

**RESOLUTION NO. 2021-58**

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA APPROVING THE ISSUANCE BY THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, OF ITS MULTIFAMILY MORTGAGE REVENUE NOTE, SERIES 2021 (SAN MARCOS HEIGHTS), IN AN AGGREGATE PRINCIPAL AMOUNT NOT EXCEEDING \$17,500,000, THE PROCEEDS OF WHICH WILL BE LOANED TO SAN MARCOS HEIGHTS, LLC, A FLORIDA LIMITED LIABILITY COMPANY (THE "BORROWER"), FOR THE PURPOSE OF FINANCING A PART OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND INSTALLATION OF A MULTIFAMILY RENTAL HOUSING DEVELOPMENT TO BE LOCATED IN ST. JOHNS COUNTY, FLORIDA, TO BE OWNED AND OPERATED BY THE BORROWER, AS DESCRIBED HEREIN; ALL PURSUANT TO CHAPTER 159, PART IV, FLORIDA STATUTES, AS AMENDED.

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

**SECTION 1. FINDINGS.** It is hereby ascertained, determined and declared that:

A. The Housing Finance Authority of St. Johns County, Florida (the "Authority") has been created to act as the sole housing finance authority for St. Johns County, Florida (the "County") and is a public body corporate and politic, duly organized and existing under the provisions of Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "Board") on February 26, 1980, as amended (the "County HFA Ordinance"), and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (the "County HFA Resolution").

B. San Marcos Heights, LLC, a Florida limited liability company (the "Borrower") has requested that the Authority issue its Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights Project), in a principal amount not to exceed \$17,500,000 (the "Governmental Note"), to finance or refinance (including through reimbursement) the acquisition, construction and development of an approximately 132-unit multifamily rental housing development, to be known as San Marcos Heights, to be constructed on an approximately 15.0-acre site located at 127 Adair Road, in an unincorporated area of St. Johns County, Florida 32084 (collectively, the "Project").

C. On October 22, 2020, following a public hearing held by the Authority concerning the Project, the Authority adopted a resolution (the "Preliminary Resolution") confirming its intention to approve at a later date the issuance of the Governmental Note in order to finance or refinance a part of the costs of the Project, subject to the satisfaction of certain conditions, and recommending that the Board approve the issuance of the Governmental Note in order to finance

or refinance a part of the costs of the Project for the purposes of Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"). The Preliminary Resolution is attached as "Exhibit C" to the TEFRA Resolution (as defined below).

D. On December 1, 2020, the Board adopted Resolution No. 2020-483, attached hereto as Exhibit A (the "TEFRA Resolution"), approving the Project for purposes of Section 147(f) of the Code but also providing that the Governmental Note cannot be issued by the Authority unless the issuance of the Governmental Note is subsequently approved by the Board for purposes of Section 11 of the County HFA Ordinance and Section 7 of the County HFA Resolutions.

E. On January 28, 2021, the Authority adopted a resolution (the "Bond Resolution") authorizing the issuance of the Governmental Note in order to finance or refinance a portion of the costs of the Project and the execution and delivery of various documents in connection therewith. A copy of the Bond Resolution is attached hereto as Exhibit B and incorporated herein by reference.

F. In the Bond Resolution, the Authority has recommended and requested that the Board approve the issuance of the Governmental Note, in order to satisfy the requirements of the County HFA Ordinance, the County HFA Resolutions and the Act.

G. The Preliminary Resolution and the Bond Resolution show that the Project will serve significant public purposes as provided in the Act.

H. The purposes of the Act will be effectively served, and it is necessary and desirable and in the best interest of the County that the issuance of the Bonds by the Authority be approved by the Board.

**SECTION 2. APPROVAL OF ISSUANCE OF BONDS.** For purposes of the County HFA Ordinance, the County HFA Resolutions and the Act, the Board hereby approves the issuance of the Governmental Note by the Authority to finance or refinance a part of the costs of the Project. The Authority is hereby directed to ensure that prior to the issuance of the Governmental Note each of the following shall occur:

A. The Authority is assured that the project that is being financed with the Governmental Note proceeds is a project that may be financed under the authority of Section 159.612, Florida Statutes, as amended; that the Governmental Note is issued in a manner authorized by Section 159.613 Florida Statutes, as amended; and that the interest rate borne by the Governmental Note complies with the maximum interest rate provisions of Section 215.84, Florida Statutes, as amended.

B. The Governmental Note contains on its face the statement required by Section 159.612(4), Florida Statutes, as amended, and includes a statement to the effect that neither the faith and credit nor the taxing power of the Authority or of the County, or the State of Florida, or any political subdivision thereof is pledged to the payment of the principal of, premium, if any, or interest in the Governmental Note.

C. The Authority receives an opinion from the attorney that represents the Authority as Authority's counsel for the issuance of the Governmental Note, dated its date of issuance, that

has the effect of confirming the Authority has full power and authority to execute and deliver each of the documents that are signed by the Authority in connection with the issuance of the Governmental Note and that the Authority has full power and authority to perform the Authority's obligations under each such document; that the Authority has full power and authority to issue and deliver the Governmental Note; and that the Authority's execution and delivery of, and compliance with the terms and conditions of, the Governmental Note and the related documents will not violate or conflict with any provision of the Constitution of the State of Florida, any applicable Florida statute or this Resolution and will not conflict with or cause a breach of any contract, agreement, or other instrument to which the Authority is a party.

**SECTION 3. NO ENDORSEMENT BY COUNTY.** The approvals given herein shall not be construed as (A) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (B) a recommendation to hold or purchase the Governmental Note, (C) an evaluation of the likelihood of the repayment of the debt service on the Governmental Note, or (D) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard.

**SECTION 4. OTHER ACTION.** The officers of the County are hereby authorized and directed to execute and deliver, or approve the execution and delivery of, such other documents and to take or approve the taking of such other actions as may be advised by the County's counsel or Foley & Lardner LLP, Bond Counsel, to be appropriate in connection with the issuance of the Bonds as contemplated by this Resolution.

**SECTION 5. REPEALING CLAUSE.** All resolutions or orders and parts thereof in conflict herewith, to the extent of such conflict, are hereby superseded and repealed.

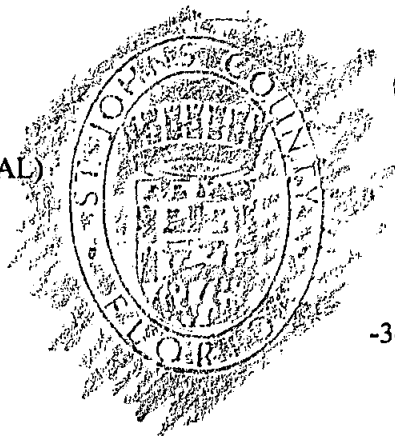
**SECTION 6. EFFECT OF TYPOGRAPHICAL AND/OR ADMINISTRATIVE ERRORS.** To the extent that there are typographical and/or administrative errors and/or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board.

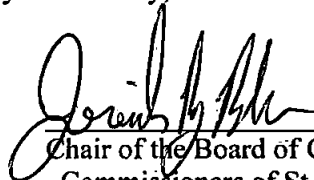
**SECTION 7. EFFECTIVE DATE.** This Resolution shall take effect immediately.

