentation and shall be presented at our office located at One Main Place, Buffalo, New York 14202, Attention: Letter of Credit Desk - Securities Investment Department, or at any other office in the City of Buffalo, New York, which may be designated 92 by us by written notice delivered to you. If we receive any of your drafts and certificates at such office, all in conformity with the terms and conditions of this Letter of Credit, on or 95 prior to the termination hereof and in any event not later than 96 the Expiration Date stated in the initial paragraph hereof, we 97 will honor the same by 10:00 a.m., Buffalo, New York time on the 98 third (3rd) Business Day after presentation thereof by payment to day funds in accordance with your payment you in same instructions.

If a demand for payment made by you does not, in any instance, conform to the terms and conditions of this Letter of Credit, we will give you prompt notice, by telecopy, that the negotiation of this Letter of Credit was not effected in accordance with the terms and conditions of this Letter of Credit, stating the reason therefor and that we are holding any documents at your disposal or are returning the same to you, as you may elect. Upon being notified that the negotiation was not effected in accordance with this Letter of Credit, you may attempt to correct any such nonconforming conditions relating to your demand for payment if and to the extent that you are able to do so, provided that such resubmission of documents is made prior to the expiration of this Letter of Credit.

If requested by you, payment under this Letter of Credit may he made by wire transfer of Federal Reserve Bank of New York funds to your account in a bank on the Federal Reserve wire system or by deposit of same day funds into a designated account that you maintain with us. As used in this Letter of Credit, a Business Day is any day of the year other than a Saturday, Sunday or a day on which banks located in the State of New York or the State of Florida are required or authorized to remain closed.

122 Upon the earlier of (a) the Expiration Date, (b) our 123 honoring your Final Draft presented hereunder, (c) our receipt from you, as Trustee under the Indenture, of a certification that 124 125 the principal of and interest due on the Bonds have been paid in 126 full, or provided for as set forth in the Indenture, or (d) our

SUN BANK, NATIONA ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
Page 4 of pages

receipt from you, as Trustee under the Indenture, of a certification that the Company has caused an "Alternate Credit Facility" (as defined in the Indenture), in substantially the form required under the Indenture, to be delivered to you and that the Alternate Credit Facility is in effect as of the date of the certificate, this Letter of Credit shall automatically terminate.

134 All documents presented to us in connection with any demand 135 payment hereunder, as well as all notices and other communications to us regarding this Letter of Credit, shall be in 136 writing and addressed and presented to us at our home office 137 located at One Main Place, Buffalo, New York 14202, Attention: 138 Letter of Credit Desk Securities Investment Department, or at any 139 other office in the City of Buffalo, New York, which may be 140 designated by us by written notice delivered to you, and shall make specific reference to this Letter of Credit by number. 142 documents, notices and other communications shall be deemed given 143 when personally delivered to us, or when mailed by registered or 144 145 certified mail, return receipt requested, postage prepaid, or when sent by nationally recognized overnight air courier service, 146 147 or when sent to us by telecopy, with originals of sight draft supporting documentation forwarded to us immediately 148 following the telecopier transmission by nationally recognized 149 overnight air courier service, in which case presentation of the 150 sight draft and certificate requirements are waived, to the 151 152 following number:

153 Telecopier:

Type of machine: Canon Fax 31

155 Telephone number: (716) 845-7389

Any notice concerning a rejection of a draft against this Letter of Credit shall be deemed given when personally delivered or sent by telecopy, with a confirming copy of such notice sent by mail promptly thereafter.

This Letter of Credit is transferable in its entirety (but not in part) to any transferee who has succeeded you as Trustee under the Indenture and may be successively transferred to further successor Trustees. Transfer of this Letter of Credit to such transferee shall be effected by the presentation to us of this Letter of Credit accompanied by a certificate substantially in the form of Annex E attached hereto. Under such presentation we shall forthwith transfer the Letter of Credit to your transferee or, if so requested by your transferee, issue a replacement Letter of Credit to your transferee with provisions

SUN BANK, NATIONA ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
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therein consistent with this Letter of Credit. 170 This Letter of Credit sets forth in full our undertaking, 171 172 and such undertaking shall not in any way be modified, amended, 173 amplified or limited (except with regard to periodic adjustment of the Stated Amount) by reference to any document, instrument, or agreement referred to herein (including, without limitation, 174 175 the Bonds and the Indenture); and any such reference shall not he 176 177 deemed to incorporate herein by reference any document, 178 instrument or agreement. 179 This Letter of Credit shall be governed by the laws of the 180 State of New York, including Article 5 of the New York Uniform Commercial Code, and to the extent not inconsistent therewith, with the express terms of the Uniform Customs and Practice for 181 182 183 Documentary Credits (1983 Rev.) International Chamber of Commerce 184 Publication No. 400. 185 Very truly yours, 186 EMPIRE OF AMERICA FEDERAL 187 SAVINGS BANK

By_

G. Gary Berner

Senior Vice President

SUN BANK, NATIONA ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
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191 ANNEX A 192 INTEREST DRAFT 193 CERTIFICATE FOR DRAWING IN CONNECTION WITH THE PAYMENT OF INTEREST ON ACCOUNT OF THE 194 195 HOUSING FINANCE AUTHORITY OF ST. 196 COUNTY, FLORIDA MULTIFAMILY HOUSING REFUNDING 197 REVENUE BONDS, (REMINGTON AT PONTE VEDRA PROJECT) (THE "BONDS") (All capitalized terms 198 used herein unless otherwise specifically provided shall have the meanings assigned 199 200 201 thereto in the Indenture) The undersigned, a duly authorized officer of Sun Bank, National Association, as trustee (the "Trustee") under the 202 203 204 Indenture dated as of May 15, 1987 between the Housing Finance Authority of St. Johns County, Florida (the "Issuer") and the Trustee under which the Bonds are issued and secured (the 205 206 "Indenture") hereby certifies to Empire of America Federal 207 Savings Bank (the "Bank"), with reference to Irrevocable Letter of Credit No. C-__ (the "Letter of Credit") issued by the Bank 208 209 210 in favor of the Trustee, that: 211 The Trustee is the Trustee under the Indenture for the holders of the Bonds. The total principal amount of 212 the Bonds Outstanding is \$_____; and the total interest 213 payable currently or within *[forty (40)] [one hundred 214 (100)] days following the date hereof is \$_____. 215 216 The Trustee is making a drawing under the Letter 217 of Credit with respect to the payment of interest accrued on 218 the Bonds on or prior to their stated maturity date. 219 The amount of the Interest Draft accompanying 220 this Certificate was computed in accordance with the terms 221 and conditions of the Bonds and the Indenture and does not 222 exceed the amount available to be drawn under the Letter of 223 Credit by an Interest Draft. 224 This Certificate and the Interest Draft it 225 accompanies are dated, and are being presented to the Bank 226 on, a date which is no more than *[forty (40)] [one hundred 227 (100)] days prior to the Interest Payment Date on which 228 interestais due and payable under the Indenture.

SUN BANK, NATION. ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
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| 229 230 231 232 233 234 235 | (5) The amount of the Interest Draft accompanying this Certificate equals the difference between (i) the amount of the interest payment on the Bonds on the next Interest Payment Date and (ii) the amount of Available Moneys, if any, currently on deposit in the Bond Fund, and available in accordance with the Indenture for the payment of such interest. |
|---|---|
| 236 237 | IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the day of, 19 |
| 238 239 | SUN BANK, NATIONAL ASSOCIATION as Trustee |
| 240 241 | By:Name and Title |
| 242 243 244 245 | *Determination regarding date of drawing to be made based on availability of sufficient "30-Day Collateral" to cover the amount of the draw, as determined pursuant to Section 5.05 of the Indenture. |

SUN BANK, NATIONAL ASSOCIATION
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ANNEX B 246 247 PRINCIPAL DRAFT CERTIFICATE FOR DRAWING IN CONNECTION WITH 248 THE PAYMENT OF PRINCIPAL ON ACCOUNT OF THE 249 FINANCE AUTHORITY OF 250 HOUSING 251 COUNTY, FLORIDA MULTIFAMILY HOUSING REFUNDING REVENUE BONDS, (REMINGTON AT PONTE VEDRA 252 PROJECT) (THE "BONDS") (All capitalized terms 253 used herein unless otherwise specifically 254 provided shall have the meanings assigned 255 thereto in the Indenture) 256 The undersigned, a duly authorized officer of Sun Bank, 257 National Association, as trustee (the "Trustee") under the Indenture dated as of May 15, 1987 between the Housing Finance 258 259 Authority of St. Johns County, Florida (the "Issuer") and the 260 Trustee under which the Bonds are issued and secured (the 261 "Indenture") hereby certifies to Empire of America Federal 262 Savings Bank (the "Bank"), with reference to Irrevocable Letter 264 of Credit No. C- (the "Letter of Credit") issued by the Bank 265 in favor of the Trustee, that: The Trustee is the Trustee under the Indenture 266 for the holders of the Bonds. The total principal amount of 267 the Bonds Outstanding is \$___ 268 The Trustee is making a drawing under the Letter 269 of Credit with respect to the payment of a portion of the 270 unpaid principal amount of the Bonds which are Outstanding. 271 272 The amount of the Principal Draft accompanying this certificate was computed in accordance with the terms 273 and conditions of the Bonds and the Indenture and does not 274 exceed the amount available to be drawn under the Letter of 275 276 Credit by a Principal Draft. This Certificate and the Principal Draft it 277 278 accompanies are dated, and are being presented to the Bank on, a date that is no more than *[forty (40)] [one hundred 279 (100)] days prior to the Interest Payment Date on which 280 principal is due and payable under the Indenture. 281 Principal Draft 282 The accompanying

certificate equals the difference between (i) the amount of

SUN BANK, NATIONA. ASSOCIATION
Irrevocable Letter of Credit No. C-___
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| 284 285 286 287 288 | Interest Payment Date or Reset Date and (ii) the amount of |
|---------------------------------|---|
| 289 290 | IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the day of, 19 |
| 291 292 | SUN BANK, NATIONAL ASSOCIATION as Trustee |
| 293 294 | By: |
| 295 296 297 298 | *Determination regarding date of drawing to be made based on availability of sufficient "30-Day Collateral" to cover the amount of the draw, as determined pursuant to Section 5.05 of the Indenture. |

SUN BANK, NATIONAL ASSOCIATION
Irrevocable Letter of Credit No. C-___
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ANNEX C 299 300 REDEMPTION DRAFT 301 CERTIFICATE FOR DRAWING IN CONNECTION WITH 302 THE PAYMENT OF PRINCIPAL AND INTEREST ON THE 303 HOUSING FINANCE AUTHORITY OF ST. COUNTY, FLORIDA MULTIFAMILY HOUSING REFUNDING 304 305 REVENUE BONDS, (REMINGTON AT PONTE PROJECT) (THE "BONDS") UPON MANDATORY 306 OPTIONAL REDEMPTION (All capitalized terms 307 308 used herein unless otherwise specifically 309 provided shall have the meanings assigned thereto in the Indenture) 310 311 The undersigned, a duly authorized officer of Sun Bank, National Association, as trustee (the "Trustee") under the Indenture dated as of May 15, 1987 between the Housing Finance 312 313 314 Authority of St. Johns County, Florida and the Trustee under which the Bonds are issued and secured (the "Indenture") hereby 315 316 certifies to Empire of America Federal Savings Bank (the "Bank"), with reference to Irrevocable Letter of Credit No. C- (the 317 318 "Letter of Credit") issued by the Bank in favor of the Trustee, 319 that: 320 The Trustee is the Trustee under the Indenture 321 for the holders of the Bonds. 322 The Trustee is making a drawing under the Letter 323 of Credit with respect to the payment, upon optional or mandatory prepayment, of a portion of the unpaid principal amount of and unpaid interest on the Bonds which are 324 325 326 Outstanding. 327 The amount of the Redemption Draft accompanying 328 this Certificate was computed in accordance with the terms 329 and conditions of the Bonds and the Indenture and does not 330 exceed the amount available to be drawn under the Letter of 331 Credit. 332 This Certificate and the Redemption Draft it 333 accompanies are dated, and are being presented to the Bank 334 on, a date that is no more than *[forty (40)] [one hundred 335 (100)] days prior to the date on which the unpaid principal 336 amount of, and unpaid interest on, the Bonds Outstanding in 337 the amount of such prepayment are due and payable under the SUN BANK, NATIONA ASSOCIATION
Irrevocable Letter of Credit No. C-___
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| 338 | Indenture (upon optional or mandatory redemption). |
|--|---|
| 339 340 341 342 343 344 345 346 | (5) The Redemption accompanying this Certificate equals the difference between (i) the sum of the principal of, and all unpaid interest to the date on which the aggregate unpaid principal amount of and unpaid interest on, the Bonds Outstanding which are due and payable under the Indenture (upon optional or mandatory redemption) and (ii) the amount of Available Moneys, if any, currently on deposit in the Bond Fund and available to the Trustee pursuant to the Indenture for the payment of such principal and |
| 348 349 | <pre>interest. IN WITNESS WHEREOF, the Trustee has executed and delivered this Certificate as of the day of</pre> |
| 351 352 | SUN BANK, NATIONAL ASSOCIATION as Trustee |
| 353 354 | By:Name and Title |
| 355 356 357 358 | *Determination regarding date of drawing to be made based on availability of sufficient "30-Day Collateral" to cover the amount of the draw, as determined pursuant to Section 5.05 of the Indenture. |

SUN BANK, NATIONAL ASSOCIATION
Irrevocable Letter of Credit No. C-___
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359 ANNEX D

360 <u>FINAL DRAFT</u>

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CERTIFICATE FOR DRAWING IN CONNECTION WITH 361 THE PAYMENT OF PRINCIPAL AND INTEREST ON THE 362 AUTHORITY OF ST. 363 FINANCE COUNTY, FLORIDA MULTIFAMILY HOUSING REFUNDING 364 REVENUE BONDS, (REMINGTON AT PONTE VEDRA 365 "BONDS") UPON SCHEDULED 366 PROJECT) (THE MATURITY, ACCELERATED MATURITY OR REDEMPTION 367 AS A WHOLE (All capitalized terms used herein 368 unless otherwise specifically provided shall 369 370 have the meanings assigned thereto in the 371 Indenture)

The undersigned, a duly authorized officer of Sun Bank, 372 National Association, as trustee (the "Trustee") under the 373 Indenture dated as of May 15, 1987 between the Housing Finance 374 Authority of St. Johns County, Florida and the Trustee under 375 which the Bonds are issued and secured (the "Indenture") hereby 376 certifies to Empire of America Federal Savings Bank (the "Bank"), 377 with reference to Irrevocable Letter of Credit No. C- (the 378 "Letter of Credit") issued by the Bank in favor of the Trustee, 379 380 that:

- 381 (1) The Trustee is the Trustee under the Indenture 382 for the holders of the Bonds.
 - (2) The Trustee is making a drawing under the Letter of Credit with respect to the payment, at scheduled maturity, accelerated maturity or upon redemption as a whole of the unpaid principal amount of and unpaid interest on, all of the Bonds which are Outstanding.
 - (3) The amount of the Final Draft accompanying this Certificate was computed in accordance with the terms and conditions of the Bonds and the Indenture and does not exceed the amount available to be drawn under the Letter of Credit.
 - (4) This Certificate and the Final Draft it accompanies are dated, and are being presented to the Bank, on a date that is no more than *[forty (40)] [one hundred (100)] days prior to the date on which the aggregate unpaid principal amount of, and unpaid interest on, all of the

SUN BANK, NATIONA. ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
Page 13 of ___ pages

| 39 8 399 400 | Bonds Outstanding are due and payable under the Indenture (at scheduled maturity, upon acceleration or upon redemption as a whole). |
|--|---|
| 401 402 403 404 405 406 407 408 409 410 | (5) The Final Draft accompanying this Certificate equals the difference between (i) the sum of the principal of, and all unpaid interest to the date on which the aggregate unpaid principal amount of and unpaid interest on, all of the Bonds Outstanding which are due and payable under the Indenture (at scheduled maturity, upon acceleration or upon redemption as a whole) and (ii) the amount of Available Moneys, if any, on deposit in the Bond Fund and currently available to the Trustee pursuant to the Indenture to pay such principal and/or interest. |
| 411 412 | · |
| 413 414 | SUN BANK, NATIONAL ASSOCIATION as Trustee |
| 415 416 | By: Name and Title |
| 417 418 419 420 | *Determination regarding date of drawing to be made based on availability of sufficient "30-Day Collateral" to cover the amount of the draw, as determined pursuant to Section 5.05 of the Indenture. |

SUN BANK, NATIONA ASSOCIATION
Irrevocable Letter of Credit No. C-___
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| 421 | ANNEX E |
|---------------------------------|--|
| 422 | INSTRUCTION TO TRANSFER |
| 423 424 | , 19 |
| | Empire of America Federal Savings Bank One Main Place Buffalo, New York 14202 |
| 429 430 | Attention: Letter of Credit Desk Securities Investment Department |
| 431 | Irrevocable Letter of Credit No. C- |
| 432 | Gentlemen: |
| | For value received, the undersigned beneficiary hereby irrevocably transfers to: |
| 435 | (Name of Transferee) |
| 436 | (Address) |
| 437 438 439 440 | Letter of Credit. The transferee has succeeded the undersigned |
| 441 442 443 444 445 | By this transfer, all rights of the undersigned beneficiary in such Letter of Credit are transferred to the transferee and the transferee shall hereafter have the sole rights as beneficiary thereof; provided, however, that no rights shall he deemed to have been transferred to the transferee until such |

SUN BANK, NATIONA ASSOCIATION
Irrevocable Letter of Credit No. C-___
June __, 1987
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| | transfer complies with the requirements of such Letter of Credit pertaining to transfers. |
|------------|--|
| 450 451 | The Letter of Credit is returned herewith and in accordance with the Letter of Credit we ask that this transfer be effected and, if so requested by the transferee, that you issue a new irrevocable letter of credit in favor of the transferee with provisions consistent with the Letter of Credit. |
| 453 | Very truly yours, |
| 454 455 | SUN BANK, NATIONAL ASSOCIATION, as predecessor Trustee |
| 456 457 | By: |

1359 <u>EXHIBIT B</u>
1360 <u>FORM OF DEMAND NOTE</u>

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| 1361 | EXHIBIT C |
|--------------|--|
| 1362 1363 | <u>LETTER OF CREDIT</u> <u>FEE AGREEMENT</u> |

COLLATERAL AGREEMENT

between

EMPIRE OF AMERICA FEDERAL SAVINGS BANK

and

SUN BANK, NATIONAL ASSOCIATION, as Trustee

Dated as of June 1, 1987

\$12,000,000

Housing Finance Authority of St. Johns County, Florida

Multifamily Housing Refunding Revenue Bonds

(Remington at Ponte Vedra Project)

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This COLLATERAL AGREEMENT (the "Agreement") dated as of June 152 1, 1987, by and between EMPIRE OF AMERICA FEDERAL SAVINGS BANK, a 153 stock savings bank duly organized under the laws of the United 154 States, having its home office at One Main Place, Buffalo, New 155 York 14202 (the "Bank") and SUN BANK, NATIONAL ASSOCIATION, a 156 national banking association having a corporate trust office at 157 255 South Orange Avenue, Orlando, Florida 32801, as Trustee under 158 an Indenture dated as of June 1, 1987 between the Housing Finance 159 Authority of St. Johns County, Florida (the "Issuer") and the 160 Trustee (the "Indenture"), 161

162 RECITALS

WHEREAS, the Issuer has agreed to issue its Multifamily
Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project)
(the "Bonds") in the principal amount of \$12,000,000 pursuant to
the Indenture; and

WHEREAS, the Bonds are being issued for the purpose of refunding the Issuer's \$12,000,000 Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project) which relate to the Remington at Ponte Vedra Apartments project (the "Project") owned by Jacksonville Ventures, Inc. (the "Company"); and

WHEREAS, the Bonds are to be payable from payments to be made 173 by the Company in accordance with the terms of the Amended and 174 Restated Loan Agreement dated as of June 1, 1987 between the 175 Issuer and the Company (the "Loan Agreement"); and

WHEREAS, the Bank has agreed, at the request of the Company, 176 to issue its irrevocable, transferable letter of credit (the 177 "Letter of Credit") in favor of the Trustee in the initial 178 (or such lesser amount as principal amount of \$__ 179 shall, as of any date, constitute the sum of the principal balance 180 of the Bonds Outstanding (as defined in the Indenture) and 210 181 days' interest thereon) (the "Stated Amount") in order to enhance 182 the marketability of the Bonds and entitle them to a rating of 183 "AAA" (the "Rating") in accordance with the rating standards of 184 Standard and Poor's Corporation (the "Rating Agency"); and 185

WHEREAS, the Letter of Credit will permit the Trustee to draw against the Letter of Credit to provide funds necessary to pay all amounts due to holders of the Bonds, when due, and the Bank will obtain reimbursement for such amounts from the Company; and

WHEREAS, in order that the Bonds might qualify for the last Rating, the Bank has been required to provide security for the payment of any amounts required to be paid by the Trustee to the

- 193 holders of the Bonds in the event of a failure of the Bank to
 194 honor a draw made by the Trustee on the Letter of Credit, and the
- 195 Bank has agreed to pledge certain Collateral (as defined in this
- 196 Agreement) to the Trustee to secure the Bank's obligations to make 197 such payments under the Letter of Credit; and
- WHEREAS, the Company has agreed to execute and deliver to the 199 Bank a Letter of Credit and Reimbursement Agreement, dated as of
- 200 June 1, 1987 (the "Reimbursement Agreement") obligating the
- 201 Company to reimburse the Bank for any amounts drawn by the Trustee 202 under the Letter of Credit or for any Collateral liquidated by the
- 203 Trustee pursuant to the terms of this Agreement; and
- 204 WHEREAS, this Agreement is entered into in order to evidence 205 and secure the Bank's obligation to honor draws presented by the 206 Trustee with respect to the Letter of Credit.

207 ARTICLE I

208 DEFINITIONS

All words and phrases defined in Article I of the Indenture, 210 as hereafter defined, shall have the same meanings in this 211 Agreement as in the Indenture unless a different definition is set 212 forth herein. In addition, the following words and phrases shall

213 have the following meanings:

- Accountant shall mean the firm of independent certified public accountants selected by the Bank, subject to the reasonable approval of the Trustee, to prepare the periodic Accounting Reports required pursuant to the terms of Section 3.18.
- Accountant Report Date shall mean (i) a date within five (5)
 Business Days after issuance of the Bonds and (ii) the day within
 thirty (30) days after the Evaluation Date occurring on or most
 closely after each June 1 and December 1 during the term of this
 Agreement, commencing on December 1, 1987, on which the Accountant
 shall render Accounting Reports required under the terms of
 Section 3.18.
- 225 Accounting Report shall mean the reports conforming to the 226 requirements of Section 3.18 and Exhibit L annexed hereto, 227 prepared by the Accountant.
- 228 <u>Administrator</u> shall mean the Administrator, if any, appointed 229 pursuant to Section 7.01 hereof as custodian of Collateral other 230 than Cash or Government Securities.
- 231 <u>Anniversary Date</u> shall have the meaning assigned thereto in 232 the Reimbursement Agreement.
- Bond Obligation shall mean, as of any date, the sum of the principal amount of the Bonds Outstanding and accrued interest thereon to such date.
- Business Day shall mean any day of the year which shall not 237 be a Saturday, Sunday, legal holiday or a day on which banking 238 institutions in the States of New York or Florida are authorized 239 by law or executive order to close.
- 240 <u>Cash</u> shall mean currency and/or Cash Equivalents.
- Cash Equivalents shall mean Government Obligations having a maturity of 90 days or less.
- 243 <u>Collateral</u> shall mean the Eligible Collateral delivered by 244 the Bank to the Administrator or the Depository, as the case may 245 be, from time to time under this Agreement, and certain revenues

and proceeds derived from such Eligible Collateral (including any Insurance Proceeds or Condemnation Proceeds payable with respect to the Mortgage Collateral included therein).