**PASSED AND ADOPTED** this 2<sup>nd</sup> day of February, 2021.

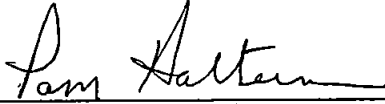
(OFFICIAL SEAL)

ATTEST:



  
Chair of the Board of County  
Commissioners of St. Johns County,  
Florida

RENDITION DATE 2/4/21

*Deputy*   
Clerk of the Circuit Court & Comptroller,  
ex-officio Clerk of the Board of County  
Commissioners of St. Johns  
County, Florida



**EXHIBIT A**  
**TEFRA RESOLUTION**

RESOLUTION NO. 2020-483

A RESOLUTION OF THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, APPROVING FOR PURPOSES OF SECTION 147(F) OF INTERNAL REVENUE CODE OF 1986, AS AMENDED, THE ISSUANCE BY THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, OF MULTIFAMILY HOUSING REVENUE DEBT OBLIGATIONS, IN ONE OR MORE SERIES, TO FINANCE OR REFINANCE ALL OR PORTION OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF A MULTIFAMILY HOUSING PROJECT TO BE KNOWN AS SAN MARCOS HEIGHTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Housing Finance Authority of St. Johns County, Florida (the "Authority") has been created to act as the sole housing finance authority for St. Johns County, Florida (the "County") and is a public body corporate and politic, duly organized and existing under the provisions of Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "Board") on February 26, 1980, as amended (the "County HFA Ordinance"), and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (the "County HFA Resolution"); and

WHEREAS, San Marco Heights, LLC, a Florida limited liability company (the "Borrower"), has applied to the Authority for the issuance of tax-exempt debt obligations in an aggregate principal amount not to exceed \$17,500,000, in one or more series (collectively, the "Bonds"), to finance or refinance (including through reimbursement) the acquisition, construction and development of an approximately 132-unit multifamily rental housing development, to be known as San Marcos Heights, to be constructed on an approximately 15.0-acre site located at 127 Adair Road, in an unincorporated area of St. Johns County, Florida 32084 (the "Project"), and to be owned by the Borrower; and

WHEREAS, the Authority adopted a resolution on July 23, 2020 (the "Intent Resolution"), attached hereto as Exhibit A, expressing its intention to approve at a later date, by appropriate resolution, the financing of a loan to the Borrower through the issuance of the Bonds in order to finance or refinance all or a portion of the costs of the acquisition and development of the Project upon the satisfaction of certain conditions as set forth in the Intent Resolution, and authorizing the Authority to publish notice of a public hearing and conduct a public hearing regarding the location and nature of the Project and proposed issuance of the Bonds by the Authority in accordance with the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, notice of a public hearing to be held before the Authority, inviting comments and discussion concerning the nature of the Project and the issuance of the Bonds (the "Notice of Hearing"), was published in the The St. Augustine Record, a newspaper of general circulation in

the County, at least seven (7) days prior to the date of such public hearing, and a copy of the affidavit in proof of publication of such Notice of Hearing is attached hereto as Exhibit B and incorporated herein by reference; and

WHEREAS, following such notice, a public hearing was held by the Authority on October 22, 2020, upon notice during which comments and discussion concerning the issuance of the Bonds to finance or refinance all or a portion of the costs of the Project, were requested and allowed; and

WHEREAS, following such hearing, the Authority passed a resolution on October 22, 2020, attached hereto as Exhibit C (the "HFA Preliminary Resolution"), confirming its intention to approve the Project at a later date, subject to the satisfaction of certain conditions, and recommending approval by the Board, solely for the purposes of Section 147(f) of the Code, of the issuance of the Bonds by the Authority in order to finance or refinance all or a portion of the costs of the Project; and

WHEREAS, the Board concurs in the findings of the Authority that the Project will inure to the benefit of the citizens of St. Johns County, Florida;

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA, as follows:**

Section 1. The recitals are incorporated into the body of this Resolution.

Section 2. For purposes of Section 147(f) of the Code, the Board hereby approves the issuance by the Authority of the Bonds in an aggregate principal amount not to exceed \$17,500,000 for the purpose of financing or refinancing all or a portion of the costs of the Project. This approval is given solely for the purposes of satisfying the requirements of the Code and is final and conclusive for such purposes. The granting of this approval shall not impose any liability upon the County with respect to the Bonds.

Section 3. The approval given herein shall not be construed as (A) an endorsement of the creditworthiness of the Borrower or the financial viability of the Project, (B) a recommendation to any holder or prospective purchaser to hold or purchase the Bonds, (C) an evaluation of the likelihood of the repayment of the debt service on the Bonds, or (D) approval of any necessary rezoning applications or approval or acquiescence to the alteration of existing zoning or land use nor approval for any other regulatory permits relating to the Project, and the Board shall not be construed by reason of its adoption of this Resolution to make any such endorsement, finding or recommendation or to have waived any right of the Board or estopping the Board from asserting any rights or responsibilities it may have in such regard.

Section 4. The Bonds shall not be issued by the Authority unless the issuance of the Bonds by the Authority are subsequently approved by the Board for purposes of Section 11 of the County HFA Ordinance and Section 7 of the County HFA Resolution.

Section 5. The Bonds and the interest on the Bonds shall not constitute a debt, liability or general obligation of the Authority, the County or of the State of Florida or of any political subdivision thereof, but shall be payable solely from the revenues or other moneys specifically provided by the Borrower for the payment of the Bonds and neither the faith and credit nor any taxing power of the Authority, the County or of the State of Florida or of any political subdivision thereof is pledged to the payment of the principal or interest on the Bonds.

Section 6. This Resolution shall be effective immediately upon adoption by the Board.  
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PASSED AND ADOPTED by the Board of County Commissioners of St. Johns County, Florida, this 1 day of December, 2020.

BOARD OF COUNTY COMMISSIONERS  
OF ST. JOHNS COUNTY, FLORIDA

By Henry Dean  
Henry Dean, Vice Chairman

ATTEST: Brandon J. Patty, Clerk of the  
Circuit Court and Comptroller

By Pam Halteim  
Deputy Clerk

RENDITION DATE 12/3/20



**EXHIBIT A**  
Intent Resolution  
(See attached.)

RESOLUTION NO. 2020-\_\_\_

A RESOLUTION EXPRESSING THE INTENT OF THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA TO PROCEED WITH THE ISSUANCE OF ITS NOT TO EXCEED \$17,500,000 MULTIFAMILY HOUSING REVENUE BONDS (SAN MARCOS HEIGHTS PROJECT), THE PROCEEDS OF WHICH WILL BE LOANED TO SAN MARCOS HEIGHTS, LLC, A FLORIDA LIMITED LIABILITY COMPANY, TO FINANCE OR REFINANCE (INCLUDING THROUGH REIMBURSEMENT) ALL OR A PORTION OF THE COST OF THE ACQUISITION, CONSTRUCTION, DEVELOPMENT AND INSTALLATION OF AN APPROXIMATELY 132-UNIT MULTIFAMILY HOUSING DEVELOPMENT; AUTHORIZING THE PUBLICATION OF A TEFRA NOTICE RELATING TO A PUBLIC HEARING TO BE HELD BY THE AUTHORITY AT A SUBSEQUENT MEETING OF THE AUTHORITY; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Housing Finance Authority of St. Johns County, Florida (the "Authority") has determined that there exists a shortage of safe and sanitary housing for persons and families of low, moderate and middle income, within St. Johns County, Florida (the "County"); and

WHEREAS, such housing shortage will be partially alleviated by the acquisition and construction by a private owner of a multifamily rental housing development, to be occupied by persons or families of low, moderate or middle income, to consist of approximately 132 units, on an approximately 15.0 acre site located at 127 Adair Road, St. Augustine, Florida 32084, in an unincorporated area of the County, to be known as San Marcos Heights (the "Project"); and to be owned by San Marcos Heights, LLC, a Florida limited liability company (the "Borrower"); and

WHEREAS, in order to provide for a portion of the financing or refinancing (including through reimbursement) for the acquisition, construction and development of the Project, the Authority intends to issue its tax-exempt multifamily housing revenue bonds for the benefit of the Borrower, in one or more series or issues, at the same time or at different times in a total aggregate principal amount currently estimated not to exceed \$17,500,000 (herein the "Bonds"), and to enter

into a borrower loan or financing agreement, a trust indenture or funding loan agreement, a tax regulatory agreement, land use restriction agreement and/or other necessary documents with respect to the Project; and

**WHEREAS**, the Authority deems it necessary to authorize the publication of a notice of public hearing (the "Notice of Public Hearing") relating to a public hearing to be held by the Authority regarding the location and nature of the Project and the proposed issuance of the Bonds by the Authority, to be held at a subsequent meeting of the Authority in accordance with the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code");

**NOW, THEREFORE, BE IT RESOLVED** by the members of the Housing Finance Authority of St. Johns County, Florida, a lawful quorum of which duly assembled, as follows:

**SECTION 1.** The Authority hereby expresses its intention to approve at a later date, by appropriate resolution, the financing of a loan to the Borrower in order to finance the development of the Project through the issuance of the Bonds and the execution of the necessary documents, including a trust indenture or funding loan agreement, borrower loan or financing agreement, tax regulatory agreement, land use restriction agreement and/or such other documents as the Authority deems necessary to effect the tax exempt issuance of the Bonds; provided that, the Borrower shall have delivered to the Authority evidence satisfactory to the Authority, in its sole discretion, that (i) the Borrower and the Project have complied with the applicable program policies and requirements of the Authority and (ii) the Project will meet the physical requirements for a "qualified residential rental project" under the Code and applicable state and local requirements; provided further, however, such Bonds shall not be issued unless the Bonds, if publicly offered, (a) are rated at least "BBB" or equivalent (without regard to gradations or modifiers) or better by



any or all of the following rating agencies providing such rating: S&P Global Ratings, Moody's Investors Service, Inc. or Fitch Ratings Inc., or if not so rated, (b) are sold by private placement to institutional investors.

**SECTION 2.** This Resolution shall constitute a declaration of the official intent of the Authority, within the contemplation of Section 1.150-2 of the Income Tax Regulations promulgated by the Department of the Treasury, to permit the Borrower to use proceeds of the Bonds to reimburse itself for certain acquisition, construction, planning, design, legal or other costs and expenses originally paid by the Borrower in connection with the Project with funds other than proceeds of the Bonds prior to the issuance of the Bonds (the "Advanced Funds").

The Borrower has represented to the Authority that all of the expenditures initially to be made with the Advanced Funds and then to be reimbursed by the Borrower from proceeds of the Bonds will be for costs of a type properly chargeable to the capital account of the Project under general income tax principles, non-recurring working capital expenditures (of a type not customarily payable from current revenues), or costs of issuing the Bonds. Other than any preliminary expenditures for architectural, engineering, surveying, soil testing, costs of issuing the Bonds or similar purposes that may have been paid more than sixty days prior to the date of this Resolution, no expenditures to be reimbursed have been paid more than sixty days earlier than the date of this Resolution.

**SECTION 3.** The intent period for the Project shall have a term of two (2) years from the date of adoption of this Resolution (the "Intent Period"). The Intent Period is subject to extension by the Authority upon compliance by the Borrower of certain requirements established by the Authority, including the payment of an additional fee to the Authority and bond counsel prior to the extension of the Intent Period.

**SECTION 4.** The publication of the Notice of Public Hearing in advance of the public hearing described above is hereby authorized.

**SECTION 5.** It is expressly stated and agreed that the adoption of this Resolution is not a guaranty, express or implied, that the Authority shall approve the closing and issue its Bonds for the Project. This Resolution is qualified in its entirety by the provisions of Chapter 159, Part VI, Florida Statutes, or any subsequently enacted or effective Executive Order or legislation concerning a State volume ceiling on multifamily housing bonds. In regard to the State volume ceiling for multifamily housing bonds, the Authority can make no guarantees as to the method by which funds will be allocated to any particular project, including the Project, and to which projects, including the Project, funds will be allocated. The Borrower shall hold the Authority and its past, present and future members, officers, staff, attorneys, financial advisors, and employees harmless from any liability or claim based upon the failure of the Authority to close the transaction and issue the Bonds or any other cause of action arising from the adoption of this Resolution, the processing of the financing for the Project, the issuance of the Bonds except for the gross negligence and willful and wanton misconduct of the Authority.

**SECTION 6.** The Authority has no jurisdiction regarding zoning and land use matters and the adoption of the Resolution is not intended to express any position or opinion regarding such matters.

**SECTION 7.** All resolutions and orders or parts thereof, of the Authority, in conflict herewith are, to the extent of such conflict, hereby modified to the extent of such conflict, and this Resolution shall take effect from and after its passage, the public welfare requiring it.

**SECTION 8.** It is found and determined that all formal actions of this Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of the

members of this Authority and that all deliberations of the members of this Authority and of its committees, if any which resulted in such formal action were taken in meetings open to the public, in full compliance with all legal requirements.

This Resolution shall become effective immediately upon its adoption. The presiding officer declared said Resolution adopted and approved in open meeting.

PASSED AND ADOPTED this 23rd day of July, 2020.

HOUSING FINANCE AUTHORITY OF  
ST. JOHNS COUNTY, FLORIDA

(SEAL)

By: Jay A. Katter  
Jay Katter, Chair

ATTEST:

Linda B. DeGrande  
Linda DeGrande, Secretary

**EXHIBIT B**

**Affidavit of Notice of Public Hearing**

(See attached.)

THE ST. AUGUSTINE RECORD  
Affidavit of Publication

FOLEY & LARDNER, LLP  
1 INDEPENDENT DRIVE  
ROOM 1300  
JACKSONVILLE, FL 32202

ACCT: 18459  
AD# 0003314849-01

PO#

PUBLISHED EVERY MORNING SUNDAY THROUGH SATURDAY  
ST. AUGUSTINE AND ST. JOHNS COUNTY, FLORIDA

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

Before the undersigned authority personally appeared MELISSA RHINEHART who on oath says he/she is an Employee of the St. Augustine Record, a daily newspaper published at St. Augustine in St. Johns County, Florida; that the attached copy of advertisement being a NOTICE OF HEARING in the matter of SAN MARCO HEIGHTS PUB MTG was published in said newspaper on 10/15/2020.

Affiant further says that the St. Augustine Record is a newspaper published at St. Augustine, in St. Johns County, Florida, and that the said newspaper heretofore has been continuously published in said St. Johns County, Florida each day and has been entered as second class mail matter at the post office in the City of St. Augustine; in said St. Johns County, Florida for a period of one year preceding the first publication of the attached copy of advertisement; and affiant further says the he/she has neither paid nor promised any person, firm or corporation any discount, rebate, commission, or refund for the purpose of securing this advertisement for publication in said newspaper.