249 <u>Collateral Deficiency</u> shall mean the failure of Collateral 250 pledged pursuant to this Agreement to have a Pledge Value 251 sufficient to satisfy the Collateral Requirement.

Collateral Requirement shall mean the value in Eligible
Collateral which the Bank is required to maintain in order to
secure its obligations under the Letter of Credit, which will be
Collateral having a Pledge Value equal to the Stated Amount of the
Letter of Credit.

Company Mortgage shall mean the Mortgage, Security Agreement and Assignment of Rents and Leases dated as of June 1, 1987, executed by the Company in favor of the Bank in which the Company conveys a third mortgage lien upon the Project to secure, among other things, the obligations of the Company under the Reimbursement Agreement.

263 <u>Condemnation Expenses</u> shall mean expenses incurred by the 264 Bank in connection with the condemnation of any property covered 265 by a Mortgage Loan.

Condemnation Proceeds shall mean amounts received by the Bank in connection with condemnation of any property covered by a Mortgage Loan.

269 <u>Conventional Mortgage Note</u> shall mean the type of instrument 270 specified in Section 3.02 of this Agreement.

Conventional Pass-Through Certificates shall mean 271 certificates representing undivided interests in a pool of 272 conventional, FHA insured or VA-guaranteed mortgage loans secured 273 by first lien mortgages or deeds of trust on real property and the 274 improvements thereon so long as the mortgage loans underlying the 275 pass-through certificates do not permit any further negative 276 amortization, do not contain provisions for balloon payments and 277 278 otherwise satisfy the characteristics of Mortgage Loans, and the pass-through certificates were rated A or better by the Rating 279 280 Agency at the time of their acquisition by the Bank (or, if not rated, are acceptable for inclusion in the collateral pool without 281 impairing the Rating). 282

Cure Period shall mean, with respect to Eligible Collateral pledged in accordance with this Agreement, the time period within pledged in accordance with this Agreement, the time period within which the Bank must replace or supplement such particular Eligible Collateral upon the issuance of a Valuation Certificate showing that the Pledge Value thereof is not sufficient to satisfy the Collateral Requirement.

- Date of Deposit shall mean, with respect to any Collateral, the date the same is deposited with the Depository, the Administrator or the Trustee pursuant to this Agreement.
- 293 <u>Depository</u> shall mean Manufacturers and Traders Trust 294 Company, Buffalo, New York, a banking corporation organized and
- 295 existing under the laws of the State of New York, or any successor 296 appointed pursuant to Section 7.07 hereof, as custodian of
- appointed pursuant to Section 7.07 hereof, as custodian Collateral consisting of Cash, Government Securities or
- 298 Conventional Pass-Through Certificates.
- Depository Agreement shall mean the Depository Agreement dated as of June 1, 1987 between the Bank and the Depository, substantially in the form of Exhibit G annexed hereto.
- Discounted Collateral Value shall mean the value as set forth in Section 3.01 attributable to Eligible Collateral pledged by the Bank under this Agreement as determined by the Rating Agency.
- 305 <u>Eligible Collateral</u> shall mean the categories of Collateral 306 specified in Section 3.02 of this Agreement which may he pledged 307 by the Bank in order to secure its obligations under the Letter of 308 Credit.
- Errors and Omissions Insurance Policy shall mean a standard form insurance policy, in form and substance as generally approved from time to time by FHLMC or FNMA, insuring against losses from errors or omissions of the Bank or its employees, officers or agents in the conduct of its business.
- Evaluation Date shall mean the date or dates specified in Section 3.04 on which the Collateral is to be valued.
- $\frac{\text{FHA}}{317}$ shall mean the Federal Housing Administration, or any successor to the powers thereof.
- 318 <u>FHA Multifamily Notes</u> shall have the meaning specified in 319 Section 3.03 of this Agreement, but may constitute Eligible 320 Collateral only if such inclusion would not impair the Rating on 321 the Bonds.
- 322 <u>FHA/VA Mortgage Notes</u> shall have the meaning specified in 323 Section 3.02 of this Agreement.
- 324 <u>FHLMC</u> shall mean the Federal Home Loan Mortgage Corporation, 325 or any successor to the powers thereof.
- Fidelity Bond shall mean a standard form fidelity bond with respect to the Bank, its officers, employees and agents, in form and substance as generally approved from time to time by FHLMC or FNMA.

- FNMA shall mean the Federal National Mortgage Association, or any successor to the powers thereof.
- FSLIC shall mean the Federal Savings and Loan Insurance Corporation, or any successor to the powers thereof.
- 334 <u>GNMA</u> shall mean the Government National Mortgage Association, 335 or any successor to the powers thereof.
- Government Obligations shall mean noncallable direct general obligations of the United States of America or obligations the payment of principal of and interest on which is unconditionally guaranteed by the full faith and credit of the United States of America.
- 341 <u>Government Securities</u> shall have the meaning specified in 342 Section 3.02 of this Agreement.
- Indenture shall mean the Indenture dated as of June 1, 1987 344 between the Issuer and the Trustee, including any amendments or 345 any supplements thereto as therein permitted.
- Insurance Expenses shall mean expenses incurred by the Bank or the Trustee that are recoverable under the insurance policies required to be maintained hereunder, exclusive of amounts representing recoveries of principal and interest on any Mortgage Loan.
- Insurance Proceeds shall mean payments received under any insurance policy maintained under this Agreement.
- 353 <u>Letter of Credit</u> shall mean the Letter of Credit issued by 354 the Bank, substantially in the form of Exhibit D attached hereto.
- Liquidation Expenses shall mean expenses incurred by the Bank in connection with the liquidation of any defaulted Mortgage Loan and not recovered by the Bank under the Private Mortgage Guaranty Insurance Policy for reasons other than the Bank's failure to comply with Section 3.07 of this Agreement, exclusive of amount representing recoveries of principal and interest on any Mortgage Loan.
- Liquidation Proceeds shall mean amounts (other than Insurance 363 Proceeds) received by the Bank in connection with the liquidation of any defaulted Mortgage Loan, whether through trustee's sale, foreclosure or otherwise.
- Loan-to-Value Ratio shall mean the ratio between the principal amount of a Mortgage Loan and the lesser of the purchase price or the original appraised value of the property financed with the proceeds of such Mortgage Loan.

370 <u>Market Rate</u> shall have the meaning specified in Section 3.04 371 of this Agreement.

Market Value shall mean as of any date the value of 373 Collateral pledged under this Agreement as determined pursuant to 374 Section 3.04 hereof.

Mortgage shall mean a mortgage securing a Mortgage Loan, which shall be the standard FNMA/FHLMC form for the state in which the mortgaged property is located or a form which is acceptable to FNMA/FHLMC for the state in which the mortgaged property is located.

Mortgage Collateral shall mean Eligible Collateral
consisting. Of Collateral other than Cash, Government Securities
or Conventional Pass-Through Certificates, and which may
constitute Eligible Collateral only if the requirements of Section
384 3.07 hereof regarding Underwriting Approval shall have been
satisfied.

Mortgage File shall mean the mortgage documents listed in Exhibit A to this Agreement pertaining to a particular Mortgage Loan, including all documents as are customarily maintained in mortgage loan files by private institutional mortgage servicers, provided that there need be contained only a copy (or other evidence satisfactory to the Trustee) of original hazard or other insurance policies, the original of which is not customarily held by a mortgagee.

Mortgage Loans shall mean the mortgage loans evidenced by the 395 Mortgage Notes that the Bank pledges and delivers to the 396 Administrator pursuant to this Agreement.

Mortgage Note shall mean a promissory note executed by a Mortgagor to evidence the Mortgagor's obligation to repay the Mortgage Loan, which shall be the standard FNMA/FHLMC form for the state in which the mortgaged property is located (or a form acceptable to FNMA/FHLMC).

Mortgage Service Account shall mean the account by that name created pursuant to Section 4.03 hereof.

Mortgage Submission Schedule shall mean a schedule, containing the information set forth in Exhibit B to this Agreement, that is submitted to the Administrator pursuant to Section 3.06 of this Agreement.

Mortgagee shall mean any holder of a Mortgage Note.

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Mortgagee Single Interest Hazard Insurance Policy shall mean 410 a mortgagee single interest hazard insurance policy or any similar 411 mortgagee single interest hazard insurance policy or any similar 412 policy approved by FHLMC or FNMA.

| 415 <u>Notice Address</u> shall mean: | |
|--|-----|
| 416 (a) As to the Issuer: | |
| HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA COURTS COU | |
| 422 (b) As to the Trustee: | |
| SUN BANK, NATIONAL ASSOCIATION as Trustee 255 South Orange Avenue Orlando, Florida 32801 Attention: Corporate Trust Department | |
| 428 (c) As to the Bank: | |
| EMPIRE OF AMERICA FEDERAL SAVINGS BANK, One Main Place Buffalo, New York 14202 Attention: Letter of Credit Desk Securities Investment Department | |
| (d) As to the Administrator, if any: | |
| The address provided by the Administrator pursuant Section 7.04 hereof. | to. |
| 437 (e) As to the Depository: | |
| MANUFACTURERS AND TRADERS TRUST COMPANY, as Depository One M&T Plaza Buffalo, New York 14240 Attention: Corporate Trust Department | |
| 443 (f) As to the Company: | |
| JACKSONVILLE VENTURES, INC. Building 6 Rotterdam Industrial Park Rotterdam, New York 13206 Attention: | |

Other Securities shall mean securities other than those specifically described herein which are approved by the Rating Agency for inclusion as Eligible Collateral.

Outstanding, when used with reference to a Bond or Bonds, shall have the meaning provided in the Indenture.

Pledge Value shall mean the value of Collateral pledged pursuant to this Agreement, as determined by multiplying the Market Value thereof by the applicable Discounted Collateral Value.

458 <u>Private Mortgage Guaranty Insurance Policy</u> shall mean a 459 mortgage guaranty insurance policy issued for mortgages described 460 under Section 3.02(c) hereof by any insurance company which is 461 licensed to do business in the State and approved by FHLMC or 462 FNMA.

Rating Agency shall mean Standard & Poor's Corporation or any 464 other nationally recognized bond rating agency acceptable to the 465 Trustee and the Company.

466 <u>Rating</u> shall mean a rating of "AAA" (or its equivalent) 467 issued by the Rating Agency with respect to the Bonds.

Receipts Account shall mean the account by that name created pursuant to Section 4.02 of this Agreement.

Reimbursement Agreement shall mean the Letter of Credit and Reimbursement Agreement dated as of June 1, 1987 between the Company and the Bank, including any amendments, changes, modifications or alterations thereto as therein permitted.

Residence shall mean, with respect to Conventional Mortgage 474 Notes and FHA/VA Mortgage Notes, real property consisting of a 475 single-family structure (specifically including low-rise 476 condominiums not in excess of four stories, but not mobile homes) 477 that was, at the time of origination of the Mortgage Loan thereon, 478 owner-occupied and designed and intended for use as a primary 479 residence. In the event FHA Multi-Family Notes may be used as 480 Eligible Collateral without impairing the Rating on the Bonds, 481 "Residence" shall mean, with respect to such FHA Multi-Family 482 Notes, the real property consisting of the multi-family structure. 483

Servicing Officer shall mean any officer of the Bank or a subsidiary of the Bank involved in, or responsible for, the administration and servicing of the Mortgage Loans, whose name appears on a list of servicing officers furnished to the Administrator by the Bank at or prior to the date of delivery of the Bonds, as such list may from time to time be amended.

- 490 <u>Standard Hazard Insurance Policy</u> shall mean a standard 491 homeowner's fire insurance policy with extended coverage as 492 approved by the insurance commissioner of the State.
- Stated Amount shall mean, as of any date, the maximum amount which may be drawn by the Trustee under the Letter of Credit, such amount constituting the sum of \$_____; or such lesser amount which shall, as of any date, be the sum of (a) \$12,000,000.00, plus (b) 210 days interest accrued on the Bond Obligation at the rate of % per annum.
- Stated Amount Schedule shall mean the schedule annexed to the 500 Letter of Credit as Annex A, or any amendment thereof, which shows the changes in the Stated Amount during the term of the Letter of
- 502 Credit.
 - 503 <u>Substituted Collateral</u> shall mean Eligible Collateral pledged 504 pursuant to this Agreement in place of Withdrawn Collateral.
 - 505 <u>Underwriting Approval</u> shall mean approval by the Rating 506 Agency of the Bank or any other originator of Mortgage Loans, 507 described in Section 3.07, which approval shall permit the Bank to 508 pledge as Collateral hereunder Conventional Mortgage Notes and 509 FHA/VA Mortgage Notes.
 - 510 <u>Uninsured Cause</u> shall mean any cause of damage to property 511 subject to a Mortgage where the cost of the complete restoration 512 of such property is not fully reimbursable by the insurance 513 policies required to be maintained pursuant to Section 4.06 or 514 4.08 of this Agreement.
 - 515 $\underline{\text{VA}}$ shall mean the Veterans Administration or any successor to 516 the powers thereof.
 - Valuation Certificate shall mean a Certificate of Collateral Value, substantially in the form of Exhibits E or F, on which valuation of the Collateral pledged under this Agreement shall be reported.
 - Valuation Period shall mean the specified intervals at which Collateral pledged pursuant to this Agreement shall be valued, such period to be selected by the Bank and confirmed by the Trustee.
 - 525 <u>Withdrawn Collateral</u> shall mean Collateral pledged pursuant 526 to this Agreement which is released or replaced with Substituted 527 Collateral.

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REPRESENTATIONS, WARRANTIES AND COVENANTS OF THE BANK

- Representations, Warranties and Covenants of Section 2.01 530 the Bank. The Bank represents and warrants to and covenants with 531 532 the Trustee that:
- (a) the Bank is a stock savings bank duly chartered and in 533 good standing under the laws of the United States; 534
- (b) the Bank agrees that during the term of this Agreement 535 it will remain subject to supervision and examination by federal 536 authorities, and that it will remain in good standing and 537 qualified to do business under the laws of the State of New York, 538 will not dissolve or otherwise dispose of all or substantially all 539 of its assets and will not voluntarily consolidate with or merge 540 into any other entity or permit one or more other entities to 541 consolidate with or merge into it; provided, that the Bank may, 542 without violating the agreement contained in this subsection, 543 consolidate with or merge into another entity, or permit one or 544 more entities to consolidate with or merge into it, or sell or 545 otherwise transfer to another such entity all or substantially all 546 of its assets as an entirety and thereafter dissolve, provided the 547 surviving, resulting or transferee entity, as the case may be, 548 shall be subject to the supervision and examination of state or 549 federal authorities, as may be applicable, and after giving effect 550 to such transaction, have a net worth which satisfies the 551 regulatory requirements of the Federal Home Loan Bank Board and 552 the Federal Savings and Loan Insurance Corporation; and shall 553 assume in writing all of the obligations of the Bank under this 554 Agreement (in the case of a sale of all or substantially all of 555 the Bank's assets, the Trustee shall release the Bank in writing, 556 concurrently with and contingent upon such assumption, from all 557 liability hereunder); 558
- (c) the Bank has the power to execute and deliver the Letter 559 of Credit and this Agreement and to enter into the transactions 560 contemplated by this Agreement, and the execution, delivery and 561 performance of the Letter of Credit and this Agreement have been 562 duly authorized by all necessary corporate and other action; 563
- (d) neither the execution and delivery of the Letter of Credit or this Agreement, the consummation of the transactions contemplated thereby, nor the fulfillment of or compliance with 566 the terms and conditions of the Letter of Credit or this 567 Agreement, conflict with or result in any breach or violation of 568 any of the terms, conditions or provisions of any applicable laws, 569 including regulations, or any agreement or instrument to which the 570 Bank is now a party or by which it is hound, or constitute a 571 default under any of the foregoing; 572

- (e) the Bank will not knowingly take any action or permit any action which is within its control to be taken which would impair the exemption from federal income taxation of interest on the Bonds or reduce the Rating on the Bonds;
- (f) the Bank shall deliver to the Trustee at or prior to the 577 time of delivery of the Bonds (i) the original executed Letter of 578 Credit, (ii) an executed copy of this Agreement, (iii) duly 579 executed and recorded financing statements, required to be filed 580 pursuant to subsection (g) of this Section 2.01, and (iv) such 581 opinions of the Bank's legal counsel and certifications evidencing 582 the taking of necessary or appropriate corporate action, and other 583 documents as may reasonably be requested by the Trustee or 584 required by the Rating Agency; 585
- (g) the Bank shall, prior to the delivery of the Bonds, and 586 thereafter from time to time, cause this Agreement and any 587 financing statements in respect thereof to be filed, registered 588 and recorded in such manner and in such places as may be required 589 by law in order to fully perfect and protect the lien and security 590 interest created pursuant to Section 3.01 hereof and from time to 591 time will perform or cause to be performed any other act as 592 provided by law and will execute or cause to be executed any and 593 all continuation statements and further instruments that may be 594 requested by the Trustee for such perfection and protection. 595 Bank shall pay or cause to be paid all filing, registration and 596 recording fees incident to such filing, registration and 597 recording, and all expenses incident to the preparation, execution 598 and acknowledgment of such instruments of further assurance, and 599 600 all federal or state fees and other similar fees, duties, imposts, assessments and charges arising out of or in connection with the 601 execution and delivery of this Agreement and such instruments of 602 further assurance; 603
- the Bank shall execute and deliver or cause to be 604 executed and delivered to the Trustee now, and at any time or 605 times hereafter at the request of the Trustee, all documents, 606 instruments, letters of direction, notices, reports, acceptances, 607 receipts, consents, waivers, affidavits and certificates as the 608 Trustee may request, in form reasonably satisfactory to the 609 Trustee, to perfect and maintain first priority perfected liens 610 and security interests granted by the Bank pursuant to Section 611 3.01 of this Agreement, and in order to consummate fully all of 612 613 the transactions contemplated hereunder;
- (i) the Bank or an affiliate thereof regularly originates 615 mortgage loans for single-family residences in the course of its 616 business;
- (j) the Bank and each such affiliate referred to in 618 subparagraph (i) above, are FNMA- or FHLMC-approved Seller-619 Servicers; and

(k) this Agreement constitutes the valid and binding 621 obligation of the Bank, enforceable against it in accordance with 622 its terms.

623 ARTICLE III

624 PLEDGE AND MAINTENANCE OF COLLATERAL

Pledge and Delivery of Collateral; Collateral Section 3.01 625 Requirements. Prior to the delivery of the Bonds, the Bank shall 626 deliver (a) to the Depository, in the case of Eligible Collateral 627 consisting of Cash, Government Securities or Conventional Pass-628 Through Certificates, or (b) to the Trustee, or to the 629 Administrator, if one be appointed in accordance with the terms of 630 this Agreement, in the case of Eligible Collateral consisting of 631 any other category of Collateral described in this Section 3.01, for the benefit of the Trustee, in the manner set out in Sections 632 633 3.05 and 3.06 hereof, in the form and manner necessary to perfect 634 the first and prior lien to the Trustee as provided herein, and 635 shall thereafter maintain until the Expiration Date of the Letter 636 of Credit (as defined in the Letter of Credit) Eligible Collateral 637 having a Pledge Value (determined in accordance with Section 3.04 638 hereof) at least equal to the Collateral Requirement. 639

Collateral shall be valued by multiplying to the applicable
Market Value of each type of Collateral (as determined pursuant to
Section 3.04) by the appropriate Discounted Collateral Value as
described below. The Discounted Collateral Value to be used in
such valuations shall be based on the Valuation Period and Cure
Period selected by the Bank and designated to the Trustee, the
Depository and/or the Administrator in a notice given in
accordance with the terms hereof.

COLLATERAL REQUIREMENT 648 DISCOUNTED COLLATERAL VALUE / FREQUENCY 649 OF VALUATION/ CURE PERIOD 650 651 CASH AND GOVERNMENT SECURITIES 652 Weekly/ Monthly/ Monthly/ 653 Type of 2-day Cure 2-day Cure 654 Collateral Month Cure 100.00% 100.00% 100.00% 655 Cash 68.97% 71.43% 62.50% 656 FHLMC PC's 71.43% FNMA MBS's 62.50% 68.97% 657 76.92% 74.07% 658 GNMA Certificates 66.67% 659 Government 660 Obligations 661 Remaining Maturities 93.46% 95.24% l year 92.59% 662 80.00% 86.96% 78.13% 663 5 years 84.75% 75.19% 74.07% 664 10 years 83.33% 74.07% 15 years 71.43% 665 76.92% 66.67% 68.97% 30 years 666 * * * * 667 Provided, however, where a monthly Valuation Period and 668 669 monthly Cure Period are applied to Government Securities which 670 have not been registered in the name of the Trustee, the following 671 Discounted Collateral Values shall apply: Monthly/ 672 Type of Month Cure 673 Collateral 59.38% FHLMC PC's 674 59.38% FNMA MBS's 675 GNMA Certificates 63.33% 676 677 Government

Obligations

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| 679 | Remaining Maturiti | ies | | | | |
|---|---|--|--|--|--|--|
| 680 681 682 683 684 | 1 year 5 years 10 years 15 years 30 years | 87.96% 74.22% 70.37% 67.86% 63.33% | | | | |
| 685 | | * * * * | | | | |
| 686 687 | MORTGAG PA | E COLLATERAL AND CONVASS-THROUGH CERTIFICA | VENTIONAL ATES | | | |
| 688 689 | | Quarterly/ Month Cure | Monthly/ Monthly Cure | | | |
| 690 691 | Conventional/FHA/VA Mortgages | 58.82% | 62.50% | | | |
| 692 693 | Conventional Pass Through Certificates | 58.82% | 62.50 | | | |
| 694 | | * * * * | | | | |
| 695 | FHA MULT | IFAMILY NOTES/ OTHER | SECURITIES | | | |
| 696 697 698 699 700 | applicable Cure Period relating to FHA Multifamily Notes and Other Securities shall be such as may be necessary to secure and/or maintain the quality of the Rating, as the Rating Agency may | | | | | |
| 701 | | * * * * | | | | |
| 702 703 704 705 706 707 708 709 710 | circumstance which sha than as contemplated: shall give notice to t the occurrence thereof Business Days of such Schedule accordingly a | the Stated Amount the Bank, within five and the Bank, shal notification, amend and deliver a copy of Trustee and the Com | Schedule, the Trustee (5) Business Days of the Within fifteen (15) the Stated Amount | | | |

Agreement shall be determined with reference to the Stated Amount 711 as set forth on the Stated Amount Schedule, as the same may be 712 amended from time to time. 713

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In order to secure the prompt payment of any amounts payable by the Bank to the Trustee as the result of the failure of the Bank to honor a draw made under its Letter of Credit, and the fulfillment of the Bank's other covenants, obligations and agreements set forth in this Agreement, the Bank hereby grants, assigns, transfers and conveys to the Trustee a first perfected security interest under the New York Uniform Commercial Code (the "Code") in and to all of the Bank's right, title and interest in (i) the Collateral initially delivered hereunder; (ii) all additions to and substitutions for such Collateral; (iii) all proceeds and collections derived from or in connection with the Collateral, including any insurance or condemnation proceeds received with respect thereto; and (iv) all powers and rights of the Bank, including rights of enforcement under the Collateral. The Trustee shall have all of the rights, remedies and recourses 728 with respect to the Collateral afforded a secured party by the 729 Code in addition to, and not in limitation of, the other rights, remedies and recourses afforded to the Trustee by this Agreement.