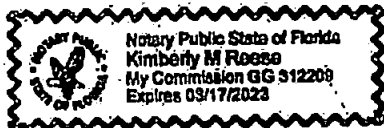
Sworn to (or affirmed) and subscribed before me by means of

physical presence or  
 online notarization

this \_\_\_ day of OCT 15 2020

by Melissa Rhinehart who is personally known to  
me or who has produced as identification

Kimberly M Reese  
(Signature of Notary Public)



NOTICE OF PUBLIC HEARING  
OF THE HOUSING FINANCE  
AUTHORITY OF ST. JOHNS  
COUNTY, FLORIDA

NOTICE is hereby given that the Housing Finance Authority of St. Johns County, Florida (the "Authority"), will hold a public hearing on Thursday, October 22, 2020 at 5:00 p.m., or as soon thereafter as is practicable, in the Board of County Commissioners Auditorium at 500 San Sebastian View, County Administration Building, St. Augustine, Florida 32084, concerning the proposed issuance of debt obligations by the Authority in an aggregate principal amount not to exceed \$17,500,000 (the "Bonds").

The Bonds are to be issued for the purpose of financing or refinancing all or a portion of the costs of the acquisition, construction and development of a multi-family rental housing development to be known as San Marcos Heights, to be occupied by persons or families of low, moderate or middle income, to consist of approximately 132 units, on an approximately 15.0-acre site located at 127 Adair Road, in an unincorporated area of St. Johns County, Florida 32084 (collectively, the "Project"), and to be owned by San Marcos Heights, LLC, a Florida limited liability company.

The public hearing will be conducted in a manner that provides a reasonable opportunity to be heard for persons with differing views on the issuance of the Bonds and the location and nature of the Project. Any person desiring to be heard on this matter is requested to attend the public hearing or send a representative. Written comments (not exceeding 250 words) to be presented at this hearing may be submitted to the Authority at, and further information relating to this matter is available for inspection and copying during the regular business hours at the office of Joseph Cima, Assistant Director of Health and Human Services, at 500 San Sebastian View, Suite 2302, St. Augustine, Florida 32084. Comments made at the hearing and the meeting are for the consideration of the Authority and the Board of County Commissioners, and will not bind any legal action to be taken by the Authority or the Board of County Commissioners.

In accordance with the American Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact St. Johns County at (904) 897-8990 or at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida 32084, not later than 7 days prior to the date of this hearing.

IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND, FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.

Dated: October 15, 2020.

HOUSING FINANCE AUTHORITY  
OF ST. JOHNS COUNTY, FLORIDA  
0003314849 October 15, 2020

Thu, Oct 15, 2020  
9:11:29AM

Legal Ad Invoice

# The St. Augustine Record

Send Payments to:  
The St. Augustine Record  
One News Place  
St. Augustine, FL 32086

Acct: 18459  
Phone: 18043598735  
E-Mail:  
Client: FOLEY & LARDNER, LLP

Name: FOLEY & LARDNER, LLP  
Address: 1 INDEPENDENT DRIVE  
ROOM 1300  
City: JACKSONVILLE

State: FL Zip: 32202

Ad Number: 0003314849-01  
Start: 10/15/2020

Caller: AMBER WARE  
Issues: 1

Paytype: BILL  
Stop: 10/15/2020

Placement: SA Legals

Rep: Melissa Rhinehart

Copy Line: NOTICE OF PUBLIC HEARING OF THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA NOTICE

Thu, Oct 15, 2020  
9:11:29AM

Legal Ad Invoice

# The St. Augustine Record

Send Payments to:  
The St. Augustine Record  
One News Place  
St. Augustine, FL 32086

Lines	88
Depth	7.50
Columns	1
Price	\$134.63

**NOTICE OF PUBLIC HEARING  
OF THE HOUSING FINANCE  
AUTHORITY OF ST. JOHNS  
COUNTY, FLORIDA**

NOTICE is hereby given that the Housing Finance Authority of St. Johns County, Florida (the "Authority"); will hold a public hearing on Thursday, October 22, 2020 at 2:00 p.m. or as soon thereafter as is practicable, in the Board of County Commissioners Auditorium at 500 San Sebastian View, County Administration Building, St. Augustine, Florida 32084, concerning the proposed issuance of debt obligations by the Authority in an aggregate principal amount not to exceed \$17,000,000 (the "Bonds").

The Bonds are to be issued for the purpose of financing or refinancing all or a portion of the costs of the acquisition, construction and development of a multi-family rental housing development to be known as San Marcos Heights, to be occupied by persons or families of low, moderate or middle income, to consist of approximately 132 units on an approximately 15.0-acre site located at 127 Adair Road, in an unincorporated area of St. Johns County, Florida 32084, (collectively, the "Project"), and to be owned by San Marcos Heights, LLC, a Florida limited liability company.

The public hearing will be conducted in a manner that provides a reasonable opportunity to be heard for persons with differing views on the issuance of the Bonds and the location and nature of the Project. Any person desiring to be heard on this matter is requested to attend the public hearing or send a representative. Written comments (not exceeding 250 words) to be presented at this hearing may be submitted to the Authority at, and further information relating to this matter is available for inspection and copying during the regular business hours at, the office of Joseph Coon, Assistant Director of Health and Human Services, at 200 San Sebastian View, Suite 2300, St. Augustine, Florida 32084. Comments made at the hearing and the meeting are for the consideration of the Authority and the Board of County Commissioners, and will not bind any legal action to be taken by the Authority or the Board of County Commissioners.

In accordance with the American Disabilities Act, persons needing a special accommodation or an interpreter to participate in this proceeding should contact St. Johns County at (904) 827-6890 or at the County Administration Building, 500 San Sebastian View, St. Augustine, Florida 32084, not later than 7 days prior to the date of this hearing.

**IF A PERSON DECIDES TO APPEAL ANY DECISION MADE BY THE AUTHORITY WITH RESPECT TO ANY MATTER CONSIDERED AT SUCH HEARING, SUCH PERSON WILL NEED A RECORD OF THE PROCEEDINGS AND FOR SUCH PURPOSE, SUCH PERSON MAY NEED TO ENSURE THAT A VERBATIM RECORD OF THE PROCEEDINGS IS MADE, WHICH RECORD INCLUDES THE TESTIMONY AND EVIDENCE UPON WHICH THE APPEAL IS TO BE BASED.**

Dated: October 15, 2020

**HOUSING FINANCE AUTHORITY  
OF ST. JOHNS COUNTY, FLORIDA**  
0003314849 October 15, 2020

**EXHIBIT C**

**HFA Preliminary Resolution**

**(See attached.)**



## RESOLUTION

A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA ("THE AUTHORITY") RECOMMENDING THAT THE BOARD OF COUNTY COMMISSIONERS OF ST. JOHNS COUNTY, FLORIDA APPROVE, SOLELY FOR PURPOSES OF SECTION 147(F) OF INTERNAL REVENUE CODE OF 1986, AS AMENDED, THE ISSUANCE BY THE AUTHORITY OF ITS MULTIFAMILY HOUSING REVENUE DEBT OBLIGATIONS, IN ONE OR MORE SERIES, TO FINANCE OR REFINANCE ALL OR A PORTION OF THE COSTS OF THE ACQUISITION, CONSTRUCTION AND DEVELOPMENT OF A MULTIFAMILY HOUSING PROJECT TO BE KNOWN AS SAN MARCOS HEIGHTS; AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the Housing Finance Authority of St. Johns County, Florida (the "Authority") has determined that there exists a shortage of safe and sanitary housing for persons and families of low, moderate and middle income, within St. Johns County, Florida (the "County"); and

WHEREAS, on July 23, 2020, the Authority adopted a resolution (the "Intent Resolution") (i) expressing the Authority's intention to approve at a later date, by appropriate resolution, the financing of a loan to San Marco Heights, LLC, a Florida limited liability company (the "Borrower"), through the issuance of tax-exempt multifamily housing revenue debt obligations, in one or more series or issues, at the same time or at different times in a total aggregate principal amount currently estimated not to exceed \$17,500,000 (herein the "Bonds"), upon the satisfaction of certain conditions as set forth in the Intent Resolution, in order to finance or refinance all or a portion of costs of the acquisition, construction and development of an approximately 132-unit multifamily rental housing development, to be occupied by persons or families of low, moderate or middle income, to be known as San Marcos Heights, to be constructed on an approximately 15.0-acre site located at 127 Adair Road, in an unincorporated area of St. Johns County, Florida 32084 (the "Project"), and to be owned by the Borrower, and (ii) authorizing the Authority to publish notice of a public hearing (a "TEFRA Notice") and conduct a public hearing (a "TEFRA Hearing") regarding the location and nature of the Project and proposed issuance of the Bonds by the Authority in accordance with the requirements of the Tax Equity and Fiscal Responsibility Act of 1982 ("TEFRA") and Section 147(f) of the Internal Revenue Code of 1986, as amended (the "Code"); and

WHEREAS, pursuant to the Intent Resolution, on October 15, 2020, the Authority published a TEFRA Notice relating to a TEFRA Hearing in *The St. Augustine Record* (a copy of said notice is attached hereto as Exhibit A and incorporated herein) to be held by the Authority at its meeting on October 22, 2020, regarding the location and nature of the Project and the proposed issuance of the Bonds by the Authority, in accordance with the requirements of TEFRA and Section 147(f) of the Code; and

WHEREAS, on October 22, 2020, the TEFRA Hearing was held by the Authority, upon public notice published in a newspaper of general circulation in the County as described above, at least 7 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 proposed Project; 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 affected governmental units, including the County, of the proposed issue, stated that the Authority would be the issuer of the Bonds and the time and place for the hearing and contained the information required by the Code; and the 7-day period was adequate for notice to be brought to the attention of all interested persons, equals or exceeds the normal periods for notices of public hearings conducted by the members of the Authority and various agencies of the State, and provided sufficient time for interested persons to prepare for and to express their views at such hearing;

**NOW, THEREFORE, BE IT RESOLVED** by the members of the Housing Finance Authority of St. Johns County, Florida, a lawful quorum of which duly assembled, as follows:

**SECTION 1.** The recitals above are incorporated into the body of this Resolution.

**SECTION 2.** The Project will inure to the benefit of the citizens of St. Johns County, Florida.

**SECTION 3.** Upon consideration of the documents described herein and the information presented to the Authority at or prior to the adoption of this Resolution, including the information and views presented at the foresaid public hearing, the Authority hereby: (i) confirms its intention to approve, by appropriate resolution at a later date, upon the satisfaction of certain conditions as set forth in the Intent Resolution, the issuance of the Bonds by the Authority in order to finance the Project, and (ii) recommends that the Board of County Commissioners of St. Johns County, Florida (the "County Commission") approve, solely for the purposes of Section 147(f) of the Code, the issuance of the Bonds in order to finance or refinance all or a part of the costs of the Project.

**SECTION 4.** The Bonds shall not be issued by the Authority unless the County Commission shall have approved the issuance of the Bonds by the Authority and the documentation therefor as required by Section 11 of Ordinance 80-7 enacted by the County Commission on February 26, 1980, as amended, and Section 7 of Resolution 80-25 adopted by the County Commission on March 11, 1980, as amended.

**SECTION 5.** It is expressly stated and agreed that the adoption of this Resolution is not a guaranty, express or implied, that the Authority shall approve the closing and issue its Bonds for the Project. The Borrower shall hold the Authority and its past, present and future members, officers, staff, attorneys, financial advisors, and employees harmless from any liability or claim based upon the failure of the Authority to close the transaction and issue the Bonds or any other cause of action arising from the adoption of this Resolution, the processing of the financing for the Project, the issuance of the Bonds except for the gross negligence and willful and wanton misconduct of the Authority.

**SECTION 6.** The Authority has no jurisdiction regarding zoning and land use matters and the adoption of the Resolution is not intended to express any position or opinion regarding such matters.

**SECTION 7.** All resolutions and orders or parts thereof, of the Authority, in conflict herewith are, to the extent of such conflict, hereby modified to the extent of such conflict, and this Resolution shall take effect from and after its passage, the public welfare requiring it.


**SECTION 8.** It is found and determined that all formal actions of this Authority concerning and relating to the adoption of this Resolution were taken in an open meeting of the members of this Authority and that all deliberations of the members of this Authority and of its committees, if any which resulted in such formal action were taken in meetings open to the public, in full compliance with all legal requirements.

This Resolution shall become effective immediately upon its adoption. The presiding officer declared said Resolution adopted and approved in open meeting.

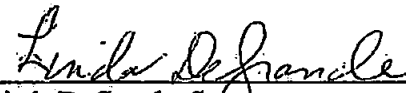
PASSED AND ADOPTED this 22nd day of October, 2020.

**HOUSING FINANCE AUTHORITY OF  
ST. JOHNS COUNTY, FLORIDA**

(SEAL)

By:   
Michael O'Donnell, Chair

ATTEST:

  
Linda DeGrande, Secretary

Sign in

Bealls Florida

Dobbs Rd Cutoff

207

312

207

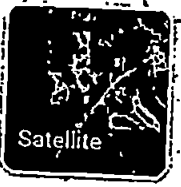
127 Adair Road

Dobbs Rd

Old Moultrie Rd

207

Hilop Rd



Wildwood D.

Kings Estate Rd

Google

Kings Estate Rd

Kings Estate Rd



**EXHIBIT B**  
**BOND RESOLUTION**

RESOLUTION NO. \_\_\_\_\_

A RESOLUTION OF THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (THE "AUTHORITY") PROVIDING FOR THE ISSUANCE BY THE AUTHORITY OF ITS MULTIFAMILY MORTGAGE REVENUE NOTE, SERIES 2021 (SAN MARCOS HEIGHTS), IN ONE OR MORE TAX EXEMPT OR TAXABLE SERIES OR SUBSERIES, IN THE ORIGINAL AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$17,000,000 (THE "GOVERNMENTAL NOTE") FOR THE PURPOSE OF MAKING A LOAN OR LOANS TO SAN MARCOS HEIGHTS, LLC TO FINANCE OR REFINANCE THE ACQUISITION AND CONSTRUCTION OF A MULTIFAMILY RENTAL HOUSING DEVELOPMENT FOR FAMILIES OF MODERATE, MIDDLE AND LESSER INCOME RESIDENTS IN ST. JOHNS COUNTY, FLORIDA; APPROVING AND AUTHORIZING THE EXECUTION AND DELIVERY OF FUNDING LOAN DOCUMENTS IN CONNECTION THEREWITH AND DESIGNATING THE INITIAL FISCAL AGENT UNDER THE FUNDING LOAN AGREEMENT; APPROVING THE FORMS OF GUARANTEES RELATED THERETO; AUTHORIZING THE PRIVATE PLACEMENT OF THE GOVERNMENTAL NOTE WITH BANK OF AMERICA, N.A.; APPOINTING RBC CAPITAL MARKETS, LLC AS PLACEMENT AGENT; DESIGNATING FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA, AS THE INITIAL GOVERNMENTAL LENDER SERVICER AND COMPLIANCE AGENT; ACCEPTING THE DRAFT CREDIT UNDERWRITING REPORT; AUTHORIZING THE OFFICERS OF THE AUTHORITY TO TAKE ALL ACTIONS REQUIRED IN CONNECTION WITH ISSUANCE OF THE GOVERNMENTAL NOTE AND THE SUBORDINATE NOTE; PROVIDING CERTAIN OTHER DETAILS IN CONNECTION THEREWITH; AND PROVIDING AN EFFECTIVE DATE.