In the case of Eligible Collateral consisting of Mortgage Collateral, the Bank shall deliver to the Trustee an Assignment substantially in the form of Exhibit C annexed hereto, and shall cause to be recorded an assignment of the related Mortgages in favor of the Trustee in the appropriate registries of deeds or other recording offices prior to the delivery of such Eligible Collateral to the Administrator.

Section 3.02 Eligible Collateral. "Eligible Collateral" shall mean and include Cash, Government Securities, FHA/VA Mortgage Notes, Conventional Mortgage Notes and Conventional Pass-Through Certificates, as described more fully below:

Government Securities shall mean (i) direct obligations (a) of or obligations the payment of principal and interest on which is fully guaranteed by the full faith and credit of the United States of America and provide for the payment of interest throughout their respective terms; and (ii) obligations of Agencies of the government of the United States of America the payment of principal and interest on which is fully guaranteed by the full faith and credit of the United States of America; and (iii) mortgage loan participation certificates or mortgage-backed securities issued by the Government National Mortgage Bank, the Federal Home Loan Mortgage Corporation and the Federal National Mortgage Association; but in all cases (i) through (iii) above, excluding "zero" coupon obligations;

| 75 8 | (b) | FHA/ | VA Mortgage Notes shall mean obligations that: |
|--|-----|------|--|
| 759 760 761 | | (1) | meet the requirements set forth in either clause (i) or clause (ii) of Subsection (a) of Section 3.07; |
| 762 763 | | (2) | meet the requirements set forth in Subsections (b) through (s) of Section 3.07; |
| 764 765 766 767 768 | | (3) | have not been thirty (30) days or more in arrears beyond any applicable grace period at any time during the twelve (12) months preceding the Date of Deposit as part of the Collateral and are not in arrears as of such date; |
| 769 770 771 | | (4) | are serviced by the Bank or by an affiliate of the Bank or by an approved FNMA, FHLMC and GNMA Seller-Servicer of mortgage loans; and |
| 772 773 774 775 776 777 | | (5) | if secured by mortgages on two to four unit structures which were, at the time of origination of the Mortgage Loan thereon, owner occupied and designed and intended for use as a primary residence, do not aggregate more than 10% of the total of FHA/VA Mortgage Notes. |
| 7 78 | (c) | Conv | entional Mortgage Notes shall mean obligations that: |
| 779 780 | | (1) | meet the requirements set forth in clause (iii) of Subsection (a) of Section 3.07; |
| 781 782 | | (2) | meet the requirements set forth in clauses 2 through 4 in Subsection (b) of this Section 3.02; |
| 783 784 | | (3) | meet the requirements set forth in Subsections (a) through (u) of Section 3.07; |
| 785 786 787 788 | | (4) | have an unpaid principal balance on the Date of Deposit as part of the Collateral of not more than \$25,000 in excess of the FHLMC maximum loan amount; and |
| 7 8 9 790 | | (5) | satisfy the following individually or in the aggregate, as the case may be: |
| 791 792 793 794 | | | (i) Conventional Mortgage Notes secured by mortgages on condominiums may not aggregate more than 10% of the total of Conventional Mortgage Notes; |
| 795 796 | | | (ii) Conventional Mortgage Notes with Loan-to- Value Ratios in excess of 80% may not |

| 797 79 8 | | | | aggregate more than 25% of the total of Conventional Mortgage Notes; | |
|---|-----|---|---|--|--|
| 799 800 801 802 803 | | | (iii) | Conventional Mortgage Notes with unpaid principal balances exceeding the then current FHLMC purchase limit may not aggregate more than 25% of the total of Conventional Mortgage Notes; | |
| 804 805 806 807 808 809 810 | | | (iv) | Conventional Mortgage Notes secured by mortgages on two to four unit structures which were, at the time of origination of the Mortgage Loan thereon, owner-occupied and designed and intended for use as a primary residence, may not aggregate more than 10% of the total of Conventional Mortgage Notes; | |
| 812 813 814 815 | | | (♥) | no Conventional Mortgage Note may have more than one of the characteristics referred to in subparagraphs (i), (ii), (iii) and (iv) above; and | |
| 816 817 818 819 820 821 | | | (vi) | the total aggregate unpaid balance of the Conventional Mortgage Notes described in subparagraphs (i), (ii), (iii) and (iv) above may not, when added together, exceed 35% of the total Conventional Mortgage Notes. | |
| 822 823 | (d) | Conventional Pass-Through Certificates shall mean obligations that: | | | |
| 824 825 826 827 828 | | (1) | time o rated, inclus | ated A or better by the Rating Agency at the f their acquisition by the Bank or, if not so then are nevertheless satisfactory for ion in the Collateral pool without impairing ting, as certified by the Bank; | |
| 829 830 831 832 833 834 835 836 837 838 839 | | (2) | are covered by a pooling and servicing agreement with an approved FNMA, FHLMC and GNMA seller servicer of mortgage loans and each such pooling and servicing agreement shall contain provisions permitting the servicer to advance certain delinquent payments of principal, interest, taxes, insurance premiums and foreclosure costs including reasonable attorneys' fees on the mortgage loans underlying the certificates and shall provide for a transfer by the Bank of servicing under certain conditions; and | | |
| 840 841 | | (3) | are co | overed by a blanket private mortgage insurance insuring against aggregate losses by reason | |

of defaults in payments by the mortgagors on such loans in an amount, at the time of acquisition of the certificate by the bank, of not less than 5% of the outstanding principal balance of the certificate.

Provided, however, that Collateral consisting of FHA/VA Mortgage Notes or Conventional Mortgage Notes may constitute Eligible Collateral hereunder only if Underwriting Approval (as described in Section 3.07) shall have been secured with respect thereto.

Section 3.03 Other Eliqible Collateral. The categories of 851 Collateral which are listed in Section 3.02 are currently 852 acceptable as collateral to secure a letter of credit under 853 criteria of the Rating Agency to provide the basis for a Rating. 854 The patties acknowledge the possibility that, from time to time, 855 categories of collateral other than those listed in Section 3.02 856 may be approved by the Rating Agency as having characteristics 857 which permit their inclusion as Eligible Collateral without 858 impairing the Rating. The parties therefore agree that, at such 859 time as other categories of collateral may constitute Eligible 860 Collateral, and the Bank has provided the Trustee, the 861 Administrator and the Depository with written evidence of the 862 approval of such categories of Collateral by the Rating Agency, 863 the Bank shall have the right to pledge the same in accordance 864 with this Agreement, but only after the Trustee shall have 865 confirmed to the Depository and the Administrator, if any, the 866 fact that any such collateral may constitute Eligible Collateral 867 under this Agreement, and designated the Discounted Collateral 868 Value applicable thereto. Such collateral ("Other Eligible 869 Collateral") may include: 870

(a) FHA Multifamily Mortgage Notes; or

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(b) Other Securities (including obligations other than FHA 873 Multifamily Mortgage Notes or obligations described in Section 874 3.02 (a) through (d).

875 FHA Multi-Family Mortgage Notes and other Securities shall have 876 such characteristics and Pledge Values, and shall be delivered and 877 otherwise treated in such manner as may be necessary in order to 878 secure and maintain the Rating.

The Pledge Value of Section 3.04 Valuation of Collateral. 879 the Collateral shall be determined by the Bank in accordance with 880 this Section 3.04 (i) upon the initial delivery thereof by the 881 Bank with the Trustee, the Administrator or the Depository, as the 882 case may be, and thereafter (ii) at such intervals as shall be 883 specified by the Bank to the Trustee. The Bank shall deliver to 884 the Trustee a Notice of Valuation Period substantially in the form 885 of Exhibit H annexed hereto, which Notice shall specify the 886 Valuation Period and Cure Period applicable to the Collateral 887 delivered pursuant to this Agreement. In the event Collateral 888

having varying Cure Periods shall at any time constitute the 889 Collateral, the Cure Period applicable to all the Collateral then 890 pledged under this Agreement shall be the shortest period 891 applicable to any such Collateral. The Valuation Period may be 892 changed from time to time by similar notice by the Bank, with the 893 consent of the Trustee which shall not be withheld so long as no 894 Event of Default occurs hereunder, provided, however, that any 895 such change which results in less frequent Valuation Periods or 896 shorter Cure Periods shall not be permitted unless the Trustee 897 shall also have received a current Valuation Certificate showing 898 that the Collateral has a sufficient Pledge Value to cover the 899 Collateral Requirement which would he in effect following the 900 change, together with a satisfactory confirming Accounting Report. 901 Such valuations shall be made (i) on the first: Business Day of 902 each applicable Valuation Period, and (ii) within the time limit 903 specified herein in Section 3.11 following the cure of a 904 Collateral Deficiency, if any such Collateral Deficiency shall 905 occur, (any such dates on which valuations are to be made being 906 referred to herein as an "Evaluation Date"). The Pledge Value of 907 Collateral shall be determined by multiplying the Market Value of 908 the Collateral to be valued, as determined on any Evaluation Date 909 in accordance with the criteria set forth in Section 3.04, by the 910 Discounted Collateral Value for such type of Collateral as 911 specified in Section 3.01. The evaluation so made shall be 912 reported following each valuation on a Certificate of Collateral 913 Value (a "Valuation Certificate") substantially in the form of 914 Exhibit E annexed hereto (in the case of Collateral consisting of 915 Cash, Government Securities or Conventional Pass-Through 916 Certificates), or Exhibit F annexed hereto (in the case of 917 Collateral consisting of Mortgage Collateral). In no event shall 918 any Collateral so valued have a value greater than par. 919

The Market Value of Cash shall be determined by the Depository by confirming the amount currency or of Cash Equivalents on deposit with the Depository on the Evaluation Date.

The Market Value of Government Securities shall be determined as follows:

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- (a) as to Government Securities, the bid and asked prices of which are published on a regular basis in The Wall Street Journal, at the bid price for such Government Securities so published most recently prior to the Evaluation Date; and
- as to Government Securities for which a valuation method 930 is not described in subparagraph (a) above, at the lower 931 bid price for such Government Securities as reported 932 within five (5) days prior to the Evaluation Date by any 933 two dealers in such Government Securities who are 934 members of the National Bank of Securities Dealers, 935 Inc., (provided that at least one of such bids shall be 936 in writing). 937

938 The Market Value of Mortgage Collateral (the "Evaluated 939 Loans") constituting Collateral for purposes hereof shall be 940 determined in the following manner:

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- The Evaluated Loans shall be grouped and identified (i) by servicer and, upon determining the weighted average interest rate and weighted average remaining term to maturity with respect to the Evaluated Loans in each group, written bids will be obtained by the Administrator on the Business Day next preceding the applicable Evaluation Date from any two nationally recognized dealers, selected by the Administrator subject to the reasonable approval of the Bank and the Trustee, who are at the time making a market in comparable mortgage loans, and the Evaluated Loans shall then be valued by multiplying the lower of the bid prices received with respect to each group by the aggregate outstanding principal balance of all Evaluated Loans within such group as shown on the most recent report related to such Evaluated Loans received by the Bank prior to the applicable Evaluation Date;
 - (ii) In the event bid prices cannot be obtained as described in clause (i) above, the Evaluated Loans shall be valued by discounting the remaining scheduled payments of principal and interest on each Evaluated Loan by
 - (A) for Conventional Mortgage Loans, a rate equivalent to the yields at which either FNMA or FHLMC committed to purchase conventional mortgage loans of such type for the shortest available delivery period prior to the applicable Evaluation Date; and
 - (B) for FHA/VA Mortgages a rate (rounded to the nearest .01%) equivalent to the yields at which FNMA committed itself to purchase FHA/VA Mortgages for the shortest available delivery period prior to the applicable Evaluation Date,

in all cases in this clause (ii), as such FHLMC or FNMA posted rates were reported by The Wall Street Journal, The New York Times or directly by FNMA or FHLMC (FNMA and FHLMC yields currently are quoted net of any servicing fee), and based on commitments to purchase with a 144-month prepayment assumption;

(iii) in the event that the rates described in clause (ii), are not available as of the applicable Evaluation Date or, with respect to Conventional Mortgage Loans, in the event that, as of the applicable evaluation date, FHLMC and FNMA have ceased to post rates with respect to Conventional Mortgage Loans, and with respect to FHA Multi-Family Mortgages and FHA/VA Mortgages in the event that, as of the applicable Evaluation Date, FNMA has ceased to post FHA/VA commitment rates,

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- (A) a rate either 0.75% as to Conventional Mortgage Loans, or 0.50% as to FHA/VA Mortgages, greater than the yield on the Business Day next preceding the applicable Evaluation Date (as published on a regular basis by The Wall Street Journal, or The New York Times) for GNMA mortgage-backed pass-through certificates with the same (or if there are none with the same then the next higher) nominal interest rate as the weighted average nominal interest rate of the Mortgage Loans included in the Bank's assets; or
- (B) if no such yield is so published, a rate 2.75% as to Conventional Mortgage Loans, or 2.50% as to FHA/VA Mortgages, greater than the most recent per annum Ten Year Average Yield as published weekly by the Federal Reserve Board, by any Federal Reserve Bank or by any U.S. Government department or agency.

The Market Value of Conventional Pass-Through Certificates 1013 constituting Collateral for purposes hereof shall be determined by 1014 multiplying the outstanding aggregate principal balance of the 1015 mortgage loans evidenced by each Conventional Pass-Through 1016 Certificate as shown on the most recent report related to such 1017 Certificate received by the Bank prior to the applicable 1018 Evaluation Date by (x) the lower of the bid prices for such 1019 1020 Conventional Pass-Through Certificate received in writing by the Bank on the Business Day next preceding the applicable Evaluation 1021 Date from any two nationally recognized dealers selected by the 1022 Administrator, subject to the reasonable approval of the Trustee 1023 and the Bank, who ate at the time making a market in conventional 1024 pass-through certificates, or (y) in the event bid prices cannot 1025 be obtained as described in clause (x) above, each Conventional 1026 Pass-Through Certificate shall be valued in accordance with the 1027 method described above as a group of FHA/VA Mortgages having a 1028 weighted average interest rate equal to the interest rate of such 1029 Certificate and a weighted average remaining term to maturity 1030 equal to the final stated maturity of such Certificate. 1031

Section 3.05 <u>Delivery and Review of Collateral Documents - 1033 Cash, Government Securities and Conventional Pass-Through</u> 1034 Certificates.

1035 Collateral shall be delivered to the Depository, and the 1036 Depository shall identify and segregate Collateral held by it in 1037 the manner provided in the Depository Agreement.

In the case of Government Securities held in book-entry form 1039 by the Federal Reserve System, delivery shall be by transfer 1040 thereof to the account of the Depository or any account designated 1041 by the Depository with Depository Trust Company.

In the case of Government Securities held in book-entry form by Depository Trust Company, delivery shall be by transfer thereof through the book-entry system of Depository Trust Company to the account of the Depository or any account designated by the Depository.

In the case of Government Securities held in physical form and Conventional Pass-Through Certificates, delivery shall be by delivery of the certificates evidencing the same to the Depository endorsed in blank without recourse, and accompanied by bond powers, also executed in blank.

The Depository shall be entitled to rely upon the form of 1052 confirmation customarily provided by the Federal Reserve System or 1053 Depository Trust Company, as the case may be, to determine that 1054 1055 Government Securities held in book-entry form shall have properly been delivered to its account. In the case of Government 1056 1057 Securities held in physical form, the Depository shall promptly review the certificates, the endorsements thereon and the bond 1058 powers accompanying the same to ascertain that all documents have 1059 been executed and received. 1060

The Bank shall pay the fees of the Depository in accordance with the Depository Agreement.

Section 3.06 <u>Delivery and Review of Collateral Documents - 1064 Mortgage Collateral</u>.

In the case of Collateral consisting of Mortgage Collateral, 1066 in addition to recording assignments of the related Mortgages in 1067 favor of the Trustee, as provided in Section 3.01, the Bank shall 1068 deliver to the Administrator for each Mortgage Loan constituting 1069 Collateral:

- the Mortgage Note, endorsed in blank by the Bank, or accompanied by valid instruments of assignment as security;
- 1073 (ii) the original recorded Mortgage or a true copy of the recorded Mortgage securing the Mortgage Loan;

evidence of Private Mortgage Guaranty Insurance, 1075 (iii) the quaranty by VA or insurance by FHA, as the case 1076 may be with respect to each Mortgage Loan unless 1077 such Mortgage Loan had, at the date of origination 1078 thereof, a Loan-to-Value Ratio of less than 80%; 1079 a Mortgage Submission Schedule; (iv) 1080 a true copy of title insurance policies relating to 1081 (V) such Mortgage Loan or legal opinions as to title; 1082 1083 and such other documents or other information relating (vi) 1084 to the Mortgage Loan as the Rating Agency may 1085 require. 1086

The Administrator shall review the documents so delivered and 1087 each Mortgage File relating thereto as promptly as practicable, 1088 1089 and in any event within thirty (30) days after the delivery thereof to ascertain that all requited documents have been 1090 executed and received as provided herein, and that the Mortgage 1091 Loan covered thereby complies with the requirements hereof. 1092 1093 Administrator shall hold the Mortgage Collateral in trust for the 1094 benefit of the Trustee, shall identify and segregate the Mortgage Collateral separate and apart from any and all other documents and 1095 1096 instruments held by it and shall maintain an accurate record of the Mortgage Collateral, including any additions thereto, 1097 substitutions therefor and proceeds thereof. The Bank shall pay 1098 the Administrator's reasonable charges for its services rendered 1099 1100 hereunder.

The Bank shall, at its own expense, maintain the Mortgage 1101 File with respect to each Mortgage Loan constituting Collateral at 1102 the Bank's principal place of business in Buffalo, New York, or at 1103 such other locations as the Bank shall designate by written notice 1104 to the Trustee and the Administrator, and shall keep the same 1105 available for inspection and copying by the Administrator at such 1106 reasonable times and in such reasonable manner as the 1107 Administrator may request. 1108

Neither the Trustee nor the Administrator shall be under any 1109 duty or obligation whatsoever, to make or give any presentments, 1110 demands for performances, notices of non-performance, protests, 1111 notices of protest or notices of dishonor in connection with any 1112 obligations or evidences of indebtedness held as collateral 1113 hereunder, or in connection with any obligation or evidences of 1114 indebtedness which constitute in whole or in part the indebtedness 1115 secured hereunder, except as specifically required hereunder. 1116

The Trustee shall not be liable for any loss or diminution in 1118 value of the Collateral or the proceeds thereof irrespective of whether the Bank retains the right to substitute Collateral. In 1120 particular, and without limitation, the Bank hereby expressly

agrees that the Trustee shall not be liable for any destruction, 1121

conversion, misappropriation or loss of the certificates 1122

representing securities pledged as Collateral after such 1123

securities are delivered to the Administrator or the Depository. 1124

The Trustee shall pay no interest on the Collateral and assumes no 1125

responsibility for the earning of any income thereon. 1126

If, at any time during the term of this Agreement, the 1127 Administrator in its reasonable judgment ascertains that a 1128 Mortgage Loan or any part of the Mortgage File fails to comply 1129 with the requirements hereof, the Administrator shall immediately 1130 notify the Bank of such fact and the Bank shall replace the 1131 Collateral relating to such Mortgage Loan as provided in Section 1132 3.12 hereof. 1133

Section 3.07 Requirements, Representations and Warranties 1134 Concerning Mortgage Loans. No Mortgage Collateral consisting of 1135 Conventional Mortgage Notes or FHA/VA Mortgage Notes may be 1136 delivered by the Bank and constitute Eligible Collateral hereunder 1137 unless the Bank or, if any of Mortgage Loans constituting such 1138 Mortgage Collateral were not originated by the Bank and have not 1139 been, at the time of delivery to the Administrator, seasoned in 1140 the Bank's portfolio for five years, the Bank and the institution 1141 originating such Mortgage Loans, shall be approved by the Rating 1142 Agency as eligible to deliver Mortgage Loans hereunder (such

approval being referred to herein as "Underwriting Approval"). 1144 With respect to each Mortgage Loan to be included as 1145 Collateral hereunder, the Bank hereby represents, warrants and 1146

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covenants that:

as of the Date of Deposit, each Mortgage Loan will be (a) either (i) fully insured by the FHA or the Farmers Home Administration, (ii) VA guaranteed, or (iii) a Conventional Mortgage Note that either (x) had, as of the date of origination thereof, a Loan-to-Value Ratio not in excess of 80%, or (y) had, as of the date of origination thereof, a Loan-to-Value Ratio not in excess of 90% and is covered by a Private Mortgage Guaranty Insurance Policy issued by an insurer currently eligible under FNMA/FHLMC regulations, insuring against default on such Mortgage Loan as to the principal amount thereof exceeding 75% of the appraised value of the Residence securing such Mortgage Loan (appraised value is deemed, for the purposes hereof, to be the amount set forth in the appraisal made in connection with the origination of such Mortgage Loan, unless a more recent appraisal by an independent appraiser has been carried out as set forth in the Mortgage Submission Schedule). The Private Mortgage Guaranty Insurance Policy shall be maintained in force until the Loan-to-Value Ratio is not in excess of 80% on the basis of the original appraisal by an independent appraiser;

- 1170 (b) the information set forth in the Mortgage Submission
 1171 Schedule will be true and correct and the terms of the
 1172 original Mortgage and Mortgage Note will not have been
 1173 waived, altered, impaired or modified in any respect;
- 1174 (c) the property subject to each Mortgage will be a Residence;

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- (d) as of the Date of Deposit, each Mortgage will be a valid first lien on the Residence securing the related Mortgage Note (subject only to (a) the lien of current real property taxes and assessments, (b) covenants, conditions and restrictions, rights-of-way, easements and other matters of public record as of the date of recording of such mortgage, such exceptions appearing of record being acceptable to mortgage lending institutions generally or specifically reflected in the appraisal made in connection with the origination of such Mortgage Loan, and (c) other matters to which like properties are commonly subject that do not materially interfere with the benefits of the security intended to be provided by the Mortgage);
 - (e) as of the Date of Deposit, the Bank will have good title to and will be the sole holder of each Mortgage Note and the same will be free and clear of any lien or encumbrance having priority over the security interest therein created by this Agreement;
- (f) each Mortgage Loan will have a maximum original maturity of thirty (30) years or less, and will have been outstanding for at least one year prior to the Date of Deposit thereof;
 - (g) as of the Date of Deposit all payments on the Mortgage Loan will be current and no payment on the Mortgage Loan due within the twelve (12) months preceding the date of deposit will have been thirty (30) days or more in arrears;
 - (h) as of the Date of Deposit, there will be no delinquent tax or assessment lien against the property subject to any Mortgage;
 - (i) as of the Date of Deposit, there will be no offset, defense or counterclaim to a Mortgage Note or Mortgage, including the obligation of the Mortgagor to pay the unpaid principal or interest on such Mortgage Note, and such Mortgage Note and Mortgage will be valid and binding agreements of the Mortgagor enforceable in accordance with their terms;

1214 (j) as of the Date of Deposit, there will be no mechanics'
1215 liens or claims for work, labor or material affecting
1216 the premises subject to any Mortgage which will be or
1217 may be a lien prior to, or equal or coordinate with, the
1218 lien on such Mortgage except those which are insured
1219 against by the title insurance policy referred to below;

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- (k) each Mortgage Loan at the time it was made will have complied in all material respects with applicable state and federal laws, including usury, equal credit opportunity and disclosure laws;
 - (1) a lender's mortgagee title insurance policy or binder therefor will have been issued at the time of the origination of each Mortgage Loan, each such policy as of the Date of Deposit will be valid and remain in full force and effect in an amount at least equal to the outstanding principal amount of the Mortgage Loan and will insure that the Mortgage constitutes a first lien on the property;
- (m) each Mortgage Loan will have been originated by the Bank, by an affiliate of the Bank or by an approved FNMA/FHLMC Seller-Servicer and will provide for level monthly payments of principal and interest;
 - (n) each Mortgage Loan will bear interest at a fixed annual rate and shall be fully amortizing, without a balloon payment;
 - (o) as of the Date of Deposit, the improvements upon the real property subject to the Mortgage will be covered by a valid Standard Hazard Insurance Policy, with a standard mortgagee endorsement, in an amount at least equal to the unpaid principal amount of the Mortgage Loan;
 - (p) to the best knowledge of the Bank, as of the Date of Deposit, the improvements upon the real property subject to the Mortgage will be free of any material damage and will be in good general repair;
 - (q) each Mortgage will have been duly and timely filed or recorded in the proper public office or offices in order to perfect the lien thereof and to give constructive notice thereof to all subsequent purchasers or encumbrances of the property subject to the Mortgage;
 - (r) to the best knowledge of the Bank, the Mortgagor of a Mortgage Loan will not have conveyed such Mortgagor's right, title or interest in or to the property subject to the related Mortgage;

- 1258 (s) the portfolio of Mortgage Loans included as Collateral,
 1259 at any time and from time to time, shall be generally
 1260 representative of mortgage loans then owned by the Bank
 1261 with respect to geographical location of the properties
 1262 secured by the related Mortgage Loans;
- 1263 (t) no more than 5% of the properties secured by FHA, VA or 1264 Conventional Mortgage Loans may be located within the 1265 area included within any single five digit zip code 1266 assigned by the United States Postal Service;

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- (u) a federal flood insurance policy will have been issued insuring each Conventional Mortgage Loan secured by a Mortgage on a Residence located in an area designated as a flood area by State or federal authorities, and each such policy as of the Date of Deposit will be valid and remain in full force and effect in an amount not less than the principal balance owing on the Mortgage Loan or the maximum amount insurable under the federal flood insurance policy, whichever is less;
- (v) any portfolio of FHA/VA Mortgage Loans or of Conventional Mortgage Loans included as Collateral shall, at the time of delivery as Collateral hereunder, contain at least one hundred (100) Mortgage Loans;
 - (w) any Mortgage Loans originated after 1977 shall be on the standard FNMA/FHLMC form for the state in which the mortgaged property is located (or a form acceptable to FNMA/FHLMC);
 - (x) each of the Mortgage Loans in the pool shall have a minimum balance of \$10,000, except that Mortgage Loans which have been seasoned in the Bank's portfolio for 10 years or more may have a minimum balance of \$5,000;
 - (y) all Mortgage Loans in the pool shall have been seasoned in the Bank's portfolio (i) for at least three (3) months, if such Mortgage Loans were originated by the Bank or by another institution with respect to which the Rating Agency shall have given Underwriting Approval, or (ii) if not originated by the Bank or another institution with respect to which the Rating Agency shall have given Underwriting Approval, for at least five (5) years.

Upon discovery by the Bank, the Administrator or the Trustee of a breach of any of the foregoing representations and warranties that in the reasonable judgment of the Trustee materially and adversely affects the value of any Mortgage Loan, the party discovering such breach shall give prompt written notice to the other parties set out in this paragraph and the Bank shall replace the Mortgage Loan as provided in Section 3.12 hereof.

Section 3.08 Defective Documents; Breach of Representations. 1304 If at any time any document or documents constituting a part of a 1305 Mortgage File for a Mortgage Loan shall be defective, or there 1306 shall be a breach of any representations, warranties and covenants 1307 made with respect to a Mortgage Loan, in any material respect in 1308 the reasonable judgment of the Trustee, the Trustee shall notify 1309 the Bank in writing and the Bank shall immediately cure the defect 1310 or breach. If any such defect or breach cannot be immediately 1311 cured, the Bank will replace such Mortgage Loan as provided under 1312 Section 3.12. 1313

Section 3.09 Preservation of Collateral. The Bank shall 1314 take such action as is necessary and proper with respect to the 1315 Collateral in order to preserve, maintain and service such 1316 Collateral. The Bank will do, execute, acknowledge and deliver, 1317 or cause to be done, executed, acknowledged and delivered such 1318 instruments and transfers or take such other steps or actions as 1319 may be necessary, or required by the Trustee or to effect the 1320 Trustee's security interest in the Collateral. Upon any 1321 substitution of Collateral as required or permitted by this 1322 Agreement, it shall be the Bank's obligation to create for the 1323 1324 benefit of the Trustee a valid and perfected first security interest in the Collateral so substituted together with 1325 satisfactory assurances thereof, and to pay any costs incurred by 1326 the Trustee, the Administrator and the Depository or otherwise in 1327 connection with such substitution. 1328

Section 3.10 Notice of Valuation. Notice of valuation shall 1329 be given by means of a Valuation Certificate transmitted by the 1330 Bank to the Trustee by telex, telecopy or other form of electronic 1331 or electro-mechanical transmission, with copies of such Valuation 1332 Certificates being sent by first class mail, postage prepaid, to 1333 the Company, sent to the address specified as the Company's 1334 Address in Article I hereof. In the case of valuations having 1335 either weekly or monthly Valuation Periods, and where a two day 1336 Cure Period has been specified on the most recent Notice of 1337 Valuation Period, the Valuation Certificate shall be transmitted 1338 on the same Business Day as the valuation is made. In the case of 1339 valuations having either monthly or quarterly Valuation Periods, 1340 where a one-month Cure Period has been specified on the most 1341 recent Notice of Valuation Period, the Valuation Certificate shall 1342 be transmitted within five (5) days of the Evaluation Date. 1343

Section 3.11 Collateral Deficiency. In the event any 1344 Valuation Certificate prepared as of a particular Evaluation Date 1345 in accordance with the preceding Section 3.10 indicates a 1346 Collateral Deficiency, the Bank shall (a! in the case of 1347 Collateral which is subject to a two-day Cute Period, cure any 1348 Collateral Deficiency by the close of business on the second (2nd) 1349 Business Day following the Evaluation Date, and (b) in the case of 1350 Collateral which is subject to a one-month Cure Period, cure any 1351 Collateral Deficiency by the close of business on the thirtieth 1352 (30th) day following the Evaluation Date. The Collateral 1353

Deficiency shall be cured by the delivery to the Depository of 1354 Eligible Collateral having a Pledge Value at least equal to the 1355 amount of the deficiency. Any Collateral Deficiency shall be 1356 cured by delivery by the Bank of Eligible Collateral other than 1357 Mortgage Collateral or Conventional Pass-Through Certificates, 1358 subject to the Bank's right to substitute Mortgage Collateral or 1359 Conventional Pass-Through Certificates for such other Eligible 1360 Collateral after the cute has been effected, such substitution to 1361 be made in the manner provided in Section 3.14. 1362

If any Valuation Certificate discloses a Collateral 1363 Deficiency, the Bank shall, on the Business Day following the last 1364 day of the Cure Period then applicable, again evaluate the 1365 Collateral and issue an updated Valuation Certificate which will 1366 set forth the Pledge Value of Collateral following expiration of 1367 the applicable Cure Period. 1368

Section 3.12 Required Replacement of Collateral. Subject to 1369 the proviso set forth below: 1370

- if a Mortgage Loan fails to or ceases to qualify as 1371 Eligible Collateral under Section 3.02, the Bank shall 1372 replace such Mortgage Loan with Eligible Collateral that 1373 meets the requirements of Section 3.02 within thirty 1374 (30) days after the receipt of notice under Section 1375 3.10; 1376
- if payments on a Mortgage Loan constituting Eligible (b) 1377 Collateral become delinquent for more than thirty (30) 1378 days while any Bonds are outstanding, the Bank shall 1379 within fifteen (15) days thereafter replace such 1380 Mortgage Loan with Eligible Collateral that meets the 1381 requirements of Section 3.02; and 1382
- if any Collateral matures or is redeemed or prepaid in (c) 1383 whole or in part or is otherwise converted into cash for 1384 any reason, the Administrator or the Depository, as the 1385 case may be, shall not release the proceeds received as 1386 a result thereof until the Bank shall substitute 1387 Eligible Collateral that meets the requirements of 1388 Section 3.02 hereof; 1389

provided, however, that, the Bank shall not be required to replace 1390 or substitute Collateral or to provide additional Collateral 1391 pursuant to subparagraph (a) or (b) above if, notwithstanding its 1392 failure to do so, the Pledge Value of the remaining Collateral 1393 (exclusive of Collateral otherwise required to be replaced 1394 pursuant to such subparagraphs) meets the Collateral Requirement. 1395

Section 3.13 Substituted Collateral. The replacement of 1396 existing Collateral (the "Withdrawn Collateral") with new 1397 Collateral (the "Substituted Collateral") shall be subject to the 1398 following conditions: 1399

- 1400 (a) all the terms, conditions, covenants and warranties of 1401 this Agreement shall be applicable to the Substituted 1402 Collateral;
- 1403 (b) the Pledge Value of the Substituted Collateral shall be
 1404 at least equal to the Pledge Value of the Withdrawn
 1405 Collateral (as determined pursuant to Section 3.04
 1406 hereof);
- the Substituted Collateral shall be accompanied by an 1407 (c) opinion of counsel to the Bank, addressed to the 1408 Trustee, stating that the Substituted Collateral has 1409 been delivered in accordance with the Collateral 1410 Agreement and that all action necessary to be taken by 1411 the Bank to perfect the security interest of the Trustee 1412 in such Substituted Collateral has been duly taken and 1413 that a valid, first, perfected security interest has 1414 been created in such Substituted Collateral in favor of 1415 the Trustee; and 1416
- 1417 (d) the Trustee shall confirm that such substitution is
 1418 permissible under the terms of this Agreement, such
 1419 confirmation to be given on a Notice of Substitution of
 1420 Collateral substantially in the form of Exhibit J
 1421 annexed hereto.
- Section 3.14 Substitution at the Option of Bank; Release of 1423 Collateral.
- The Bank shall have the right from time to time after 1424 (a) the date of the initial deposit of Eligible Collateral 1425 meeting the Collateral Requirement, to deposit with the 1426 Trustee, the Administrator or the Depository, as the 1427 case may be, Eligible Collateral in substitution for the 1428 Collateral or any portion thereof, and to obtain the 1429 release of the Collateral or portion thereof so 1430 substituted for, by presenting to the Administrator or 1431 the Depository, as the case may be, (i) a written 1432 request for such release specifying the Collateral to be 1433 so released; (ii) (in the case of substitution of 1434 Collateral) Substituted Collateral having a Pledge Value 1435 at least equal to the Pledge Value of the Collateral to 1436 be released (as determined pursuant to Section 3.04 1437 hereof); (iii) a certificate executed by an officer of 1438 the Bank stating that, following such release and/or 1439 substitution, the Collateral will have a Pledge Value at 1440 least equal to the Collateral Requirement; (iv) an 1441 opinion of counsel as set out in Section 3.13(c) hereof; 1442 and (v) confirmation by the Trustee, by means of a 1443 Notice of Substitution of Collateral, substantially in 1444 the form of Exhibit I annexed hereto, that such 1445 substitution is permissible under the terms of this 1446 Agreement. 1447

- Unless an Event of Default has occurred under this 1448 Agreement and is continuing, if at any time and from 1449 time to time an Evaluation Certificate shows that the 1450 Collateral has a Pledge Value in excess of the 1451 Collateral Requirement, the Bank may obtain the release 1452 of Collateral having a Pledge Value in an amount equal 1453 to such excess, by presenting to the Administrator or 1454 the Depository, as the case may be: (i) a written 1455 request for such release specifying the Collateral to be 1456 so released; (ii) a certificate executed by an officer 1457 of the Bank stating that, following such release, the 1458 Collateral will have a Pledge Value at least equal to 1459 the Collateral Requirement; and (iii) confirmation by 1460 the Trustee by means of a Notice of Release of 1461 Collateral substantially in the form of Exhibit J 1462 annexed hereto, that such release is permissible under 1463 the terms of this Agreement. 1464
 - (c) Upon the later of (i) the expiration of the Letter of Credit or (ii) the date on which all amounts owed by the Bank to the Trustee, the Administrator or the Depository under this Agreement are paid in full, all Collateral then held by the Trustee, the Administrator or the Depository shall be released and delivered to the Bank, but only upon written direction from the Trustee in the form of a Notice of Release of Collateral in the form of Exhibit J hereto.

The Bank covenants that Section 3.15 Title to Collateral. 1474 it now has and will at all times hereafter have good and 1475 marketable title to the Collateral, free of all liens and 1476 encumbrances having priority over the security interest created 1477 hereby, and now has and will at all times hereafter have good, 1478 right and lawful authority to assign, transfer and pledge such 1479 Collateral and all such additions thereto and substitutions 1480 therefor under this Agreement. 1481

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Section 3.16 Disposition of Collateral in Event of Default. 1482 In the event of an occurrence of an Event of Default under Section 1483 6.01 of this Agreement, the Trustee shall immediately, by means of 1484 a Notice of Default substantially in the form of Exhibit K annexed 1485 hereto, direct the Administrator and/or the Depository (a) to sell 1486 or otherwise dispose of the Collateral held by such parties in 1487 such manner as the Trustee may specify in such notice, or (t) to 1488 deliver the Collateral to the Trustee, whereupon the Trustee 1489 shall, as expeditiously as is reasonable under the circumstances 1490 collect or otherwise convert into money the whole or any part of 1491 the Collateral, and sell, assign and deliver the whole or any part 1492 of such Collateral, at public or private sale, in such manner and 1493 upon such terms and conditions as the Trustee may deem proper; 1494 provided that, before any such sale, the Trustee shall, unless the 1495 Collateral is of the type described in 12 C.F.R. 563.8-2(h), have 1496 sent to the Bank and FSLIC, as required by 12 C.F.R. 563.8-2(a), 1497

notice of the proposed disposition of such Eligible Collateral and 1498 the Trustee shall have given to FSLIC an opportunity to purchase 1499 all the Collateral, at any time within thirty (30) days after its 1500 giving to them of the notice required above, at a price equal to 1501 the amount owed by the Bank under this Agreement. The Trustee 1502 shall be authorized at any sale made under this Section (if it 1503 deems it advisable to do so) to restrict the prospective bidders 1504 or purchasers to persons to whom such sale may be made without 1505 registration under the Securities Act of 1933, if applicable. 1506 Upon consummation of any such sale, the Trustee shall have the 1507 right to assign, transfer, endorse and deliver to the purchaser or 1508 purchasers thereof the Collateral, or any portion thereof or any 1509 interest therein, so sold. Each such purchaser at any such sale 1510 shall hold the property sold absolutely free from any claim or 1511 right on the part of the Bank, and the Bank hereby waives (to the 1512 1513 extent permitted by law) all rights of redemption, stay and/or appraisal that the Bank now has or may at any time in the future 1514 have under rule of law or statute now existing or hereafter 1515 1516 enacted.

In the event of sale, collection or conversion into money of 1517 the Collateral, or any part thereof, after deducting actual costs 1518 and expenses incurred in connection with the disposition thereof, 1519 the Trustee shall apply such residue of the proceeds thereof (a) 1520 to the Trustee for any amounts owed to it hereunder, including, 1521 1522 but not limited to, any amounts owed to the Trustee pursuant to 1523 Section 8.01 hereof, then (b) to the Administrator for any amounts 1524 owed to it hereunder, and to the Depository for any amounts owed to it hereunder or under the Depository Agreement, and then (c) 1525 any excess to the Bank. 1526

Section 3.17 <u>Investment of Cash Deposited by Bank as</u>

Collateral. Any Cash deposited by the Bank with the Depository

pursuant to Section 3.01 hereof shall be invested by the

Depository pursuant to instructions from the Bank, provided that

the Cash may only be invested in Government Obligations which have

a maturity of not more than ninety (90) days.

Section 3.18 <u>Accounting Review</u>. Within five (5) Business 1534 Days after the the Depository Agreement, and then (c) any excess to the Bank.

Section 3.17 <u>Investment of Cash Deposited by Bank as</u>

Collateral. Any Cash deposited by the Bank with the Depository

pursuant to Section 3.01 hereof shall be invested by the

Depository pursuant to instructions from the Bank, provided that

the Cash may only be invested in Government Obligations which have

a maturity of not more than ninety (90) days.

Section 3.18 <u>Accounting Review</u>. Within five (5) Business 1543 Days he last Accountant Report Date, and certifying that:

1544 (a) the Accountant has reviewed the Valuation Certificates
1545 issued since the period covered by the last Accounting
1546 Report, together with the detailed listings of the
1547 Eligible Collateral referred to therein;

- (b) assuming the accuracy (as to which the Accountant shall not make any independent investigation in connection with such Accounting Report) of the detailed listings of Collateral, the Collateral constitutes Eligible Collateral under the terms of this Agreement.
- (c) assuming the accuracy (as to which the Accountant shall not make any independent investigation in connection with such Accounting Report) of the detailed listings of the Collateral and of the Collateral Requirement as of such dates set forth on the Valuation Certificates, the calculations required to be performed have been performed and the results of such calculations set forth on the Valuation Certificates are correct;
- (d) assuming the accuracy of the listing of Collateral (as to which the Accountant shall not make any independent investigation in connection with the Accounting Report) the Accountant has traced the Market Values of the Collateral listed on the Valuation Certificates to sources used in making such valuations, which the Accountant shall specify, and that such Market Values were correct as of the dates on which the Market Values were measured;
- (e) assuming the accuracy (as to which the Accountant shall not make any independent investigation in connection with the Accounting Report) of the detailed listings of the Collateral, the Accountant has calculated the Pledge Value of the Collateral shown on the Valuation Certificates based on the Market Value thereof as multiplied by the Discounted Collateral Value, and has found them to be correct and calculated in a proper manner and in compliance with the Collateral Requirement as specified in this Agreement.

Section 3.19 Bank's Obligation to Maintain Certain Collateral. In the event the Bank elects to have the Collateral at any time include Mortgage Collateral or Conventional Pass-Through Certificates, the Bank agrees that, (i) regardless of the amount of the Collateral Requirement which may be covered by Mortgage Collateral, the Bank shall at all times maintain with the Depository Cash or Government Securities having a Pledge Value at any time equal to the sum of (a) the amount of the mandatory principal redemption payment with respect to the Bonds to be covered by the Letter of Credit on the next succeeding Interest Payment Date (as defined in the Indenture) and (b) an amount equal to interest for the 210 day period during which the highest amount

of interest shall accrue on the Bond Obligation, both items (a) and (b) as specified on the Stated Amount Schedule attached to the Letter of Credit as Annex A thereto, as the same may be amended in accordance with the Reimbursement Agreement; and (ii) none of the Collateral shall comprise Mortgage Collateral or Conventional Pass-Through Certificates from and after a date which is one hundred thirty (130) days prior to the Expiration Date of the Letter of Credit.

Section 3.20 Interest Earned on Collateral. So long as no 1600 Event of Default exists under the terms of this Agreement, and the 1601 Collateral Requirement is satisfied without taking any interest or 1602 premiums earned on account of Collateral pledged by the Bank, all 1603 interest and premiums earned on account of Collateral pledged by 1604 the Bank pursuant to this Agreement shall be deemed owned by the 1605 Bank, and shall be paid over to the Bank according to the same 1606 schedule as it is received by the Trustee, the Administrator or 1607 the Depository. During the pendency of an Event of Default, any 1608 such interest shall be retained by the Trustee, the Administrator 1609 1610 or the Depository, as the case may be, pending receipt by the 1611 Administrator or the Depository of a notice from the Trustee 1612 confirming the cure of the Event of Default or disposition of the 1613 Collateral pursuant to this Agreement.

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ADMINISTRATION AND SERVICING OF MORTGAGE LOANS

Section 4.01 Bank To Act as Servicer. Subject to the 1616 provisions of the third paragraph of this Section 4.01, the Bank 1617 or an affiliate thereof, or an approved FNMA/FHLMC Seller-1618 Servicer, shall service and administer the Mortgage Loans. 1619 Subject to the express provisions of this Agreement, the Bank 1620 shall have full power and authority, acting alone, to do any and 1621 all things in connection with such servicing and administration 1622 that it may deem necessary or desirable. Without limiting the 1623 generality of the foregoing, the Bank shall, and is hereby 1624 irrevocably authorized and empowered by the Trustee to, execute 1625 and deliver, in the Bank's own name, on behalf of itself and the 1626 Trustee, with respect to the Mortgage Loans and with respect to 1627 the properties subject to the Mortgages securing the Mortgage 1628 Loans, any and all instruments, documents and writings necessary 1629 or desirable to file all claims and initiate all proceedings by 1630 foreclosure or otherwise, necessary or appropriate to realize upon 1631 the insurance policies and property securing any defaulted 1632 Mortgage Loans or in satisfaction or cancellation, or in partial 1633 or full release or discharge of such Mortgage Loans. 1634

Without limiting the generality of the foregoing paragraph, 1635 the Bank agrees to service, or cause to be serviced, the Mortgage 1636 Loans in accordance with the then current loan servicing standards 1637 of FHLMC or FNMA as set forth in their respective servicing guides 1638 relating to Mortgage Loans originated and serviced under programs 1639 regulated by FHLMC or FNMA, as the case may be. The Bank shall 1640 not, however, be required to prepare, submit or file any forms or 1641 other documents required by the FHLMC, FNMA or Servicing Guides, 1642 except as specifically referenced herein, or as may reasonably be 1643 required from time to time by the Administrator. Any entity 1644 appointed as a successor to the Bank to service the Mortgage Loans 1645 shall be subject to review by, and shall conduct its activities in 1646 accordance with, the loan servicing standards of either FHLMC or 1647 FNMA and all other standards and requirements as set forth herein. 1648

Notwithstanding the provisions of the first paragraph of this 1649 Section 4.01, the Bank may, upon prior written notice to the 1650 Trustee, sell and assign the Bank's rights and obligations 1651 pursuant to this Agreement to service all Mortgage Loans then 1652 pledged by it under this Agreement to any other person who shall 1653 agree in writing to accept such assignment and to comply with the 1654 requirements of this Agreement. In the case of assignment of the 1655 obligation to service as provided in this paragraph, the assignee 1656 shall assume in writing the servicing obligations of this 1657 Agreement with respect to the assigned Mortgage Loans. 1658

In addition to expenses required to be paid by the Bank as l660 otherwise herein specified, the Bank agrees to pay (i) all costs

or expenses resulting from failure by the Bank to file claims for 1661 losses relating to Mortgage Loans (including the failure to file 1662 claims under the insurance policies referred to in Section 4.06, 1663 4.07 and 4.08 of this Agreement), (ii) all costs and expenses 1664 resulting from failure by the Bank to foreclose Mortgages relating 1665 to delinquent Mortgage Loans in a manner consistent with Section 1666 4.10 of this Agreement, (iii) all costs and expenses incurred by 1667 the Trustee or the Administrator in initiating servicing 1668 activities of the Bank when, in the reasonable discretion of the 1669 Trustee or the . Administrator, such investigation is warranted 1670 on the basis of monthly or annual reports filed by, or other 1671 adverse information about, the Bank, and (iv) all costs and 1672 expenses incurred by the Trustee or the Administrator involved in 1673 replacing the Bank as the servicer of Mortgage Loans in accordance 1674 with the provisions of this Agreement and the Indenture, including 1675 any compensation to be paid to such replacement servicer. 1676 as limited by applicable law, the Bank shall be entitled to 1677 reimbursement for certain other expenses to the extent permitted 1678 by Section 4.04 hereof. Assumption fees, as provided in Section 1679 4.09 herein, and late payment charges, if any, may he received and 1680 retained by the Bank for its own account. The Bank shall be 1**681** required to pay all expenses incurred by it in connection with its 1682 servicing activities hereunder (including, without limitation, 1683 maintenance of the Mortgagee Single Interest Hazard Insurance 1684 Policy if applicable) and shall not he entitled to reimbursement 1685 therefor, except as specifically provided in Section 4.04 hereof. 1686

Section 4.02 Collection of Certain Mortgage Loan Payments; 1687 Receipts Account. The Bank shall take all reasonable action 1688 necessary and appropriate, based upon industry standards, to 1689 assure collection of, as and when due, all payments called for 1690 under the terms and provisions of the Mortgage Loans. The Bank 1691 shall establish and maintain as a separate account held in trust 1692 by the Bank, as bailee for the Trustee, a Receipts Account and 1693 shall deposit therein within two (2! Business Days of receipt: 1694

- 1695 (i) all payments by Mortgagors in respect of principal (including prepayments) or interest on the Mortgage Notes;
- 1698 (ii) all payments in respect of Government Securities constituting Collateral;
- 1700 (iii) all Liquidation Proceeds in excess of Liquidation 1701 Expenses properly incurred;
- 1702 (iv) all Condemnation Proceeds in excess of Condemnation 1703 Expenses properly incurred; and
- 1704 (v) all amounts collected under any Standard Hazard
 1705 Insurance Policy or Single Interest Hazard Insurance
 1706 Policy as provided in Section 4.06 and any Errors and
 1707 Omissions Insurance Policy or Fidelity Bond as

provided in Section 4.08, in each case in excess of Insurance Expenses relating to such policies;

provided, however, that the Bank shall not be obligated to deposit such receipts at any time unless failure to do so would cause the Pledge Value of the Collateral, after deducting the amounts described in (i) through (v) above, to fall below the Collateral Requirement.