BE IT RESOLVED BY THE HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (THE "AUTHORITY"), THAT:

**SECTION 1. AUTHORITY.** This Resolution is adopted pursuant to the Constitution of the State of Florida, the Housing Finance Authority Law, Part IV of Chapter 159, Florida Statutes, as amended, Ordinance 80-7 (the "County HFA Ordinance") enacted by the Board of County Commissioners of St. Johns County, Florida (the "County Board") on February 26, 1980, as amended, and Resolution 80-25 (the "County HFA Resolution") adopted by the County Board on March 11, 1980, as amended (collectively, the "Act").

**SECTION 2. FINDINGS.** The Authority has found and determined and does hereby declare that:

A. The Authority, at the request of San Marcos Heights, LLC, a Florida limited liability company (the "Borrower"), has determined to issue its Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "Governmental Note") in the aggregate principal amount not to exceed \$17,000,000, pursuant to a Funding Loan Agreement, substantially in the form attached hereto as Exhibit "A" (the "Funding Loan Agreement"), to be entered into among the Authority, The Bank of New York Mellon Trust Company, N.A., as fiscal agent (the "Fiscal Agent") and Bank of America, N.A., as initial funding lender (the "Initial Funding Lender") and to obtain a loan from the Initial Funding Lender and use the proceeds thereof to make a mortgage loan to the Borrower (the "Project Loan") to finance or refinance, including through reimbursement, the acquisition, construction and development of a multifamily residential rental development to be located in St. Johns County, Florida (the "Project").

B. During construction of the Project, the Project Loan will be made pursuant to the Construction Phase Project Loan Agreement among the Authority, the Fiscal Agent and the Borrower, substantially in the form attached hereto as Exhibit "B" (the "Construction Phase Project Loan Agreement"), which Project Loan will be evidenced by a Promissory Note (the "Construction Phase Project Note") from the Borrower to the Authority which will be endorsed by the Authority to the Fiscal Agent.

C. Upon completion of the Project and satisfaction of the other "Conditions to Conversion" set forth in the Construction Phase Financing Agreement (as defined in the Funding Loan Agreement), the Project Loan will convert to permanent financing, Freddie Mac will acquire the Funding Loan, and the Permanent Phase Project Loan Agreement among the Authority, the Fiscal Agent and the Borrower, substantially in the form attached hereto as Exhibit "C" (the "Permanent Phase Project Loan Agreement" and, together with the Construction Phase Project Loan Agreement, the "Project Loan Agreements"), will become effective by its terms and a "Permanent Phase Project Note" will be executed and delivered by the Borrower, and the Permanent Phase Project Loan Agreement and the Permanent Phase Project Note will secure the Funding Loan in substitution of the Construction Phase Project Loan Agreement and Construction Phase Project Note, respectively, following which the Construction Phase Project Loan Agreement will terminate.

D. The Project Loan will be secured at all times by a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing (the "Mortgage"), which Mortgage will be assigned by the Authority to the Fiscal Agent.

E. To provide security for the payment of certain indemnification obligations and obligations for the payment of certain fees, expenses and recourse obligations, for the acquisition, construction and development of the Project and to secure certain operating deficits of the Project, the Borrower and certain affiliates (collectively, the "Guarantors") will execute and deliver a Guaranty of Completion, a Continuing, Absolute and Unconditional Guaranty of Recourse Obligations, an Environmental Indemnity Agreement and an Absolute and

Unconditional Guaranty of Operating Deficits in substantially the forms attached hereto as Exhibits "G," "H," "I," and "J," respectively (collectively, the "Guaranties").

F. First Housing Development Corporation of Florida, a Florida corporation ("First Housing") has delivered to the Authority its draft Credit Underwriting Report with respect to the Project (the "Credit Underwriting Report") and the Authority has determined to accept the draft Credit Underwriting Report and delegate to the Chair or Vice Chair the authority to approve the final Credit Underwriting Report upon consultation with the Financial Advisor and Bond Counsel.

G. Within the County 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, deprives the County of an adequate tax base, and causes the County to make excessive expenditures for crime prevention and control, public health, welfare and safety, fire and accident protection, and other public services and facilities.

H. The shortage of capital and 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.

I. The Project and the financing of the acquisition, construction and development thereof will serve the purposes of the Act and the Project constitutes a "qualifying housing development" under the Act.

J. Adequate provision has been made in the documents attached hereto for the Project Loan by the Authority to the Borrower to finance the acquisition, construction and development of the Project, and for the operation, repair and maintenance of the Project at the expense of the Borrower and for the repayment by the Borrower of the Project Loan in installments sufficient to pay the principal of and the interest on the Governmental Note and all costs and expenses relating thereto.

K. The Authority is not obligated to pay the Governmental Note except from the payments received from the Borrower under the Project Loan Agreements. Neither the faith, revenues, credit nor taxing power of the State of Florida or any agency, subdivision or local government thereof, including the County, is pledged to the payment of the principal of, premium (if any), or interest on the Governmental Note. The Authority has no taxing power.

L. The Borrower has represented to the Authority that the Initial Funding Lender has indicated its willingness to purchase the Governmental Note through a negotiated private placement. A negotiated sale of the Governmental Note is necessary and in the best interests of the Authority for the following reasons: (1) the Governmental Note will be a special limited obligation of the Authority payable from amounts derived from the payments by the Borrower pursuant to the Funding Loan Agreement, the Construction Phase Project Loan Agreement, the Permanent Phase Project Loan Agreement and certain other funds and collateral



pledged therefor, as applicable; (2) the Borrower will be required to pay all costs of the Authority in connection with the issuance of the Governmental Note and the administration of the Project and to operate and maintain the Project at the Borrower's own expense; (3) the costs of issuance of the Governmental Note, which must be borne directly or indirectly by the Borrower, would most likely be greater if the Governmental Note is sold at a public sale by competitive bids than if the Governmental Note is sold at a negotiated sale; (4) the necessity of complying with certain requirements of the Internal Revenue Code of 1986, as amended (the "Code"), it is essential that the Authority and the Borrower have maximum flexibility in structuring the Governmental Note, which flexibility would not be possible in competitive bidding; (5) there is no basis, considering prevailing market conditions, for any expectation that the terms and conditions of a sale of the Governmental Note at public sale by competitive bids would be any more favorable than at a negotiated sale; and (6) multifamily housing revenue bonds which have the characteristics of the Governmental Note are typically sold at negotiated sale under prevailing market conditions.

M. Because of the nature and character of the Governmental Note, the security pledged therefor, the size and complexity of the financing and for the reasons stated above, it is in the best interest of the Authority that the Governmental Note be sold pursuant to a negotiated private placement and not at public bid, in one or more tax exempt or taxable series, in the aggregate principal amount of not to exceed \$17,000,000, upon the conditions provided herein and upon delivery by the Initial Funding Lender of respective disclosure statements containing the information and truth-in-bonding statements required by Section 218.385, Florida Statutes.