1715 The Receipts Account shall be covered and insured to the 1716 maximum extent possible by FSLIC.

Section 4.03 Collection of Taxes, Assessments and Similar 1717 Items; Mortgage Service Account. In addition to the Receipts 1718 Account, the Bank shall, to the extent required in connection 1719 with any particular Mortgage Loans, establish and maintain as a 1720 separate account held in trust by the Bank, for the benefit of the 1721 Mortgagors, a Mortgage Service Account and shall deposit therein 1722 within two (2) Business Days of receipt thereof all amounts 1723 representing collections of real estate taxes, assessments, 1724 1725 premiums of any Standard Hazard Insurance Policy or Private 1726 Mortgage Guaranty Insurance Policy required herein and, to the extent the Bank deems the same reasonably necessary, other 1727 comparable items, for the account of the Mortgagors of Mortgage 1728 Loans, provided, however, that the Bank shall not be obligated to 1729 deposit any such amounts in the Mortgage Service Account at any 1730 time unless (a) failure to do so would cause the Pledge Value of 1731 the Collateral, after deducting any amounts covered by this 1732 Section, to fall below the Collateral Requirement. 1733

1734 The Mortgage Service Account shall be covered and insured to 1735 the maximum extent possible by FSLIC.

Section 4.04 Receipts Account Reports: Disposition of the 1736 Receipts Account; Reimbursements. At any time that amounts, if any, held in the Receipts Account are required to be counted in 1737 1738 order to achieve the appropriate Collateral Requirement, on or 1739 before the twenty-eighth day of each month (or the business day 1740 preceding such twenty-eighth day) the Bank shall submit to the 1741 Administrator a report specifying (a) the amount of funds held in 1742 the Receipts Account as of the close of business on the twentieth 1743 day of such month (or the business day preceding such twentieth 1744 day), which amount shall include all funds deposited therein 1745 subsequent to the close of business on the twentieth day of the 1746 preceding month (or the business day preceding such twentieth 1747 day), and with respect to such amount, shall specify the amount 1748 representing; (i) regularly scheduled Mortgage Loan principal and 1749 interest payment, and (ii) prepayments of principal; and (b) the 1750 amounts then held in the Mortgage Service Account to pay taxes and 1751 premiums on insurance and amounts of Insurance Proceeds, 1752 Condemnation Proceeds and Liquidation Proceeds held to pay 1753 Insurance Expenses, Condemnation Expenses and Liquidation Expenses 1754

1755 or to pay costs determined by the Bank to be necessary to rebuild 1756 or restore property covered by a Mortgage.

The Administrator may agree to such reasonable accommodations or arrangements to change reporting dates, forms or other provisions or requirements of this Section 4.04 as may be requested by the Bank.

At the time any such monthly report is submitted: (a) if the 1761 Bank has not failed to make the payments required by this 1762 Agreement to be made during the period covered by such report, the 1763 Bank shall pay to itself the balance in the Receipts Account, 1764 including any interest earned on such account (as shown in such 1765 report), free of any security interest created by this Agreement; 1766 and (b) if the Bank has failed to make the payments requited by 1767 this Agreement, the Bank shall pay to the Trustee so much of the 1768 balance in the Receipts Account, exclusive of any interest earned 1769 on such account (as shown in such report), as is necessary to pay 1770 the amount owed by the Bank to the Trustee. The moneys in the 1771 Mortgage Service Account shall in all events be used for the 1772 purposes for which such moneys were paid into the Mortgage Service 1773 1774 Account.

1775 The Bank may reimburse itself at any time from the Receipts 1776 Account or the Mortgage Service Account for:

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- (a) late recoveries for real estate taxes or insurance premiums advanced by the Bank;
- (b) any costs or expense properly incurred in the rebuilding or restoring of Mortgaged Property with respect to which Insurance Proceeds have been received.

The Bank's entitlement to reimbursement and withdrawals
pursuant to the foregoing is limited to collections or other
recoveries on the related Mortgage Loan. Therefore, the Bank
shall keep and maintain a separate accounting for each Mortgage
Loan for the purpose of justifying any such reimbursement.

The Bank shall exercise reasonable care and good faith:n in 1788 disbursing all moneys from the Receipts Account and the Mortgage 1789 Service Account.

Section 4.05 Claims Against Insurers of Mortgage Loans: 1790 Payment of Proceeds of All Policies of Insurance. In connection 1791 with its activities as administrator and servicer of the Mortgage 1792 Loans, the Bank agrees to take all steps necessary and proper in 1793 order to maintain in force the insurance required hereunder, or to 1794 obtain substantially similar replacement insurance acceptable to 1795 the Trustee. The Bank also agrees to take all action necessary to 1796 comply with all relevant State and Federal laws, where applicable, 1797 and to present, on behalf of the parties in interest, claims 1798 against all such insurers of Mortgage Loans or mortgaged premises, 1799

1800 and, in this regard, to take such reasonable action as shall be 1801 necessary to permit recovery under all insurance policies 1802 respecting the Mortgage Loans, Mortgages or mortgaged premises.

Proceeds of any policy of insurance required to be maintained 1804 hereunder or under the Indenture shall be paid over by the 1805 recipient of such proceeds to the Bank for deposit into the proper 1806 Account as provided in this Article IV.

Section 4.06 Maintenance of Standard Hazard Insurance. 1807 Bank shall require that each Mortgagor obtain and maintain for 1808 each Mortgage Loan a Standard Hazard Insurance Policy on the 1809 mortgaged property in an amount which is not less than the maximum 1810 insurable value of the property securing such Mortgage Loan, or 1811 the principal balance owing on such Mortgage Loan, which ever is 1812 less,@ but, in any event, in an amount sufficient to prevent the 1813 application of any coinsurance clause. Subject to the laws of the 1814 State, such policies shall provide that amounts payable thereunder 1815 as a result of loss shall be payable to the Bank. It is 1816 understood and agreed that such insurance shall be with insurers 1817 approved by FNMA or FHLMC or such other entity that may succeed 1818 either of them in purpose or function and that no other additional 1819 1820 hazard insurance is to be required of any Mortgagor, other than pursuant to such applicable laws or regulations as shall at any 1821 time be in force and as shall require such additional insurance. 1822

In lieu of the requirements of the preceding paragraph, the 1823 Bank may obtain and maintain a Mortgagee Single Interest Hazard 1824 1825 Insurance Policy in full force and effect. The Bank, as servicer, agrees to pay the premium for any Mortgagee Single Interest Hazard 1826 Insurance Policy on the basis prescribed by such Policy. In the 1827 event that the insurer under the Mortgagee Single Interest Hazard 1828 Insurance Policy shall cease to be acceptable to the 1829 Administrator, the Bank shall exercise its best reasonable efforts 1830 to obtain, from an insurer acceptable to the Administrator, a 1831 replacement policy comparable to the Mortgagee Single Interest 1832 Hazard Insurance Policy. Any amounts collected by the Bank under 1833 such policy relating to the Mortgage Loans shall be deposited into the Receipts Account if such deposit is necessary in order to 1834 1835 maintain the Collateral Requirement. 1836

Maintenance of Private Mortgage Guaranty Section 4.07 1837 Insurance Policy. The Bank shall cause to be maintained for each 1838 Mortgage Loan the Private Mortgage Guaranty Insurance Policy, if 1839 any, required by Section 3.07(a) hereof. In the event that the 1840 insurer under a Private Mortgage Guaranty Insurance Policy shall 1841 cease to be licensed in the State, or shall cease to be acceptable 1842 to the Administrator, the Bank shall exercise its best reasonable 1843 efforts to obtain from another insurer, licensed in the State and 1844 acceptable to the Administrator, a replacement policy comparable 1845 to the Private Mortgage Guaranty Insurance Policy. All premiums 1846 advanced by the Bank in maintaining any such insurance shall be 1847 added to the amount owing under the Mortgage Loan where the terms 1848

of the Mortgage Loan so permit and the Bank so elects. Such premiums shall be recoverable by the Bank pursuant to Section 4.04 hereof. Any amounts collected under any such policy shall be deposited into the Receipts Account if such deposit is necessary in order to maintain the Collateral Requirement.

Section 4.08 Maintenance of Errors and Omissions Insurance 1854 Policy and Fidelity Bond. The Bank covenants and agrees to 1855 exercise its best reasonable efforts to maintain and keep in full 1856 force and effect throughout the term of this Agreement (or, if 1857 cancelled by the insurer or surety, to replace) the Errors and 1858 Omissions and Insurance Policy and the Fidelity Bond. The Bank, 1859 as servicer, agrees to pay the premium for the Errors and 1860 Omissions Insurance Policy and the Fidelity Bond on the basis 1861 specified by such policy or bond, as the case may he. The Bank 1862 may not cancel such Errors and Omissions Insurance Policy or 1863 Fidelity Bond unless. The Bank has obtained from another insurer 1864 or surety licensed in the State and acceptable to the Trustee a 1865 replacement policy or bond comparable to the Errors and Omissions 1866 Insurance Policy or Fidelity Bond, as the case may be. 1867 amounts collected under any such policy or bond relating to the 1868 Mortgage Loans shall be deposited into the Receipts Account if 1869 such deposit is necessary in order to maintain the Collateral 1870 Requirement. 1871

In any case in which Section 4.09 Assumption Agreements. 1872 property subject to a Mortgage has been or is about to be conveyed 1873 by the Mortgagor, the Bank is authorized to release the original 1874 Mortgagor and to take or enter into an assumption agreement from 1875 or with the person to whom such property has been or is about to 1876 be conveyed, provided that the Mortgage Loan shall continue to be 1877 insured under the insurance policies described in Sections 4.06 1878 and 4.07 of this Agreement and provided that such assignee 1879 qualifies as a Mortgagor in all respects required of an original 1880 Mortgagor under this Agreement. The assumption agreement shall be inserted in the related Mortgage File whereupon it shall be deemed 1881 1882 a part of such Mortgage File for all purposes hereof. 1883 connection with any such assumption agreement, the interest rate 1884 of the related Mortgage Note shall not be reduced; however, the 1885 Bank may charge in connection with each assumption, to the extent 1886 permitted by law, an assumption fee in such amount as the Bank may 1887 specify which may be retained by the Bank for its own account. 1888

Notwithstanding the foregoing paragraph or any other provisions of this Agreement, the Bank shall not be deemed to be in default, breach or any other violation of its obligations hereunder by reason of any assumption of a Mortgage Loan by operation of law or any assumption which the Bank may be restricted by law from preventing, for any reason whatever.

Section 4.10 <u>Release of Mortgage Documents</u>. Upon the 1896 payment in full of any Mortgage Loan, the Bank will immediately deliver to the Administrator and the Trustee a certification of

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receipt of such payment (which certification shall include a 1898 statement to the effect that all amounts received in connection 1899 with such payment which are required to be deposited in the 1900 Receipts Account pursuant to Section 4.02 hereof have been so 1901 deposited) of a Servicing Officer and shall request delivery to it 1902 of the Mortgage Note and related Mortgage. Upon receipt of such 1903 certification and request, and upon verification that the 1904 indebtedness has in fact been fully satisfied, the Trustee, or the 1905 Administrator, acting as agent and attorney-in-fact for the 1906 Trustee, and the Trustee does hereby appoint the Administrator as 1907 agent and attorney-in-fact for such purposes, shall endorse or 1908 assign the Mortgage Note without recourse to the Bank and deliver 1909 the Mortgage Note and related Mortgage to the Bank. 1910

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From time to time and as appropriate for the servicing or foreclosure of any Mortgage Loan, including for this purpose Bank as its agent and attorney-in-fact to execute such documents as shall be necessary to the prosecution of any such proceeding. Administrator shall, upon request of the Bank and delivery to it of a receipt signed by a Servicing Officer, release the related Mortgage Note and Mortgage to the Bank on behalf of the Trustee, and the Trustee shall execute such documents as shall be necessary to the prosecution of any such proceedings. Such receipt shall obligate the Bank to return the Mortgage Note and Mortgage to the Administrator when the need therefor by the Bank no longer exists, unless the Mortgage Loan shall be liquidated, in which case, upon receipt of a certificate of a Servicing Officer similar to that specified in the immediately preceding paragraph the receipt shall be released by the Administrator to the Bank.

Section 4.11 Amendment of Terms and Conditions of a Mortgage Loan; Release of Property From the Lien of Mortgage. The Bank may, with the prior written consent of the insurer under the Private Mortgage Guaranty Insurance Policy, if any is required, amend the terms or conditions of any Mortgage Loan, release property from the lien of a Mortgage or consent to the grant of, or grant easements or rights of way upon, property securing a Mortgage 1932 Loan, provided that such action does not cause such Mortgage to cease to qualify as Eligible Collateral under this Agreement.

Section 4.12 Monthly and Annual Reports to the Trustee and Administrator and Receipts Account Statement. At any time all or a portion of the Collateral is comprised of Mortgage Collateral on or before the last business day of each quarter, the Bank shall submit to the Trustee and the Administrator a report as of the close of business on the twentieth day of the last month of such quarter containing such information as may be reasonably specified or required by the Trustee and the Administrator, but in any event 1942 containing information as to the number of, and principal balance of, Mortgage Loans with respect to which there is any delinquency 1944 exceeding twenty (20) days beyond any applicable grace period or default in payment of principal or interest.

At any time all or a portion of the Collateral is comprised 1947 of Mortgage Collateral, on or before the last Business Day of each 1948 December, the Bank shall forward to the Trustee and the 1949 Administrator a statement, certified by a Servicing Officer, 1950 setting forth the status of its Receipts Account and Mortgage 1951 Service Account, if any, as of the close of business of the 1952 twentieth day of December showing, for the period since the date 1953 of the last such annual statement, the aggregate of deposits into 1954 the Receipts Account for each category of deposit specified in 1955 this Agreement and such other matters as may be specified in this 1956 Agreement, and certifying that, to the best of his knowledge upon 1957 reasonable investigation, the Bank's servicing of the Mortgage 1958 Loans has been conducted in compliance with this Agreement except 1959 as may be disclosed on such statement. Such statement shall also 1960 include (i) information as to the principal balance of the 1961 Mortgage Loans at the close of business on the twentieth day of 1962 the month preceding the date of such report, and (ii) Mortgage 1963 Loans upon which a combined total of two required monthly payments 1964 of principal and interest are in default. 1965

Contemporaneously with such annual statement, the Bank shall 1966 also deliver to the Trustee and the Administrator a Servicing 1967 Officer's certificate stating that (i) a review of the activities 1968 of the Bank during the preceding year with respect to performance 1969 under this Agreement has been made under such Servicing Officer's 1970 supervision, and (ii) there is, as of such date, no default by the 1971 Bank in the fulfillment of any of its obligations under this 1972 Agreement, of if there is any such default known to such Servicing 1973 Officer, specifying each such default and the nature and the 1974 status thereof. 1975

1976 ARTICLE V
1977 THE BANK

Section 5.01 Merger or Consolidation of the Bank. Any entity into which the Bank may he merged or consolidated, or any entity resulting from any merger, conversion or consolidation to which the Bank shall be a party, or any entity succeeding to the business of the Bank, shall be the successor of the Bank hereunder without the execution or filing of any document or instrument, except as provided in Section 2.01(b) of this Agreement, or any further act on the part of any of the parties hereto.

Section 5.02 <u>Limitation of Liability of Directors, Officers, Employees and Agents of the Bank</u>. No director, officer, employee or agent of the Bank shall be under any liability to the Trustee or the Administrator for any action taken or for refraining from the taking of any action in good faith pursuant to this Agreement.

1991 ARTICLE VI

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1992 EVENTS OF DEFAULT

Section 6.01 Events of Default. The happening of any one or 1994 more of the following events shall constitute a default and upon the occurrence of any such event, the Trustee may terminate this Agreement with respect to the Bank's servicing rights and obligations under the Agreement as provided in Section 6.02 hereof and shall have the other remedies specified herein:

- 1999 (a) failure of the Bank to honor a draw by the Trustee on 2000 the Letter of Credit;
- 2001 (b) failure by the Bank to maintain the Collateral at a
 2002 Pledge Value consistent with the then applicable
 2003 Collateral Requirement, following notice and expiration
 2004 of the applicable Cure Period provided for herein.
- 2005 (c) failure by the Bank to make any payment required by 2006 Section 8.01 hereof;
 - (d) failure by the Bank to make deposits to the Receipts Account or the Mortgage Service Account, if any, as required by Sections 4.02 and 4.03 hereof;
 - (e) a decree or order of a court or agent or supervisory authority having jurisdiction in the premises for the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding, or for the winding-up or liquidation of its affairs, shall have been entered against the Bank or the Bank shall have consented to the appointment of a conservator or receiver or liquidator in any insolvency, readjustment of debt, marshalling of assets and liabilities or similar proceeding of or relating to the Bank or of or relating to all or substantially all of its property; provided that, prior to exercising the right to declare an event of default under this subsection (e), the Trustee shall notify FSLIC and the Company in writing of the entry of such a decree or order or of the appointment of any conservator or receiver or liquidator, and if after receipt of such notice (i) FSLIC authorizes the declaration of an event of default under this subsection (e), then the Trustee may, subject to clause (iv) hereof, proceed to liquidate the Collateral pursuant to Section 6.02(c) and 3.16 hereof and exercise its other remedies available under Section 6.02 through 6.04 hereof and any other rights and remedies available hereunder; or (ii) FSLIC instructs the Trustee not to declare an event to its expiration;

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provided, however, if the failure stated in the notice cannot be corrected within the applicable period, the Trustee will not unreasonably withhold its consent to an extension of such time if corrective action is instituted by the Bank within the applicable period and diligently pursued until the default is corrected.

In the event of a formal declaration of default by the Trustee hereunder, the Trustee shall, concurrently with notice thereof to the Bank, provide a copy of such notice to the Company.

2045 Section 6.02 <u>Remedies</u>. Whenever any event referred to in 2046 Section 6.01 hereof shall have happened and be continuing, the 2047 Trustee may take any one or more of the following remedial steps:

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- With respect to Mortgage Collateral, by notice in (a) writing to the Bank and the Company, the Trustee may, after notice to the Company, subject to applicable State and Federal law, terminate all of the Bank's rights and obligations concerning the servicing of the Mortgage Loans. On or after the receipt by the Bank of such written notice, all authority and power of the Bank under this Agreement with respect to servicing the Mortgage Loans shall pass to and be vested in the Trustee, or such other entity designated by the Trustee, pursuant to and under this Section; and, without limitation, the Trustee is hereby authorized and empowered to execute and deliver, on behalf of the Bank, as attorney-in-fact or otherwise, any and all documents, and to do or accomplish all other acts or things necessary or appropriate to effect the purpose of such termination. The Bank agrees to cooperate with the Trustee in effecting the termination of the Bank's servicing responsibilities hereunder, including, without limitation, the transfer to the Administrator, for administration by it of the Mortgage Files and to the Trustee of all cash amounts which shall at the time be held by the Bank or thereafter received by the Bank with respect to the Mortgage Loans;
 - (b) redeem all Bonds Outstanding to the extent required in accordance with the terms of the Indenture;
- 2074 (c) dispose of the Collateral as provided in Section 3.11 2075 hereof;
- 2076 (d) exercise its rights of subrogation pursuant to Section 8.03 hereof;
- 2078 (e) take whatever other action at law or in equity may
 2079 appear necessary or desirable to collect the amounts
 2080 then due and thereafter to become due under this
 2081 Agreement or to enforce performance and observance of

any obligation, agreement or covenant of the Bank under this Agreement.

2084 Any amounts collected pursuant to action taken under this 2085 Section shall be applied in accordance with the provisions of the 2086 last paragraph of Section 3.16 hereof.

Section 6.03 Trustee to Act; Appointment of Successor. At the time the Bank receives a notice of termination pursuant to Section 6.02(a), the Trustee, or such other entity designated by the Trustee, shall succeed to all rights and obligations of the Bank concerning servicing of the Mortgage Loans and agrees that it shall exercise all such rights and undertake all such obligations. The entity performing servicing functions shall be entitled to receive reasonable compensation for its services in servicing the Mortgage Loans out of payments on Mortgage Loans. After the Bank receives notice of termination under this Section 6.03, the Bank shall be entitled to no payments or compensation of any kind other than the payments that are expressly provided for herein.

Section 6.04 No Remedy Exclusive. Unless otherwise expressly provided, no remedy herein conferred upon or reserved is intended to be exclusive of any other available remedy, but each remedy shall he cumulative and shall be in addition to other remedies given under this Agreement or existing at law or in equity. No delay or omission to exercise any right or power accruing under this Agreement upon the happening of any event set forth in Section 6.01 hereof shall impair any such right or power shall be construed to be a waiver thereof, but any such right and power may be exercised from time to time and as often as may be deemed expedient. In order to entitle the Trustee to exercise any remedy reserved to it in this Article VI, it shall not be necessary to give any notice, other than such notice as may be required in this Article VI.

Section 6.05 Agreement to Indemnify. The Bank shall indemnify the Trustee against any and all liability, claims, loss, costs, damages, fees of attorneys and other expenses which the Trustee may sustain or incur by reason of or in consequences of (i) the failure of the Bank to honor a draw under its Letter of Credit, or (ii) the failure of the Bank to perform or comply with the covenants or conditions of this Agreement. An itemized statement of payments made by the Trustee for any of the purposes specified herein, sworn to by an officer of the Trustee, or the voucher or vouchers for such payments, shall be prima facie evidence of the liability of the Bank, and if the Bank fails to immediately reimburse the Trustee upon receipt of said statement of payments, interest shall be computed on such amount from the date of any payment made by the Trustee at the rate set out in Section 8.01(a) hereof.

2128 ARTICLE VII

2129 APPOINTMENT OF ADMINISTRATOR AND DEPOSITORY

2130 Section 7.01 Appointment of an Administrator. At any time the Collateral consists of Mortgage Collateral, the Bank shall 2131 select and the Trustee and the Bank shall thereupon appoint an 2132 2133 Administrator meeting the requirements set out in Section 7.02 2134 The Administrator shall designate to the Trustee and the 2135 Bank its principal office for purposes of any notice required 2136 hereunder and signify its acceptance of the duties and obligations 2137 imposed upon it hereunder by a written instrument of acceptance 2138 delivered to the Trustee and the Bank under which the 2139 Administrator will agree particularly:

- 2140 (a) to accept all Mortgage Collateral delivered by the Bank 2141 pursuant to Sections 3.01 hereof and by the Trustee 2142 pursuant to Section 7.03 hereof;
- 2143 (b) to value the Mortgage Collateral on the dates and in the 2144 manner provided in Section 3.04 hereof;
- 2145 (c) to review all Mortgage Collateral and other required 2146 documents delivered by the Bank as required by Section 2147 3.01 hereof;
- 2148 (d) to dispose of and liquidate the Mortgage Collateral and 2149 account for the proceeds thereof in the manner provided 2150 in Section 3.16 hereof in the event of an occurrence of 2151 an event of default under Section 6.01 hereof;
- 2152 to invest any cash delivered by the Bank as Collateral (e) 2153 pursuant to Section 3.12 hereof;
- 2154 (f) to service the Mortgage Loans pursuant to Section 6.03 2155 hereof in the event the Bank's right to service such 2156 Mortgage Loans is terminated by the Trustee pursuant to 2157 Section 6.02(a) hereof;
- 2158 to undertake and perform all other duties and (g) 2159 obligations imposed upon the Administrator under the 2160 terms of this Agreement.

2161 Section 7.02 Qualifications of Administrator. 2162 Administrator shall have a nationally recognized expertise in the 2163 field of servicing and valuing conventional single-family mortgage 2164 loans, shall have combined capital, surplus and undivided profits 2165 of not less than \$100,000,000, and shall he authorized by law to 2166 perform all the obligations and duties imposed upon it by this Agreement.

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Section 7.03 <u>Transfer of Collateral from Trustee to</u>

2169 <u>Administrator</u>. Upon the appointment of an Administrator pursuant

2170 to Section 7.01 hereof, the Trustee shall transfer to the

2171 Administrator any Mortgage Collateral delivered by the Bank to the

2172 Trustee pursuant to Section 3.01 hereof and shall execute such

2173 instruments as are necessary to transfer its interest in such

2174 Mortgage Collateral to the Administrator.

Section 7.04 Appointment of a Depository. The Bank and the Trustee hereby appoint Manufacturers and Traders Trust Company, Buffalo, New York, as Depository in accordance with the terms hereof. The Depository shall designate to the Trustee and the Bank its principal office for purposes of any notice required hereunder and signify its acceptance of the duties and obligations imposed upon it hereunder by entering into a Depository Agreement with the Bank and the Trustee substantially in the form of Exhibit G hereto (the "Depository Agreement").

Section 7.05 Qualifications of Depository. The Depository
185 shall be a national or state-chartered bank having capital,
2186 surplus and undivided profits of not less than \$100,000,000 and
2187 shall be authorized by law to perform all the obligations and
2188 duties imposed upon it by the terms of this Agreement.

Section 7.06 Additional Documents. Prior to their appointment, the Administrator and Depository shall furnish certificates designating officers or other personnel authorized to act on behalf of the Administrator or the Depository, as the case may be, under the terms of this Agreement.

Section 7.07 Resignation of Administrator or Depository. 2194 The Administrator and/or the Depository appointed under this 2195 Agreement may at any time resign by giving thirty (30) days 2196 written notice to the Bank and the Trustee, and such resignation 2197 shall take effect upon the earlier to occur of (a) the appointment 2198 by the Bank and the Trustee of a successor Administrator or 2199 Depository, as the case may be, or (b) delivery by the resigning 2200 Administrator or Depository to the Trustee of any Collateral held 2201 by such party upon expiration of the thirty (30) day notice 2202 period. 2203

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2205 REIMBURSEMENT AND SUBROGATION

Obligation of the Bank to Reimburse the 2206 Section 8.01 The Bank agrees to make the following payments to the 2207 Trustee. 2208 Trustee: upon written demand by the Trustee, an amount equal to 2209 (a) the draw which the Bank failed to honor when such draw 2210 was made by the Trustee on the Letter of Credit with 2211 interest thereon from the date of dishonor to, but not 2212 including, the date the Trustee is reimbursed therefor 2213 at Citibank's prime rate plus two percent per annum, 2214 said "prime rate" being the rate of interest publicly 2215 announced from time to time by Citibank, in New York, 2216 New York, as its prime rate. The rate charged by the 2217 Trustee pursuant to the immediately preceding sentence 2218 shall change and take effect on the date specified in 2219 Citibank's announcement of its change of its prime rate. 2220 The rate of interest shall be calculated on the basis of 2221 a 360-day year; 2222 all other amounts required to be paid to the Trustee (b) 2223 pursuant to the terms of this Agreement upon written 2224 notice from the Trustee setting out the amounts from the 2225 date of receipt of notice thereof and shall be 2226 calculated in the manner provided in subsection (a) of 2227 this Section 8.01; 2228 the Trustee covenants and agrees that all payments 2229 (C) received by the Trustee pursuant to subsection (a) of 2230 this Section 8.01, and all proceeds received from the 2231 liquidation of the Collateral pursuant to Sections 3.16 2232 and 6.02(c) hereof (less any interest accrued on such 2233 payments which shall be retained by the Trustee) shall 2234 be immediately deposited with the Trustee in an amount 2235 necessary to redeem all outstanding Bonds pursuant to 2236 the Indenture. 2237 Section 8.02 Obligations Absolute. The obligations of the 2238 Bank to make payments under this Agreement shall be absolute, 2239 unconditional and irrevocable and shall be paid strictly in 2240 accordance with the terms of this Agreement under all 2241 circumstances whatsoever, including, without limitation, the 2242 2243 following circumstances: 2244

(a) any lack of validity or enforceability of the Letter of Credit, the Bonds, the Indenture, the Loan Agreement, the Note, the Reimbursement Agreement or any other agreement or instrument relating hereto or thereto (collectively, the "Related Documents");

- (b) any amendment or waiver of or any consent to departure from all or any of the Related Documents;
- 2251 (c) the existence of any claim, setoff, defense or other
 2252 right which the Bank may have at any time against the
 2253 Trustee, any beneficiary or any transferee of the Letter
 2254 of Credit, or any other person or entity, whether in
 2255 connection with this Agreement, the transactions
 2256 contemplated herein or in the Related Documents or any
 2257 unrelated transactions;
- 2258 (d) any other circumstance or happening whatsoever, whether
 2259 or not similar to any of the foregoing unless the
 2260 circumstance or happening giving rise to the Bank's
 2261 payment obligation is the result of the gross negligence
 2262 or willful misconduct on the part of the Trustee.

2263 Section 8.03 Subrogation Rights of the Trustee. To the extent of payments made and expenses incurred by the Trustee in 2264 2265 connection with this Agreement, the Trustee shall be fully 2266 subrogated to the Bank's rights, but shall not assume any of the 2267 Bank's obligations, in respect of the Reimbursement Agreement. The Bank will at any time, and from time to time at the request of 2268 the Trustee, execute any instrument, document or agreement, and 2269 2270 take any other action, that the Trustee may consider necessary or 2271 desirable to effect this right of subrogation.

| 2272 | | | ARTIC | LE IX | | |
|------|---------------|----|--------|-------|---------|----------|
| 2273 | SUBORDINATION | OF | RIGHTS | UNDER | COMPANY | MORTGAGE |

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MISCELLANEOUS PROVISIONS

Section 10.01 <u>Amendments, Changes and Modifications</u>. This Agreement may be amended, changed, modified, altered or terminated only with the prior written approval of the Trustee, the Bank, the Depository and the Administrator.

Section 10.02 <u>Governing Law</u>. This Agreement shall be construed in accordance with the substantive laws of the State of New York, and the obligations, rights and remedies of the parties hereunder shall be determined in accordance with such laws.

2294 Section 10.03 Notices. Unless a specific form of notice is otherwise provided for herein, all notices, certificates or other 2295 communications hereunder shall be sufficiently given when 2296 personally delivered, or on the second Business Day after the day 2297 2298 on which such notice shall be mailed by certified or registered 2299 mail, postage prepaid, return receipt requested, or on the first Business Day after the day on which such notice shall be sent, 2300 prepaid, by nationally recognized overnight air courier service, 2301 2302 addressed to the appropriate Notice Address. A duplicate copy of each notice, certificate or other communication given hereunder to 2303 any party shall also be given hereunder, designate any further or 2304 different addresses to which subsequent notices, certificates or 2305 2306 other communications shall be sent.

Section 10.04 <u>Severability</u>. In the event any provision of this Agreement shall be held invalid or unenforceable by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

Section 10.05 <u>Further Assurances and Corrective Instruments</u>.

To the extent permitted by law, the Trustee, the Administrator and the Bank agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required for carrying out the intention of or facilitating the performance of this Agreement.

2318 Section 10.06 <u>No Rights Conferred on Others</u>. Nothing in 2319 this Agreement shall confer any right upon any person other than the Trustee, the Administrators, the Depository and the Bank.

Section 10.07 <u>Counterparts</u>. This Agreement may be executed in several counterparts, each of which shall he an original and all of which together shall constitute but one and the same instrument.

IN WITNESS WHEREOF, each of the parties hereto has caused this Agreement to be executed in its respective name by its duly authorized officer, all as of the date first above written.

| 2328 2329 | | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
|----------------------|----|---|
| 2330 2331 2332 | Ву | G. Gary Berner First Senior Vice President |
| 2333 2334 | | SUN BANK, NATIONAL ASSOCIATION as Trustee |
| 2335 2336 | Ву | Its |

2337 EXHIBIT A 2338 MORTGAGE FILE REQUIREMENTS 2339 1. The original Mortgage Note or Notes. 2340 2. A copy of the original recorded Mortgage securing the 2341 Mortgage Loan. 2342 3. A copy of a mortgagee title insurance policy in form 2343 approved by American Land Title Bank in an amount at 2344 least equal to the principal amount of the Mortgage 2345 Loan, issued on the date of the origination of such 2346 Mortgage Loan (under the terms of which the Trustee will be an insured within the meaning of such policy), or an 2347 2348 attorney's opinion of title. 2349 4. A copy of the Mortgage Insurance Certificate issued by 2350 the insurer under a Private Mortgage Guaranty Insurance 2351 Policy (under the terms of which the Trustee will be an 2352 insured within the meaning of such policy, without any 2353 additional endorsement of such certificate or policy). 2354 5. Satisfactory evidence of all Standard Hazard Insurance 2355 Policies or, if applicable, the Mortgagee's Single 2356 Interest Hazard Insurance Policy maintained by the Bank. 2357 6. Satisfactory evidence of the federal flood insurance 2358 policy, if applicable. 2359 7. Such other documents or other information relating to 2360 the Mortgage Loan as the Rating Agency may require.

2362 MORTGAGE SUBMISSION REQUIREMENTS SCHEDULE Each Mortgage Submission Schedule shall contain the following 2363 2364 information as to each Mortgage Loan covered thereby: 2365 The loan number assigned by the Bank to such Mortgage 1. 2366 Loan. 2367 2. The name(s) of the Mortgagor(s). 2368 3. The Bank's city/county code assigned to, and the Zip 2369 Code of, the property. 2370 4. The original loan closing date. 2371 5. The final maturity date. 2372 The monthly constant (principal and interest) and the 6. 2373 nominal interest rate. 2374 7. The original principal balance. 2375 8. The unpaid balance as of the date of the Schedule (or 2376 other specified date). 2377 Each Mortgage Submission Schedule shall also: 2378 (i) state the aggregate unpaid balance and the total 2379 number of Mortgage Loans included in such 2380 Schedule: 2381 contain the following certification: "I certify (ii) 2382 that the foregoing information is true to the best 2383 of my knowledge and belief."; and

EXHIBIT B

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(iii) be dated and signed by an officer of the Bank.

| 2385 | EXHIBIT C |
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| 2386 | ASSIGNMENT |
| 2387 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2388 | Dated: |
| | |
| 2389 2390 2391 2392 2393 2394 2395 2396 2397 2398 2399 2400 2401 2402 | FOR VALUE RECEIVED and pursuant to the Collateral Agreement, dated as of June 1, 1987, between the undersigned and Sun Bank, National Association, as Trustee (the "Trustee") (the "Agreement") (certain capitalized terms used herein are used as defined in the Agreement), and effective on the date of this Assignment, the undersigned hereby grants, assigns, conveys and transfers to the Trustee, its successors and assigns, without recourse except as set forth in the Agreement, a first security interest in and to all of the undersigned's right, title and interest in, to and under the Mortgage Notes listed in Annex I hereto, together with rights and remedies of the undersigned under all of the foregoing, including the right to enforce the same in the same manner and to the same extent as the undersigned might do but for the execution and delivery of this instrument. |
| 2403 2404 2405 2406 2407 | The undersigned also represents and warrants that each of its representations and warranties set forth in Section 3.07 of the Agreement is true and correct on the date hereof as if made on and as of this date and that the undersigned has performed all the covenants to be performed by it under the Agreement. |
| 2408 2409 | This Assignment is made pursuant to the terms of the Agreement and is entitled to the benefits thereof. |
| 2410 2411 2412 | This Assignment shall be governed by, and construed in accordance with, the substantive laws of the State of New York. Acceptance of this Assignment and notice thereof is hereby waived. |
| 2413 2414 2415 | IN WITNESS WHEREOF, the undersigned has caused this instrument to be executed by one of its officers thereunto duly authorized, as of the date first above written |
| 2416 2417 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2418 | Ву |
| 2419 | Its |

2420 <u>EXHIBIT D</u>

2421 <u>FORM OF</u>
2422 <u>LETTER OF CREDIT</u>

| 2423 | | <u>EXHIBIT_E</u> |
|--|--|---|
| 2424 2425 2426 2427 | | FORM OF CERTIFICATE OF COLLATERAL VALUE CASH/GOVERNMENT SECURITIES/ CONVENTIONAL PASS-THROUGH CERTIFICATES |
| 2428 2429 2430 2431 2432 2433 2434 2435 2436 | Trustee (1987 between the second the Tused here | Collateral pledged to Sun Bank, National Association, as the "Trustee") under the Indenture dated as of June 1, seen the Housing Finance Authority of St. Johns County, and the Trustee, to secure the obligations of Empire of Sederal Savings Bank (the "Bank") under the terms of the Agreement dated as of June 1, 1987, between the Bank Crustee (the "Collateral Agreement"). Capitalized terms in shall have the meanings assigned thereto in the Agreement. |
| 2437 2438 2439 2440 | Trust Com | re of America Federal Savings Bank certifies that an on of the Collateral held by Manufacturers and Traders apany was performed on the date indicated hereon in se with the provisions of the Collateral Agreement. |
| 2441 | | Date of Report: |
| 2442 | | Evaluation Date: |
| 2443 | | Collateral Requirement: \$ |
| 2444 | Desc | ription and Evaluation of Collateral |
| 2445 | Α. | Collateral held: Cash: |
| 2446 | | Amount \$ |
| 2447 | В. | Collateral held: Cash Equivalents: |
| 2448 2449 | | (Type of Government Obligation, Par Value, Maturity Date, Rate) |
| 2450 | | (i) |
| 2451 | | (ii) |
| 2452 | | (iii) |
| 2453 | | Aggregate Amount \$ |

| 2454 | с. | Collatera | al held: Gover | nment Securi | ties | |
|----------------------|-----------------|------------------------|--|--|------------------------|-------------|
| 2455 | | (Type, Pa | ar Value, Matu | rity Date ar | d Rate) | |
| 2456 | | (i) | | | | |
| 2457 | | | | | | |
| 2458 | | | | | | |
| 2459 | | | | | of Valuation: | |
| 2460 2461 2462 | | Mark <u>Val</u> u | et | Discounte Collatera <u>Value</u> | d 1 P1 | edge lue |
| 2463 | | (i) \$ | | | | |
| 2464 | | (ii) \$ | | | \$ | |
| 2465 | | (iii) \$ | | | \$ | |
| 2466 | | Aggregate | Pledge Value | : \$ | | |
| 2467 | C. Colla | | | | ough Certificat | |
| 2468 2469 2470 | <u>Certi</u> | <u>ificate</u> | Aggregate Principal <u>Balance</u> | Bid <u>Price</u> | Market <u>Value</u> | |
| 2471 | | | \$ | % | years | |
| 2472 2473 | (ii) | | \$ \$ | | years years | |
| 2474 | Source of | Bids Cons | tituting Basis | s of Valuation | on: | |
| 2475 2476 | | | Discount | ced | | |
| 2477 | | Market <u>Value</u> | Collater <u>Value</u> | ral Plede <u>Valu</u> e | | |
| 2478 | (i) \$ | | 9 | \$ | | |
| 2479 | (ii) \$ | | 9 | \$ | | |
| 2480 | (iii) \$ | | | \$ | | |
| 2481 2482 | Aggregate \$ | Pledge Va | lue of Convent | cional Pass- | Through Certific | cates |

| 2483 | Sumn | mary of Pledge Value: | |
|--------------------------------------|-------------|---|--|
| 2484 | Α. | Cash | \$ |
| 2485 | в. | Cash Equivalent | \$ |
| 2 48 6 | c. | Government Securities | \$ |
| 2487 2488 | D. | Conventional Pass-Throug Certificates | h \$ |
| 2489 | | Total | \$ |
| 2490 2491 | | Aggregate Pledge Value o this Certificate | f Collateral covered by |
| 2492 | | \$ | |
| 2493 2494 2495 2496 2497 | the such | ers Trust Company is *[gr amount of the Collateral | ateral held by Manufacturers and eater than] [equal to] [less than] Requirement intended to be covered by es] [does not satisfy] the lagreement. |
| 2498 2499 | | | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2500 | | | By: |
| 2501 | | | Its |
| | | | |

2502 * delete whichever is not applicable.

| 2504 | EXHIBIT F | | |
|--|---|--|--|
| 2505 2506 2507 2508 | FORM OF CERTIFICATE OF COLLATERAL VALUE MORTGAGE COLLATERAL | | |
| 2509 2510 2511 2512 2513 2514 2515 2516 2517 | Association, as Trustee (the "Trustee") under the Indenture dated as of June 1, 1987 between the Housing Finance Authority of St. Johns County, Florida and the Trustee, to secure the obligations of Empire of America Federal Savings Bank (the "Bank") under the terms of the Collateral Agreement dated as of June 1, 1987, between the Bank and the Trustee (the "Collateral Agreement"). Capitalized terms used herein shall have the meanings assigned | | |
| 2518 2519 2520 2521 | Empire of America Federal Savings Bank certifies that an evaluation of the Mortgage Collateral held by was performed on the date indicated hereon in accordance with the provisions of the Collateral Agreement. | | |
| 2522 | Date of Report: | | |
| 2523 | Evaluation Date: | | |
| 2524 | Collateral Requirement: \$ | | |
| 2525 | A. Collateral held: FHA/VA Mortgage: Notes | | |
| 2526 2527 2528 | Weighted Weighted Aggregate Average Average Term <u>Servicer Principal Yield To Maturity</u> | | |
| 2529 | (i) | | |
| 2530 | (ii) \$years | | |
| 2531 | (iii) \$years | | |
| 2532 | Source of Bids Constituting Basis of Valuation: | | |
| 2533 | Discounted | | |
| 2534 | Market Collateral Pledge | | |
| 2535 | <u>Value</u> <u>Value</u> <u>Value</u> | | |
| 2536 | (i) \$ % \$ | | |

| 2537 | | (ii) \$ | | | % | \$ | |
|--|---|------------------------------|--|--|--|---|---------------------|
| 2538 | | (iii) \$ | | | 8 | \$ | |
| 2539 | Aggr | egate Pledge | Value of | FHA/VA M | ortgage No | tes: \$ | |
| 2540 | В. | <u>Collateral</u> | held: Conv | entional | Mortgage | <u>Notes</u> | |
| 2541 2542 2543 | | <u>Servicer</u> | Aggreg <u>Princi</u> | | Weighted Average Yield | Weighted Average T To Maturi | |
| 2544 | (i) | | \$ | | % | | years |
| 2545 | (ii) | | \$ | | % | | years |
| 2546 | (iii |) | \$ | | % | - | years |
| 2547 | Sour | ce of Bids C | onstitutin | g Basis d | of Valuati | on: | |
| 2548 2549 2550 | | Mar <u>Val</u> | ket C | iscounted ollateral Value | l | Pledge <u>Value</u> | |
| 2551 | | (i) \$ | | % | | \$ | |
| 2552 | | (ii) \$ | | | | \$ | |
| 2553 | | (iii) \$ | | | | \$ | |
| 2554 2555 | Aggre \$ | egate Pledge | Value of | Conventio | onal Mortg | age Notes: | |
| 2556 | Summa | ary of Pledge | e Value of | Mortgage | Collater | al: | |
| 2557 | Α. | FHA-VA Morto | gage Notes | | \$ | | |
| 255 8 | В. | Conventional | l Mortgage | Notes | \$ <u></u> | | |
| 2559 | | Total | | | \$ | | <u>—-</u> |
| 2560 2561 2562 2563 2564 2565 2566 2567 2568 | of the Collateral *[satisfie Agreement. | Mortgage Coll equirements | ter than] irement in tes to Coli tsatisfy] Lateral co | *[equal to the standard to the second to the | to] [less to be covered by tirements of this Cert. | than] the a red by such of the Coli | n and lateral |

| 2570 | | EMPI) | RE OF AMERICA FEDERAL SAVINGS BANK |
|----------------------|---|--------|---|
| 2571 | | ву | |
| 2572 | | | Its |
| 2573 | * delete whichever is not appl | icab: | le. |
| 2574 2575 2576 | Note: Explain on attache other than method as set forth determining Market Value. | ed Scl | nedule if Evaluation Method Collateral Agreement was used in |

2580 EXHIBIT G

2581 FORM OF
2582 DEPOSITORY AGREEMENT

| 2583 | DEPOSITORY AGREEMENT |
|--------------|--|
| 2584 | between |
| 2585 2586 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2587 | and |
| 2588 2589 | MANUFACTURERS AND TRADERS TRUST COMPANY, as Depository |
| 2522 | |
| 2590 | Dated as of June 1, 1987 |

2594

DEPOSITORY AGREEMENT

- 2595 Manufacturers and Traders Trust Company
- 2596 One M&T Plaza
- 2597 Buffalo, New York 14240
- 2598 Gentlemen:

2599 Concurrently with the execution of this Depository Agreement (the "Depository Agreement"), Empire of America Federal Savings 2600 Bank of Buffalo, New York (the "Bank") will enter into a 2601 Collateral Agreement (the "Collateral Agreement") dated as of June 2602 1, 1987 with Sun Bank, National Association, as Trustee (the 2603 "Trustee"), whereby the Bank will agree to pledge certain 2604 collateral to the Trustee to secure the Bank's obligation to make 2605 2606 payments under a letter of credit (the "Letter of Credit") issued in favor of the Trustee for the purpose of securing payment on 2607 account of the Housing Finance Authority of St. Johns County, 2608 Florida aggregate \$12,000,000 Multifamily Housing Refunding 2609 2610 Revenue Bonds (Remington at Ponte Vedra Project) (the "Bonds"). The Bank and the Trustee desire that Manufacturers and Traders 2611 2612 Trust Company (the "Depository") act, and the Depository agrees to act, as custodian of Cash, certain Government Securities and 2613 2614 Conventional Pass-Through Certificates (the "Collateral") that 2615 shall constitute from time to time a part of the collateral pledged under the Collateral Agreement, for the benefit of the 2616 2617 Trustee on the following terms and conditions.