N. On October 15, 2020, a notice of public hearing, inviting written and oral comments and discussions concerning the issuance of the Governmental Note in an aggregate face amount of not to exceed \$17,000,000 to finance or refinance the acquisition, construction and development of the Project, was published in The St. Augustine Record, a newspaper of general circulation within the County.

O. October 22, 2020, the Authority held a public hearing concerning the issuance of the Governmental Note in an aggregate face amount of not to exceed \$17,000,000 to finance or refinance the acquisition, construction and development of the Project.

P. On December 1, 2020, the County Board approved the issuance of the Governmental Note by the Authority in an aggregate face amount of not to exceed \$17,000,000 in order to finance or refinance the Project, for purposes of Section 147(f) of the Code.

Q. On January 4, 2021, the Authority received from the State of Florida Division of Bond Finance a 2021 private activity bond volume cap allocation in the amount of at least \$17,000,000 for the issuance of the Governmental Note to finance or refinance the acquisition, construction and development of the Project.

R. Subject to the conditions set forth herein and the approval of the County Board for purposes of the County HFA Ordinance and the County HFA Resolution, all conditions precedent to the issuance of the Governmental Note have been satisfied, or will be satisfied prior to or simultaneously with the delivery of the Governmental Note.

**SECTION 3. APPROVAL OF ISSUANCE OF GOVERNMENTAL NOTE.** For the purpose of making the Project Loan to the Borrower, subject to the satisfaction of the conditions herein and in the Credit Underwriting Report to the satisfaction of First Housing, the issuance of the Governmental Note in the aggregate principal amount of not to exceed \$17,000,000, or in such lesser amount as may be approved by the Chair or Vice Chair of the Authority, is hereby authorized. Subject to the criteria set forth herein, the Governmental Note shall be issued upon the terms, including the dated date, interest rate, maturity and optional and mandatory redemption provisions therefor, as set forth in the Funding Loan Agreement. The series designation for the Governmental Note may be changed to reflect the calendar year in which it is issued if not issued in calendar year 2021.

**SECTION 4. APPROVAL OF THE FUNDING LOAN AGREEMENT.** The form of the Funding Loan Agreement attached hereto as Exhibit "A" is hereby approved, subject to such changes, insertions, and omissions and such filling of blanks therein as may be made in such form and approved by the officers of the Authority executing the same in a manner consistent with the provisions of this Resolution, the execution and delivery thereof to be conclusive evidence of such approval. The form of the Governmental Note attached to the Funding Loan Agreement as "Exhibit A" thereto, is hereby approved, subject to such changes, modifications, insertions and omissions and filling of blanks therein as may be made in such form and approved by the Borrower and the officers of the Authority executing same, such execution to be conclusive evidence of such approval. The execution and delivery of the Funding Loan Agreement and the Governmental Note are hereby authorized and approved.

**SECTION 5. APPOINTMENT OF FISCAL AGENT.** The Bank of New York Mellon Trust Company, N.A. is hereby designated as the initial Fiscal Agent under the Funding Loan Agreement.

**SECTION 6. APPOINTMENT OF PLACEMENT AGENT.** RBC Capital Markets, LLC is hereby designated as the Placement Agent with respect to the Governmental Note.

**SECTION 7. APPROVAL OF LOAN AGREEMENTS AND RELATED DOCUMENTS.** The forms of the Construction Phase Project Loan Agreement and the Permanent Phase Project Loan Agreement attached hereto as Exhibits "B" and "C", respectively, are hereby approved, subject to such changes, modifications, insertions and omissions and filling of blanks therein as may be made in such form and approved by the Borrower and the officers of the Authority executing the same, execution of the Project Loan Agreements to be conclusive evidence of such approval. The execution and delivery of the Project Loan Agreements and the documents contemplated thereby, including the assignment of security documents, are hereby authorized and approved.

**SECTION 8. APPROVAL OF LAND USE RESTRICTION AGREEMENT.** In order to provide for the use and operation of the Project in compliance with the Act, the requirements of the Authority and the requirements of the Code and to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, the execution and delivery of the Land Use Restriction Agreement (the "Land Use Restriction Agreement") among the Borrower, the Authority and the Fiscal Agent are hereby authorized and approved. The form of the Land Use Restriction Agreement, attached hereto as Exhibit "D" is hereby approved, subject to such changes, modifications, insertions and deletions as may be made in such form of the Land Use Restriction Agreement and approved by the officers of the Authority executing the same, the execution and delivery thereof to be conclusive evidence of such approval.

**SECTION 9. APPROVAL OF COMPLIANCE MONITORING AGREEMENT AND CONSTRUCTION LOAN SERVICING AGREEMENT.** First Housing is hereby appointed to perform the duties of compliance monitoring agent pursuant to the Compliance Monitoring Agreement among the Authority, the Borrower, the Fiscal Agent and First Housing (the "Compliance Monitoring Agreement") and the duties of Governmental Lender Servicer under the Construction Loan Servicing Agreement among the Authority, the Fiscal Agent, the Borrower and First Housing (the "Construction Loan Servicing Agreement"). The forms of the Compliance Monitoring Agreement and the Construction Loan Servicing Agreement attached hereto as Exhibits "E" and "F," respectively, and the execution and delivery thereof are hereby approved, subject to such changes, modifications, insertions and deletions and filling of blanks therein as may be made in such forms and approved by the parties thereto, the execution thereof to be conclusive evidence of such approval.

**SECTION 10. APPROVAL OF GUARANTEES.** The forms of the Guaranties attached hereto as Exhibits "G," "H," "I," and "J," respectively, and the execution and delivery thereof by the Authority to the extent contemplated thereby, are hereby authorized and approved, subject to such changes, modifications, insertions and omissions and filling of blanks therein as shall be approved by the Chair or Vice Chair of the Authority, execution and/or acceptance thereof to be conclusive evidence of such approval.

**SECTION 11. APPROVAL BY COUNTY BOARD.** The Governmental Note shall not be issued unless the issuance of the Governmental Note by the Authority has been approved by the County Board for purposes of the County HFA Ordinance and the County HFA Resolution, and the County Commission is hereby requested to so approve the issuance of the Governmental Note by the Authority.

**SECTION 12. AUTHORIZATION TO SELL GOVERNMENTAL NOTE.** The Chair or Vice Chair is hereby authorized to award the sale of the Governmental Note to the Initial Funding Lender; provided that (A) the Governmental Note shall be issued in the aggregate principal amount of not to exceed \$17,000,000, (B) the Governmental Note shall bear interest initially at a rate or rates of not to exceed the rate computed by adding 300 basis points to the Bond Buyer "20 Bond Index" published immediately preceding the first day of the calendar

month in which the Governmental Note is sold, and (C) the Governmental Note shall mature not later than 40 years from the date of issuance thereof.

**SECTION 13. ACCEPTANCE OF DRAFT CREDIT UNDERWRITING REPORT.** The draft Credit Underwriting Report with respect to the acquisition, construction and development of the Project delivered to the Authority by First Housing, is hereby accepted. The Authority hereby delegates to the Chair or Vice Chair of the Authority the authorization to accept the final Credit Underwriting Report, after consultation with bond counsel and the Authority's financial advisor, with such changes from the draft Credit Underwriting Report as shall be approved by such officers of the Authority, execution and delivery of the Governmental Note to be conclusive evidence of the acceptance of such final Credit Underwriting Report.