- 2618 The Depository has previously opened and will maintain one or more custody accounts in the Bank's name (the "Empire 2619 Accounts") and it will open and maintain pursuant hereto a custody 2620 account in the name of the Trustee (the "Trustee's Account"), 2621 2622 which has been assigned Account No. . As used herein, 2623 the term "Account" shall mean the Trustee's Account or any of the Empire Accounts. The Depository will accept for safekeeping and 2624 credit to the appropriate Account all Collateral which shall from 2625 time to time be delivered or transferred to or collected by it for 2626 2627 such Account as provided herein and shall, in accordance with the terms hereof, disburse the same upon the instructions of the Bank 2628 and/or the Trustee as is provided for herein. Except as required 2629 pursuant to the terms of the Collateral Agreement, the Depository 2630 assumes no obligation to review the investments in any Account, 2631 and assumes no duty to recommend the purchase, retention or sale 2632 of any Collateral unless provided for by a separate written 2633 2634 agreement between the parties.
- 2635 The Depository will hold the Collateral in its vaults, 2636 at a domestic entity that provides handling, clearance or

- safekeeping services, on Federal Book Entry at the Federal Reserve Bank of New York, in book entry form with Depository Trust Company, in non-certificated form with the issuer or, with the prior approval of the Bank and the Trustee, at any other location.
- 2641 The Depository will transfer Collateral maintained in 2642 Empire's Account to the Trustee's Account within one (1) Business Day (as defined in the Collateral Agreement) or, if such notice is 2643 received after 12:00 noon, New York City time, then within two (2) 2644 Business Days) following the day of the Depository's receipt of a 2645 Notice to Transfer of Cash or Securities executed by the Bank in 2646 the form attached hereto as Exhibit "A" (or a telecopy or other 2647 copy thereof), which notice shall specify the identity and 2648 2649 quantity of the Collateral to be transferred.
- 2650 The Depository will, within one (1) Business Day 2651 following a transfer pursuant to Paragraph 3, above, send a confirmation of the transfer substantially in the form attached 2652 hereto as Exhibit "B" (a "Safekeeping Receipt") by telex, telecopy 2653 or other means of electronic or electromechanical transmission to 2654 the Bank and the Trustee. The Safekeeping Receipt shall show on 2655 its face that it is issued for the Trustee's Account and shall 2656 indicate that cash or specific securities have been transferred to 2657 2658 the Trustee's Account.
- 2659 The Depository will, within one (1) Business Day (or if 2660 such notice is received after 12:00 noon, New York City time, then 2661 within two (2) Business Days) following receipt of a notice in the form of the Release attached hereto as Exhibit "C", executed by 2662 the Bank and the Trustee, or a telecopy or other copy of such 2663 2664 notice, transfer the Collateral identified in such notice from Trustee's Account to the Empire Account designated in such notice 2665 2666 and shall give to the Bank immediate written or electronic 2667 confirmation that such transfer has been made.
- 2668 If at any time while this Agreement is in force, the 2669 Depository receives a written notice of default executed by 2670 Trustee in the form attached hereto as Exhibit "D" (a "Notice of Default") then the Depository shall immediately hold all payments 2671 2672 of principal and interest and other proceeds received or collected by the Depository in respect of the Collateral in the Trustee's 2673 2674 Account and shall, upon the written direction of Trustee, either transfer the Collateral to the Trustee or, pursuant to specific 2675 2676 directions of the Trustee as to the time and manner of such sale 2677 or disposition, place or negotiate orders to sell or otherwise 2678 dispose of the Collateral and transfer to Trustee, or order, 2679 proceeds from any such sale or other disposition and other 2680 proceeds of Collateral then held in the Trustee's Account, 2681 provided, however, that any reasonable costs of selling or 2682 otherwise disposing of the Collateral may be retained by the 2683 depository. In the event of any dispute between or conflicting 2684 claims by or among the Bank and the Trustee and any other person or entity with respect to any Collateral, funds or other property 2685

deposited hereunder, the Depository shall be entitled, at its sole 2686 option, to refuse to comply with any and all claims, demands or 2687 instructions with respect to such property so long as such dispute 26**88** or conflict shall continue, and the Depository shall not be or 2689 become liable in any way to the Bank or the Trustee for failure or 2690 2691 refusal to comply with such conflicting claims, demands or 2692 The Depository shall be entitled to refuse to act instructions. or to take any action as it deems appropriate until, at its sole 2693 option, either such conflicting or adverse claims or demands shall 2694 have been finally determined in a court of competent jurisdiction 2695 or settled by agreement between the conflicting parties as 2696 evidenced in a writing, satisfactory to the Depository or shall 2697 have received security or an indemnity satisfactory to the 269**8** Depository sufficient to save it harmless from and against any and 2699 all loss, liability or expense which it may incur by reason of its 2700 2701 In addition, the Depository may elect, in its sole discretion, to commence an interpleader action or seek such other 2702 judicial relief or orders as the Depository or the Depository's 2703 2704 legal counsel deem necessary.

- 7. So long as the Depository shall not have received a
 Notice of Default as provided in Paragraph 6, the Depository is
 authorized, upon written or electronic instruction from the Bank
 confirmed by the Trustee, in the form of Notice of Substitution of
 Collateral attached hereto as Exhibit "E", to substitute for all
 or a portion of the Collateral in the Trustee's Account,
 Collateral identified in such notice.
- 2712 Prior to the receipt by the Depository of a Notice of Default as provided in Paragraph 6, above, interest received or 2713 collected by the Depository in respect of the Collateral in the 2714 Trustee's Account shall be credited to Empire's Account; payments 2715 of principal and other proceeds received or collected by the 2716 Depository in respect of the Collateral in the Trustee's Account, 2717 unless released in accordance with the provisions of Section 3.12 2718 2719 of the Collateral Agreement, shall be retained in the Trustee's 2720 Account.
- 2721 The Depository may execute as agent in the name of the Bank all declarations, affidavits, and certificates of ownership 2722 now or hereafter required in respect of Collateral held in an 2723 account for either the Bank or the Trustee. If the issuer of any 2724 2725 security held in any account subject hereto so requests, the Depository may release the Bank's identity to such issuer for the 2726 2727 specific purpose of direct communication between such issuer and 2728 the Bank. The Bank is a savings bank duly organized under the laws of the United States with its home office at One Main Place, 2729 Buffalo, New York 14202. The Bank agrees to notify the Depository 2730 immediately in writing of any changes in its address or any 2731 2732 information set forth in this paragraph.
- 2733 10. The Depository or any of its subsidiaries or affiliates, 2734 acting as principal, may act as agent for, provide banking and

- other services to, and generally engage in any kind of business with, issuers of securities and money market instruments purchased for the Bank or the Trustee to the same extent as if the Depository were not custodian hereunder.
- 2739 The Bank and the Trustee understand that when the Depository is instructed to delivery Collateral against payment, 2740 it may deliver Collateral before receiving payment and that, as a 2741 matter of bookkeeping convenience, the Depository may credit the 2742 Bank's or the Trustee's Account with anticipated proceeds of sale 2743 prior to actual receipt of final payment. The risk of non-receipt 2744 2745 of payment shall be the Bank's and the Depository shall have no 2746 liability therefor. All credits to Empire's Account to the 2747 Trustee's Account, as the case may be, of the anticipated proceeds of sales and redemptions of Collateral and of anticipated income 2748 from Collateral shall be conditional upon receipt by the 2749 Depository of final payment and may be reversed to the extent 2750 final payment is not received. In the event that the Depository 2751 2752 in its discretion advances funds to the Bank to the Trustee, as the case may be, to facilitate the settlement of any transaction, 2753 or elects to permit the Bank or the Trustee, as the case may be, 2754 to use the funds credited to the relevant Account in anticipation 2755 2756 of final payment, the Bank or the Trustee, as the case may be, shall, immediately upon demand, reimburse the Depository for such 2757 amounts, and to secure such obligation the Bank and the Trustee 2758 each hereby grant a continuing security interest in and pledges to 2759 the Depository the Collateral in its respective Account and any 2760 funds so credited. When the Depository is instructed to receive 2761 Collateral, it is authorized to accept documents in lieu of such 2762 Collateral as long as such documents contain the agreement of the 2763 issues thereof to hold such Collateral subject to the Depository's 2764 2765 sole order.
- 2766 The Depository will provide the Bank and the Trustee each month with a statement of assets in the Trustee's Account, 2767 confirmations of transfers and a statement of account showing all 2768 transactions in the account. The Bank and the Trustee agree to 2769 examine each such confirmation and statement promptly. Únless a 2770 written exception or claim of noncompliance with instructions is 2771 filed with the Depository within 90 days after the date of such 2772 2773 confirmation or the closing date of the period covered by the first such statement that reflects any error or omission, the Bank 2774 and the Trustee will be conclusively deemed to have waived any 2775 2776 such exception or claim.
- 2777 It is understood and agreed that the Depository's duties are solely those set forth herein and that the Depository shall 2778 2779 have no duty to take any other action unless specifically agreed to by the Depository in writing. Without limiting the generality 2780 of the foregoing, the Depository shall not be required to appear 2781 2782 in or defend any suit with respect to any Collateral unless requested by the Bank or the Trustee in writing and indemnified to 2783 2784 its satisfaction.

- 2785 14. Unless otherwise specified herein, all notices and instructions to the Depository may be given in writing (including **278**6 2787 by telex, telecopy or other electronic transmission) or by telephone. The Bank, the Trustee and the Depository shall each 2788 furnish the others with certificates in the form of Designation of 27**8**9 2790 Authorized Representative attached hereto as Exhibit F indicating 2791 those persons who are authorized to give the Depository 2792 instructions hereunder and with specimen signatures of such 2793 persons. Each party is authorized to rely on any such instructions believed by it to have been sent or given by an 2794 authorized person. Notwithstanding the foregoing, each party's 2795 understanding of an oral instruction if given prior to the receipt 2796 of written instructions will be deemed the controlling 2797 instruction, notwithstanding any discrepancy between such 2798 understanding and any confirming letter sent by the party giving 27**9**9 2800 such oral instructions.
- The Depository shall not be liable for any action taken 2801 or omitted by it hereunder at the direction of the Bank or the 2802 Trustee. With respect to its performance to lack of performance 2803 hereunder other than at the instruction of the Bank or the 2804 Trustee, the Depository shall be liable only for its gross 2805 negligence or willful misconduct. The Bank will indemnify the 2806 Depository and hold it harmless against any and all claims, 2807 losses, liabilities, damages or expenses, including reasonable 2808 counsel fees, howsoever arising from or in connection with this 2809 Agreement or the performance of its duties hereunder, provided 2810 that nothing contained herein shall require that the Depository be 2811 indemnified for gross negligence or willful misconduct. The Bank 2812 and the Trustee further agree that no legal action, including one 2813 arising out of an exception or claim under Paragraph 12, shall be 2814 instituted against the Depository after one year from the date of 2815 the first confirmation or statement under Paragraph 12 that 2816 reflects the error or omission which provides the basis for such 2817 2818 claim.
- 2819 16. The fees in connection with this Agreement ate to be in accordance with the fee schedule which is attached hereto as Exhibit G, as amended by the Depository from time to time. The Bank agrees to be responsible for all expenses, including, without limitation, all taxes, brokerage fees and other charges and liabilities incurred by the Depository in connection with this Agreement.
- 2826 This Agreement may be terminated by any party hereto upon thirty (30) days' prior written notice to all parties. 2827 2828 the date termination becomes effective, the Depository will transfer any Collateral specified in a written notice from the 2829 2830 Bank and the Trustee to the successor custodian agreed upon by the 2831 Bank and the Trustee. If there is no such successor custodian, 2832 the Depository shall transfer the Collateral to the Trustee. The provisions of Paragraph 14 hereof shall survive such a 2833 2834 termination.

| 2835 2836 2837 2838 2839 2840 2841 2842 2843 2844 | Depository's nominee(s) or the subcustodian, or any other en hereof (collectively, the "Now hold the Nominees harmless fractioned, and the Bank and Trus may at any time at its discretion the Accounts from the name | egistered in the name of the e nominee of any authorized agent, tity referred to in Paragraph 2 minees"). The Bank hereby agrees to om any liability as a holder of tee hereby agree that the Depository tion without notice to the Bank or be transferred any Collateral in any of a Nominee to the name of the Bank ay be. |
|--|---|--|
| 2845 2846 | 19. This Agreement may writing duly executed by all | be amended only by an instrument in parties hereto. |
| 2847 2848 2849 2850 2851 2852 | represents on its own behalf, duly authorized, executed and legal, valid and binding oblice governed by, and construed and | Bank and the Trustee each only, that this Agreement has been delivered and constitutes its gation. This Agreement shall be d interpreted according to, the laws |
| 2853 | | Very truly yours, |
| 2854 2855 | | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2856 2857 2858 | | G. Gary Berner Senior Vice President |
| 2 8 59 2 8 60 | | SUN BANK, NATIONAL ASSOCIATION, as Trustee |
| 2861 | | Ву |
| 2862 | | Its |
| 2863 | ACCEPTED: | |
| 2864 2865 | MANUFACTURERS AND TRADERS TRUS COMPANY, as Depository | ST |
| 2866 | Ву | |
| 2867 | Its | |
| | | |

| 2868 | <u>EXHIBIT A</u> | | |
|--|---|--|--|
| 2869 2870 | FORM OF NOTICE TO TRANSFER OF CASH OR SECURITIES | | |
| 2871 2872 2873 2874 2875 | TO: Manufacturers and Traders Trust Company as Depository One M&T Plaza Buffalo, New York 14240 Attention: Corporate Trust Department | | |
| 2876 2877 2878 2879 2880 2881 2882 2883 2884 2885 2886 | Depository Agreement dated as of June 1, 1987 (the "Depository Agreement") among Manufacturers and Traders Trust Company, as Depository (the "Depository"), Empire of America Federal Savings Bank (the "Bank") and Sun Bank, National Association, as Trustee (the "Trustee"). The cash or securities which are to be transferred pursuant to this notice is collateral (the "Collateral") owned by the Bank and maintained in a custodial account in the Bank's name (Account No), one of the accounts referred to as "Empire Accounts" in the Depository | | |
| 2887 2888 | Government Securities (as defined in the Collateral Agreement): | | |
| 2889 | (Type, Par Value, Maturity Date and Rate.) | | |
| 2890 2891 | and/or Cash (as defined in the Collateral Agreement) in the amount of | | |
| 2892 | \$ | | |
| 2893 2894 2895 2896 | The Collateral is pledged for the benefit of the Trustee in accordance with the Bank's obligations under the Collateral Agreement dated as of June 1, 1987 between the Bank and the Trustee. | | |
| 2897 2898 2899 2900 | The Bank hereby instructs the Depository to transfer the Collateral described above to Trustee's custodial account maintained by the Depository pursuant to the Depository Agreement. Trustee's account number is | | |

| 2902 | Date: | |
|--------------|-------|---|
| 2903 2904 | | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2905 | | Ву |
| 2906 | | Its |

| 2907 | EXHIBIT B | | |
|--------------------------------------|--|--|--|
| 2908 2909 | <u>FORM OF</u> <u>SAFEKEEPING RECEIPT</u> | | |
| 2910 2911 2912 2913 2914 | | | |
| 2915 2916 2917 2918 2919 | TRANSACTION ADVICE DATE CUSTODY ACCT NO CURRENT ACCT NO FOR ACCOUNT OF | | |
| 2920 2921 | DESCRIPTION INCOME PRINCIPAL DEBITS CREDITS DEBITS CREDITS | | |
| 2922 | | | |
| 2922 2923 2924 2925 | MANUFACTURERS AND TRADERS TRUST COMPANY, as Depository | | |
| 2926 2927 | By | | |

| 2928 | <u>EXHIBIT_C</u> |
|--|---|
| 2929 2930 | FORM OF RELEASE |
| 2931 2932 2933 2934 2935 | TO: Manufacturers and Traders Trust Company, as Depository One M&T Plaza Buffalo, New York 14240 Attention: |
| 2936 2937 2938 2939 2940 2941 2942 | This notice is given pursuant to paragraph 5 of the Depository Agreement ("Depository Agreement") dated as of June 1, 1987 among Manufacturers and Traders Trust Company, as Depository (the "Depository"), Empire of America Federal Savings Bank (the "Bank") and Sun Bank, National Association, as Trustee ("Trustee"). Terms used herein which are defined in the Depository Agreement are used herein as therein defined. |
| 2943 2944 2945 2946 | Trustee hereby Irrevocably instructs the Depository to transfer from Trustee's Account No the Collateral described below to the account of the Bank, Account Number: |
| 2947 294 8 | Government Securities (as defined in the Collateral Agreement): |
| | |
| 2949 | (Type, Par Value, Maturity Date and Rate.) |
| 2950 2951 | <pre>and/or Cash (as defined in the Collateral Agreement) in the amount of</pre> |
| 2952 | \$ |
| 2953 2954 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 2955 | Ву |
| 2956 | The |

| 2958 | Date: | |
|--------------|-------|--|
| 2959 2960 | | SUN BANK, NATIONAL ASSOCIATION, as Trustee |
| 2961 | | Ву |
| 2962 | | Its |

| 2963 | EXHIBIT D |
|--|--|
| 2964 2965 | TOM OF |
| 2966 2967 2968 2969 2970 | as Depository One M&T Plaza Buffalo, New York 14203 |
| 2971 2972 2973 2974 2975 2976 2977 2978 2979 | Depository Agreement dated as of June 1, 1987 among yourself (the "Depository"), the undersigned (the "Trustee") and Empire of America Federal Savings Bank (the "Bank"). This notice relates to collateral (the "Collateral") pledged to the Trustee for the purpose of securing the obligations under the terms of the |
| 2980 2981 | Government Securities (as defined in the Collateral Agreement); |
| 2982 | (Type, Par Value, Maturity Date and Rate.) |
| 2983 29 8 4 | and/or Cash (as defined in the Collateral Agreement) in the amount of |
| 2985 | \$ |
| 29 8 6 29 8 7 | These securities are maintained with the Depository in Trustee's Account No |
| 29 88 29 8 9 2990 | The Trustee hereby notifies the Depository that the Bank is in default with respect to its obligations under the Collateral Agreement. You are hereby directed |
| 2991 2992 2993 | *[to effect an immediate transfer of the Collateral to the Trustee in accordance with the instructions set forth on the annexed Schedule] |
| 2994 2995 2996 | *[to undertake the sale or other disposition of the Collateral in accordance with the instructions set forth on the annexed Schedule]. |

| 2998 2999 | Date: | SUN BANK, NATIONAL ASSOCIATION as Trustee |
|--------------|-------|---|
| 3000 | | Ву |
| 3001 | | Its |
| | | |
| | | |
| | | |
| 3002 | | |
| | | |

| 3005 | SCHEDULE |
|------|---|
| 3006 | TO |
| 3007 | NOTICE OF DEFAULT |
| 300B | INSTRUCTIONS FOR TRANSFER OR SALE OF COLLATERAL |

| 3009 | <u>EXHIBIT_E</u> |
|--|---|
| 3010 | FORM OF NOTICE |
| 3011 3012 | TO <u>SUBSTITUTE_COLLATERAL</u> |
| 3012 | <u>5055114014</u> |
| 3013 3014 | To: Manufacturers and Traders Trust Company, as Depository |
| 3015 | One M&T Plaza |
| 3016 3017 | Buffalo, New York 14240 Attention: |
| 3018 3019 3020 3021 3022 3023 3024 | Terms used herein which are defined in the Depository Agreement |
| 3025 | I. TRANSFER TO TRUSTEE'S ACCOUNT |
| 3026 3027 3028 | The Bank hereby irrevocably instructs the Depository to transfer the Collateral described below from Empire's Account Noto the Trustee's Account No |
| | |
| 3029 | (Type, Par Value, Maturity Date and Rate) |
| 3030 3031 | and/or Cash (as defined in the Collateral Agreement) in the amount of |
| 3032 | \$ |
| 3033 | II. TRANSFER TO EMPIRE'S ACCOUNT |
| 3034 | The Bank hereby irrevocably instructs the Depository to transfer the Collateral described below from the Trustee's Account No. |
| 3035 3036 | the Collateral described below from the frustee 5 hossans are |
| | |
| 3037 | (Type, Par Value, Maturity Date and Rate) |
| 3038 3039 | and/or Cash (as defined in the Collateral Agreement) in the amount of |

| 3042 | \$· | |
|--------------|---|--|
| 3043 3044 | | MPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 3045 | Ву | |
| 3046 | ı | ts |
| 3047 3048 | Sun Bank, National Association, to the transfer of the Collateral as | as Trustee, hereby consents described above. |
| 3049 3050 | | UN BANK, NATIONAL ASSOCIATION as Trustee |
| 3051 | . Ву | |
| 3052 | , I | ts |

| 3053 | EXHIBIT F |
|--|--|
| 3054 3055 | FORM OF DESIGNATION OF AUTHORIZED REPRESENTATIVE |
| 3056 3057 3058 3059 3060 3061 3062 3063 3064 | The persons named below, a specimen of whose signatures appear next to their names, are hereby designated to be and to act as the Authorized Representatives of |
| 3065 3066 | Authorized Specimen Representative Signature |
| | |
| 3067 3068 3069 3070 3071 3072 3073 | The Bank, the Trustee and/or the Depository as the case may be, may rely upon any notice or other communication signed by such Authorized Representative and the signature of such Authorized Representative appearing on any such notice or communication shall be conclusive evidence that such notice or communication was duly authorized by the party on whose behalf it was given. |
| 3074 3075 3076 3077 | The designation of persons to be Authorized Representatives may be amended from time to time by the issuance of a new Designation of Authorized Representative which shall contain a current list of all persons so designated. |
| | |
| 3078 | Ву |
| 3079 | Its |
| 3080 | dated: |

| 3085 | <u>EXHIBIT G</u> |
|------------------------------|--|
| 3086 3087 | FEE SCHEDULE MANUFACTURERS AND TRADERS TRUST COMPANY |
| 3088 3089 3090 3091 | For Collateral consisting of Cash, Government Securities and Conventional Pass-Through Certificates (as defined in the Collateral Agreement), 0.03% per annum of the Collateral held by the Depository, payable quarterly. |

| 3092 | EXHIBIT H |
|--|--|
| 3093 3094 3095 | FORM OF NOTICE OF VALUATION PERIOD AND CURE PERIOD |
| 3096 3097 3098 3099 3100 | |
| 3101 3102 3103 3104 3105 3106 3107 | Re: Collateral pledged to Sun Bank, National Association, (the "Trustee") as Trustee under the Indenture dated as of June 1, 1987 between the Housing Finance Authority of St. Johns County, Florida and the Trustee, to secure the obligations of Empire of America Federal Savings Bank (the "Bank") under the terms of the Collateral Agreement dated as of June 1, 1987 between the Bank and the Trustee (the "Collateral Agreement"). |
| 3108 3109 3110 3111 3112 | You are hereby advised that, with respect to Collateral currently pledged to your benefit pursuant to the Collateral Agreement, the Valuation Period shall be *[weekly] *[monthly], and the Cure Period applicable thereto shall be *[two (2) Business Days] [thirty days]. |
| 3113 3114 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 3115 | Ву |
| 3116 | Its |
| 3117 | dated: |
| | |

3118 * delete whichever is not applicable.

| 3120 | EXHIBIT I |
|--------------------------------------|--|
| 3121 3122 3123 | FORM OF NOTICE OF SUBSTITUTION OF COLLATERAL |
| 3124 3125 3126 3127 3128 | To: Manufacturers and Traders Trust Company, as Depository One M&T Plaza Buffalo, New York 14240 Attention: Corporate Trust Department |
| 3129 | * * * |
| 3130 3131 | FOR CASH, GOVERNMENT SECURITIES AND CONVENTIONAL MORTGAGE PASS-THROUGHS |
| 3132 | * * * |
| 3136 3137 | 1987 among America Federal Savings Bank (the "Bank") and Sun |
| 3139 | I. TRANSFER TO TRUSTEE'S ACCOUNT |
| 3140 3141 3142 | The Bank hereby irrevocably instructs the Depository to transfer the Collateral described below from Empire's Account No to the Trustee's Account No |
| | |
| 3143 | (Type, Par Value, Maturity Date and Rate) |
| 3144 3145 | and/or Cash (as defined in the Collateral Agreement) in the amount of |
| 3146 | \$ |
| 3147 3148 | <pre>and/or Conventional Pass-Through Certificates (as defined in the Collateral Agreement)</pre> |

| 3150 | (Issuer, Par Value, Maturity Date and Rate) |
|--|---|
| 3151 | II. TRANSFER OF EMPIRE'S ACCOUNT |
| 3152 3153 3154 | The Bank hereby irrevocably instructs the Depository to transfer the Collateral described below from the Trustee's Account No to Empire's Account No |
| 3155 | (Type, Par Value, Maturity Date and Rate) |
| 3156 3157 | and/or Cash (as defined in the Collateral Agreement) in the amount of |
| 315 8 | \$ |
| 3159 3160 | and/or Conventional Pass-Through Certificates (as defined in the Collateral Agreement) |
| 3161 | Issuer, Par Value, Maturity Date and Rate) |
| 3162 | * * * |
| 3163 | FOR MORTGAGE COLLATERAL |
| 3164 | * * * |
| 3165 3166 3167 3168 3169 3170 | This notice is given pursuant to Section 3.14 of the Collateral Agreement (the "Collateral Agreement") dated as of November 1, 1985, between Empire of America Federal Savings Bank (the "Bank") and Manufacturers and Traders Trust Company, as Trustee (the "Trustee"). Terms used herein which are defined in the Collateral Agreement are used herein as therein defined. |
| 3171 3172 3173 3174 | The Bank hereby irrevocably instructs as Administrator appointed pursuant to the Collateral Agreement, to transfer to the Bank the Mortgage Collateral described on the annexed Schedule A. |
| 3175 | * * * |

| 3179 | IN ALL CASES |
|----------------------|---|
| 3180 | * * * |
| 3181 3182 3183 | Date: EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| 3184 | Ву |
| 3185 | Its |
| 3186 3187 | Sun Bank, National Association, as Trustee, hereby consents to the transfer of the Collateral as described above. |
| 3188 3189 3190 | Date:SUN BANK, NATIONAL ASSOCIATION as Trustee |
| 3191 | ву |
| 3192 | Its |

3193 SCHEDULE A LIST OF MORTGAGE COLLATERAL TO BE SUBSTITUTED

| 3196 | EXHIBIT J |
|--|--|
| 3197 3198 | FORM OF RELEASE OF COLLATERAL |
| 3199 | * * * |
| 3200 | To: Manufacturers and Traders Trust Company, |
| 3201 3202 | as Depository One M&T Plaza |
| 3203 3204 | |
| J204 | <u>necemeron</u> . Corporate F |
| 3205 | * * * |
| 3206 3207 | CASH, GOVERNMENT SECURITIES AND CONVENTIONAL PASS-THROUGH CERTIFICATES |
| 3208 | * * * |
| J200 | |
| 3209 3210 3211 3212 3213 3214 3215 | |
| 3216 3217 3218 3219 | The Trustee hereby irrevocably instructs the Depository to transfer from Trustee's Account No the Collateral described below to the account of the Bank, Account Number: |
| 3220 3221 | Government Securities (as defined in the Collateral Agreement): |
| 3222 | (Type, Par Value, Maturity Date and Rate.) |
| 3223 3224 | and/or Cash (as defined in the Collateral Agreement) in the amount of |

| 3226 | \$ | | | |
|--|--|--|--|--|
| 3227 3228 | and/or Conventional Pass-Through Certificates (as defined in the Collateral Agreement): | | | |
| 3229 | (Issuer, Par Value, Maturity Date and Rate.) | | | |
| 3230 | * * * | | | |
| 3231 | MORTGAGE COLLATERAL | | | |
| 3232 | * * * | | | |
| 3233 3234 3235 3236 3237 3238 | Collateral Agreement (the "Collateral Agreement") dated as of June 1, 1987, between Empire of America Federal Savings Bank (the "Bank") and Sun Bank, National Association, as Trustee (the "Trustee"). Terms used herein which are defined in the | | | |
| 3239 3240 3241 3242 | The Bank and the Trustee hereby irrevocably instruct, as Administrator appointed pursuant to the Collateral Agreement, to transfer to the Bank the Mortgage Collateral described on the annexed Schedule A. | | | |
| 3243 | * * * | | | |
| 3244 3245 | EMPIRE OF AMERICA FEDERAL SAVINGS BANK | | | |
| 3246 | Ву | | | |
| 3247 | Its | | | |
| 3248 | Date: | | | |
| 3249 3250 | SUN BANK, NATIONAL ASSOCIATION as Trustee | | | |

| 3252 | | Ву |
|------|-------|-----|
| 3253 | | Its |
| 3254 | Date: | |

| 3255 | SCHEDULE A |
|--------------|---|
| 3256 3257 | LIST OF MORTGAGE COLLATERAL TO BE RELEASED |

| 3258 | <u>EXHIBIT_K</u> |
|--|---|
| 3259 3260 | FORM OF NOTICE OF DEFAULT |
| 3261 | * * * |
| 3262 3263 3264 3265 3266 | To: Manufacturers and Traders Trust Company, as Depository One M&T Plaza Buffalo, New York 14240 Attention: Corporate Trust Department |
| 3267 | * * * |
| 326 8 3269 | CASH, GOVERNMENT SECURITIES AND CONVENTIONAL PASS-THROUGH CERTIFICATES |
| 3270 | * * * |
| 3271 3272 3273 3274 3275 3276 3277 3278 3279 | This notice is given pursuant to Paragraph 6 of the Depository Agreement dated as of June 1, 1987 among yourself (the "Depository"), the undersigned (the "Trustee") and Empire of America Federal Savings Bank (the "Bank"). This notice relates to collateral (the "Collateral") pledged to the Trustee for the purpose of securing the obligations under the terms of the Collateral Agreement dated as of June 1, 1987 between the Bank and the Trustee (the "Collateral Agreement"). The Collateral is comprised of the following: |
| 3280 3281 | Government Securities (as defined in the Collateral Agreement): |
| | |
| 3282 | (Type, Par Value, Maturity Date and Rate.) |
| 3283 3284 | and/or Cash (as defined in the Collateral Agreement) in the amount of |
| 3285 | \$ |
| 3286 3287 | and/or Conventional Pass-Through Certificates (as defined in the Collateral Agreement): |

| 3290 | (Issuer, Par Value, Maturity Date and Rate) |
|--|--|
| 3291 | * * * |
| 3292 | MORTGAGE_COLLATERAL |
| 3293 | * * * |
| 3294 | To: |
| 3295 | Attention: |
| 3296 3297 3298 3299 3300 3301 3302 3303 3304 | This notice is given pursuant to Section 6.02 of the Collateral Agreement dated as of June 1, 1987, (the "Collateral Agreement") between Empire of America Federal Savings Bank (the "Bank") and Sun Bank, National Association, as Trustee (the "Trustee"). This notice relates to Collateral (the "Collateral") pledged to the Trustee for the purpose of securing the obligations of the Bank under the Collateral Agreement. The Collateral is comprised of the Mortgage Collateral described on the annexed Schedule A. |
| 3305 | * * * |
| 3306 | IN ALL CASES |
| 3307 | * * * |
| 3308 3309 3310 3311 3312 3313 3314 | The Trustee hereby notifies you that the Bank is in default with respect to its obligations under the Collateral Agreement. You are hereby directed *[to effect an immediate transfer of the Collateral to the Trustee in accordance with the instructions set forth on the annexed schedule] *[to undertake the sale or other disposition of the Collateral in accordance with the instructions set forth on the annexed schedule]. |
| 3315 3316 | SUN BANK, NATIONAL ASSOCIATION as Trustee |

| 3320 | | Ву | | |
|--------------|-------|--------|----|------|
| 3321 3322 | Date: | Ιt | ts | |

3323 * delete whichever is not applicable.

SCHEDULE A

3326 <u>LIST OF MORTGAGE COLLATERAL</u>

3325

| 3327 3328 3329 | | EXHIBIT L FORM OF ACCOUNTING REPORT | | |
|--|---|--|--|--|
| 3330 | [LETTERHEAD OF A | CCOUNTANT] | | |
| 3331 | | *[date] | | |
| | Sun Bank, Nation as Trustee 255 South Orange Orlando, Florida Attention: Corp | Avenue | | |
| 3337 | Gentlemen: | | | |
| 3338 3339 3340 3341 3342 3343 3344 | America Federal 3.18 of the Coll between the Bank (the "Trustee") | independent accountants engaged by Empire of Savings Bank (the "Bank") pursuant to Section ateral Agreement dated as of June 1, 1987, and Sun Bank, National Association, as Trustee (the "Collateral Agreement"). Capitalized terms I have the meaning assigned thereto in the ement. | | |
| 3345 | In such cap | pacity we have reviewed the following: | | |
| 3346 | a) T | he Collateral Agreement; | | |
| 3347 | b) I | he Valuation Certificate; | | |
| 3348 3349 3350 3351 3352 3353 | n C a s | The Notices of Collateral Requirement Coverage and Notices of Valuation Period issued pursuant to the Collateral Agreement, as listed on Schedule Bannexed hereto, which are listed on the annexed Schedule A, together with the detailed listings of Collateral annexed thereto; | | |
| 3354 3355 3356 3357 | , C M | the sources referred to in the Valuation Certificates as the basis for determining the Market Value of Collateral, covered by such Valuation Certificates. | | |
| 3358 3359 | | nce with Section 3.18 of the Collateral Agreement, e you that: | | |
| 3360 3361 | l. Assumi independent inve | ing the accuracy (as to which we have made no estigation) of the detailed listings of | | |

| 3362 3363 | Collateral, the Collateral constitutes Eligible Collateral under the terms of this Collateral Agreement. |
|--|--|
| 3364 3365 3366 3367 3368 3369 | 2. Assuming the accuracy (as to which we have not made any independent investigation) of the detailed listing of the Collateral and of the Collateral Requirement as of such dates set forth on the Valuation Certificates, the calculations required to be performed have been performed and the results of such calculations set forth on the Valuation Certificate are correct. |
| 3370 3371 3372 3373 3374 | 3. Assuming the accuracy of the listing of Collateral (as to which we have not made any independent investigation) we have traced the Market Values of the Collateral listed on the Valuation Certificate to the sources which are listed on the annexed Schedule C, and such Market Values are correct. |
| 3375 3376 3377 3378 3379 3380 3381 3382 | 4. Assuming the accuracy (as to which we have not made any independent investigation) of the detailed listing of the Collateral, we have calculated the Pledge Value of the Collateral shown on the Valuation Certificates based on the Market Values thereof as multiplied by the applicable Discounted Collateral Value, and have found them to be correct and calculated in a proper manner and in compliance with the Collateral Requirement as specified in the Collateral Agreement. |
| 3383 3384 3385 3386 3387 3388 | 5. Assuming accuracy (as to which we have not made any independent investigation) of the detailed listing of Mortgage Collateral comprising part of the Collateral pledged pursuant to the Collateral Agreement, the Mortgage Loans constituting such Mortgage Collateral comply with the requirements of Section 3.02 of the Collateral Agreement. |
| 3389 | Very truly yours, |
| | |

3390

3391

Ву _____

Its _____

| 3393 | <u>SCHEDULE A</u> |
|------|------------------------|
| 3394 | LIST OF |
| 3395 | VALUATION CERTIFICATES |
| 3396 | REVIEWED |

| 3397 | SCHEDULE B |
|----------------------|--|
| 3398 3399 3400 | LIST OF NOTICES OF COLLATERAL REQUIREMENT COVERAGE AND NOTICES OF VALUATION PERIOD |

| 3401 | SCHEDULE C |
|--------------|--------------------|
| 3402 3403 | LIST OF SOURCES |
| 3404 | FOR MARKET VALUES |

| EOOXA | CR, LF | e. | Job Status: | Раде | | | |
|------------|--------------------|----------------|------------------|------------|--------------|--------------|--------------|
| E0(| S. | None | | | | | |
| | (DC1/DC3) | | | Rev. 8 | Rev. 6 | Rev. 4 | Rev. 7 |
| Revision: | XON/XOFF (DC1/DC3) | Parity: | | | | | |
| ASYNC | 0096 | ASCII/B | | 8958 Bytes | 22092 Bytes | 19866 Byres | 30118 Bytes |
| Interface: | Speed: | Data Encoding: | Fonts Available: | XCP14-L | Titan10iso-P | TrendPSiso-P | TitanlOiso-L |

1:40

REMARKETING AGREEMENT

This Remarketing Agreement (the "Remarketing Agreement") made and entered into as of May 15, 1987, by and among the Housing Finance Authority of St. Johns County, Florida (the "Issuer"), Jacksonville Ventures, Inc., a Delaware corporation (the "Developer"), Sun Bank, National Association, Orlando, Florida (the "Trustee"), and Wertheim Schroder & Co. Incorporated, New York, New York (together with any successor remarketing agent, the "Remarketing Agent").

WHEREAS, the Issuer will issue, sell and deliver its \$12,000,000 aggregate principal amount of Multifamily Housing Refunding Revenue Bonds (Remington at Ponte Vedra Project) (the "Bonds") pursuant to an Indenture of even date herewith between the Issuer and the Trustee (the "Indenture");

WHEREAS, pursuant to the Indenture the proceeds of the Bonds will be used to refund the Issuer's \$12,000,000 Multifamily Housing Revenue Bonds (Remington at Ponte Vedra Project), dated August 1, 1985;

WHEREAS, pursuant to an Amended and Restated Loan Agreement, dated as of May 15, 1987 (the "Loan Agreement"), the proceeds of the Bonds will be loaned to the Developer and used to finance the costs of acquiring, constructing and installing a multifamily rental housing development, located within St. Johns County, Florida (the "Project");

WHEREAS, in order to enhance the marketability of the Bonds and thereby achieve interest cost and other savings which will inure to the benefit of the Developer, and to induce the purchasers of the Bonds to purchase them, it is contemplated that a Letter of Credit will be issued by Empire of America Federal Savings Bank, Buffalo, New York (the "Bank"), to secure the Bonds;

WHEREAS, in order to enhance the marketability of the Bonds and thereby achieve interest cost and other savings which will inure to the benefit of the Developer, the Remarketing Agent is willing to use its best efforts to remarket Bonds in accordance with the terms, conditions and limitations set forth herein;

NOW, THEREFORE, in consideration of the foregoing mutual covenants and other good and valuable considerations, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

Section 1. <u>Definitions</u>. Except to the extent otherwise expressly provided in the recitals and elsewhere herein, all words and terms used herein as defined words and terms shall have the meanings assigned to them in the Indenture and the Loan Agreement. The term "Bond" or "Bonds" as used herein shall be deemed to include, where applicable, any portion of any Bond or Bonds.

- Section 2. Acceptance of Office of Remarketing
 Agent. (A) Wertheim Schroder & Co. Incorporated hereby accepts
 the office of Remarketing Agent and agrees to perform all of
 the duties and obligations of the Remarketing Agent upon the
 terms and conditions therein set forth, and the Remarketing
 Agent agrees specifically to:
 - (i) act as agent for Bondholders in receiving and holding moneys to pay the Purchase Price of Bonds tendered for remarketing, and act as agent for the Issuer in all other matters;
 - (ii) notify the Trustee of the Reset Rate determined in accordance with Section 3.09 of the Indenture, each such notification to be in writing or by telex or telecopier or other communication device which produces a written record thereof, or by telephone confirmed within one Business Day by any such written communication; and upon request by the Issuer, submit copies of any such notices to the Issuer;
 - (iii) hold all moneys delivered to it under the Indenture for the purchase of Bonds in trust for the benefit of the Person (as defined in the Indenture) which shall have so delivered such moneys or deliver such moneys to the Trustee for their benefit until the bonds purchased with such moneys shall have been delivered to or for the account of such Person, and not commingle such moneys with other funds of the Remarketing Agent;
 - (iv) keep such books and records as shall be consistent with prudent industry practice and make such books and records available for inspection by the Issuer, the Trustee, the Developer and the Bank at all reasonable times; and
 - (v) perform the duties and comply with the provisions set forth in Sections 11.02 through 11.05 of the Indenture, inclusive.

- (B) This Remarketing Agreement shall serve as the written instrument of acceptance required by the Indenture, and copies hereof shall be delivered by the Remarketing Agent to the Issuer, the Trustee, the Developer and the Bank.
 - (C) The principal office of the Remarketing Agent is:

Wertheim Schroder & Co. Incorporated 200 Park Avenue, 8th Floor New York, New York 10166 Attn: Municipal Department

Section 3. Remarketing of Bonds. The Remarketing Agent shall use its best efforts to remarket all Bonds tendered for remarketing in accordance with the terms of the Indenture. The Remarketing Agent may purchase such Bonds for its own account. Any such remarketing shall be at a price of at least 100% of the principal amount thereof, unless the Remarketing Agent advances the difference between the price and 100%, and the Developer concurrently reimburses the Remarketing Agent. Such sale, however, shall not be made to the Developer or any officer of the Developer or to the Issuer. The Remarketing Agent shall deliver the proceeds from the remarketing of the Bonds to the Trustee.

Section 4. Fees and Expenses of Remarketing Agent. The Developer shall pay to the Remarketing Agent, as payment for its services hereunder, remarketing fees equal to good the Bonds to be remarketed on each Mandatory Tender Date. The Developer agrees to reimburse the Remarketing Agent for all of its expenses incurred in connection with the remarketing of the Bonds, including but not limited to the expenses incurred in connection with the preparation and distribution of the Disclosure Document (as hereinafter defined), obtaining ratings from the Rating Agencies, in accordance with the Indenture, the fees and expenses of counsel to the Remarketing Agent in connection with the remarketings, the cost of carrying the Bonds, and federal funds transfer fees. Such expenses shall be paid within ten (10) calendar days after receipt by the Developer of the Remarketing Agent's statement.

Section 5. Acceptance by Trustee. The Trustee covenants to the Issuer, the Remarketing Agent and the Developer that it shall duly and faithfully perform all of the duties and obligations imposed on it by the Indenture and hereunder in connection with the remarketing of the Bonds. While any Bond is in its custody, the Trustee shall safeguard the same in accordance with its customary practices for marketable securities owned by it in its own name. The Trustee shall deliver remarketed Bonds in proper form to the purchaser of the remarketed Bonds against payment for such Bonds.

Section 6. Confirmations. The Remarketing Agent shall promptly provide confirmations to the Issuer, the Developer, the Trustee and the Bank reflecting the settlement dates of all purchases and sales of Bonds pursuant to this Remarketing Agreement, upon request by such parties.

- Section 7. <u>Disclosure Documents</u>. (A) The Remarketing Agent agrees to prepare or cause to be prepared a new official statement, offering circular or a private placement memorandum (the "Disclosure Document") in connection with each Mandatory Tender Date, if in the sole discretion of the Remarketing Agent, such a Disclosure Document is necessary for the remarketing of the Bonds. The Remarketing Agent shall not remarket the Bonds to any Person or entity if such remarketing actively would result in a violation of any provision of federal securities law or applicable state Blue Sky law.
- (B) The Developer and the Trustee each agree to cooperate with the Remarketing Agent with respect to the remarketing of the Bonds. The Developer specifically agrees to furnish to the Remarketing Agent all documents with respect to the Project, financial statements and such other information which the Remarketing Agent or its counsel may reasonably request for use in connection with the preparation of the Disclosure Document, if any, or the remarketing of the Bonds.

Section 8. Conditions Precedent to Remarketing. (A) All requirements set forth in the Indenture for the remarketing shall have been performed to the Remarketing Agent's satisfaction.

- (B) With respect to the remarketing of the Bonds, in addition to (A) above, there shall be delivered to the Remarketing Agent:
 - (i) an unqualified legal opinion of Bond Counsel with respect to the continued exemption of interest on the Bonds from Federal income taxation, with such opinion to be satisfactory to the Remarketing Agent;
 - (ii) all such certificates of the Issuer, the Developer and the Bank, and opinions of counsel to the Issuer, the Developer and the Bank, as the Remarketing Agent or its counsel may reasonably request;
 - (iii) by the Developer all indemnifications with respect to the Disclosure Document as the Remarketing Agent may reasonably request;

- (iv) an opinion of counsel to the Remarketing Agent with respect to the Disclosure Document and the remarketing of the Bonds that the Remarketing Agent may reasonably request; and
- (v) the fees of the Remarketing Agent for performing such remarketing, in accordance with Section 4 hereof.

Section 9. <u>Amendments</u>. This Remarketing Agreement may be amended by a written agreement signed by all the parties hereto.

Section 10. Notices. Except as otherwise expressly provided herein, all notices hereunder shall be in writing and shall be deemed to have been given to any party when delivered or mailed by first class mail addressed to it at its notice address set forth in or determined as provided in the Loan Agreement.

Section 11. Severability. In case any clause, provision or section of this Remarketing Agreement, or in case any covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Remarketing Agreement, or any application thereof, is for any reason held to be illegal, invalid or inoperable, such illegality or invalidity or inoperability shall not affect the remainder thereof or any other clause, provision or section of this Remarketing Agreement or any other covenant, stipulation, obligation, agreement, act or action, or part thereof, made, assumed, entered into or taken under this Remarketing Agreement, which shall at the time be construed and enforced as if such illegal or invalid or inoperable portion were not contained herein, nor shall such illegality or invalidity or inoperability or any application thereof affect any legal and valid and operable application from time to time, and each such section, provision, covenant, stipulation, obligation, agreement, act or action, or part thereof, shall be deemed to be effective, operative, made, entered into or taken in the manner and to the full extent from time to time permitted by law.

Section 12. <u>Counterparts</u>. This Remarketing 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.

Section 13. Governing Law. This Remarketing Agreement and the rights and obligations of the parties hereto (including third party beneficiaries) shall be governed exclusively by and construed in accordance with the laws of the State of New York.

IN WITNESS WHEREOF, the parties have executed this Remarketing Agreement all as of the date first above written.

| | HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA |
|--|--|
| | ByChairman |
| | JACKSONVILLE VENTURES, INC., a Delaware corporation |
| | By(Title) |
| | SUN BANK, NATIONAL ASSOCIATION, Trustee |
| | ByAuthorized Officer |
| | WERTHEIM SCHRODER & CO. INCORPORATED |
| | BySenior Vice President |
| The Bank hereby acknowl execution of this Remarketing Ag | ledges and approves the present by the above parties. |
| | EMPIRE OF AMERICA FEDERAL SAVINGS BANK |
| | By(Title) |