**SECTION 14. AUTHORIZATIONS.**

A. The Chair or the Vice Chair of the Authority and, to the extent provided therein, the Executive Director, the Secretary or any Assistant Secretary of the Authority are hereby authorized and empowered on behalf of the Authority to execute and deliver or accept the Governmental Note, the Funding Loan Agreement, the Construction Phase Project Loan Agreement, the Permanent Phase Project Loan Agreement, the Promissory Note, the Mortgage, the Land Use Restriction Agreement, the Guaranties, the Compliance Monitoring Agreement and the Construction Loan Servicing Agreement and to execute and deliver any other documents contemplated by the foregoing, in each case subject to such changes and modifications from the forms approved herein, as either of such officers may approve, such execution to be conclusive evidence of any such approval, and to affix thereto or impress thereon the seal of the Authority, if applicable.

B. The officers, employees and agents of the Authority are hereby authorized and directed to do all acts and things required by the provisions of this Resolution and the documents authorized herein, as may be necessary in connection with the issuance of the Governmental Note or as otherwise may be necessary or desirable to effectuate the purpose and intent of this Resolution. The Chair or Vice Chair and the Secretary or any Assistant Secretary of the Authority are each hereby designated as the primary officers of the Authority charged with the responsibility of issuing the Governmental Note.

**SECTION 15. NO PERSONAL LIABILITY.** No representation, statement, covenant, warranty, stipulation, obligation or agreement herein contained, or contained in the Governmental Note, the Funding Loan Agreement, the Project Loan Agreements or any certificate or other document or instrument to be executed on behalf of the Authority in connection with the issuance of the Governmental Note, shall be deemed to be a representation, statement, covenant, warranty, stipulation, obligation or agreement of any member, officer, employee or agent of the Authority in his or her individual capacity, and none of the foregoing persons nor any officer of the Authority executing the Governmental Note, the Funding Loan Agreement, the Project Loan Agreements or any certificate or other document or instrument to be executed in connection with the issuance of the Governmental Note shall be liable personally

thereon or be subject to any personal liability or accountability by reason of the execution or delivery thereof.

**SECTION 16. 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 17. EFFECT OF TYPOGRAPHICAL OR ADMINISTRATIVE ERRORS.** To the extent that there are typographical or administrative errors or omissions that do not change the tone, tenor, or context of this Resolution, then this Resolution may be revised without subsequent approval of the Board.

**SECTION 18. EFFECTIVE DATE.** This Resolution shall become effective immediately upon its adoption.

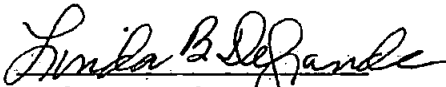
APPROVED AND ADOPTED this 28<sup>th</sup> day of January, 2021.

HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA

(OFFICIAL SEAL)

ATTEST:

By:   
Michael O'Donnell, Chair

  
Linda DeGrande, Secretary

## EXHIBIT LIST

- EXHIBIT "A" --- Funding Loan Agreement
- EXHIBIT "B" --- Construction Phase Project Loan Agreement
- EXHIBIT "C" --- Permanent Phase Project Loan Agreement
- EXHIBIT "D" --- Land Use Restriction Agreement
- EXHIBIT "E" --- Compliance Monitoring Agreement
- EXHIBIT "F" --- Construction Loan Servicing Agreement
- EXHIBIT "G" --- Guaranty of Completion
- EXHIBIT "H" --- Guaranty of Recourse Obligations
- EXHIBIT "I" --- Environmental Indemnity
- EXHIBIT "J" --- Operating Deficit Guaranty

**EXHIBIT A**  
**FUNDING LOAN AGREEMENT**

**FUNDING LOAN AGREEMENT**

**among**

**BANK OF AMERICA, N.A.,  
as Initial Funding Lender**

**HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA,  
as Governmental Lender**

**and**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Fiscal Agent**

**Relating to**

**San Marcos Heights  
127 Adair Road  
St. Augustine, Florida 32084**

**Maximum Funding Loan Principal Amount: \$[16,000,000]**

**Dated as of February 1, 2021**



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## FUNDING LOAN AGREEMENT

THIS FUNDING LOAN AGREEMENT (this "Funding Loan Agreement"), is made and entered into as of February 1, 2021, by and among **BANK OF AMERICA, N.A.**, a national banking association, in its capacity as Initial Funding Lender (the "Initial Funding Lender"), the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA** (the "Governmental Lender"), a public body corporate and politic organized and existing under the laws of the State of Florida (the "State"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, organized and operating under the laws of the United States of America, having a corporate trust office in Jacksonville, Florida, as Fiscal Agent (the "Fiscal Agent"). Capitalized terms are defined in Section 1.01 of this Funding Loan Agreement.

### RECITALS

A. Pursuant to Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "Board") on February 26, 1980, as amended, and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (collectively, the "Act"), and the Construction Phase Project Loan Agreement dated as of February 1, 2021 (the "Construction Phase Project Loan Agreement") by and among the Governmental Lender, the Fiscal Agent and San Marcos Heights, LLC, a limited liability company duly organized and existing under the laws of the State (the "Borrower"), and, following Conversion, the Project Loan Agreement dated as of February 1, 2021 (the "Permanent Phase Project Loan Agreement") by and among the Governmental Lender, the Fiscal Agent and the Borrower, the Governmental Lender is agreeing to make a construction period mortgage loan pursuant to the Construction Phase Project Loan Agreement (the "Construction Phase Project Loan") and a permanent phase mortgage loan pursuant to the Permanent Phase Project Loan Agreement (the "Permanent Phase Project Loan" and, together with the Construction Phase Project Loan, the "Project Loans") to the Borrower in the maximum aggregate principal amount of \$[16,000,000] to provide for the financing of a multifamily rental housing development located at 127 Adair Road, St. Augustine, Florida 32084, in unincorporated St. Johns County, Florida, known as San Marcos Heights (the "Project").

B. The Governmental Lender is making the Project Loans to the Borrower with the proceeds received from the separate loan made to the Governmental Lender pursuant to this Funding Loan Agreement in the maximum aggregate principal amount of \$[16,000,000] (the "Funding Loan" and together with the Project Loans, the "Loans"). The Funding Loan is evidenced by the Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) dated February [ ], 2021 in the form attached hereto as Exhibit A (together with all riders and addenda thereto, the "Governmental Note") delivered by the Governmental Lender to the Initial Funding Lender.

C. The Initial Funding Lender, pursuant to the terms and subject to the conditions of this Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by the Governmental Lender to fund the Construction Phase Project Loan to the Borrower in

corresponding installments pursuant to the Construction Phase Project Loan Agreement. The Initial Funding Lender will administer the Funding Loan and Construction Phase Project Loan during the Construction Phase in accordance with the Construction Phase Financing Agreement and the other Financing Documents.

D. The Borrower has agreed to use the proceeds of the Project Loans to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

E. The Borrower's repayment obligations in respect of the Construction Phase Project Loan will be evidenced by a Project Note dated February [ ], 2021 (together with all riders and modifications thereto, the "Construction Phase Project Note") delivered to the Governmental Lender, which Construction Phase Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower's obligations under the Construction Phase Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated February [ ], 2021 (the "Security Instrument") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

G. The Federal Home Loan Mortgage Corporation, a shareholder-owned, government-sponsored enterprise ("Freddie Mac") has entered into a commitment with Walker & Dunlop, LLC, a Delaware limited liability company (the "Freddie Mac Seller/Servicer") dated [February \_\_, 2021] (the "Freddie Mac Commitment") whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date. On the Conversion Date, the Permanent Phase Project Loan Agreement shall become effective by its terms and the Permanent Phase Project Note substantially in the form of attached to the Construction Phase Financing Agreement shall be executed and delivered by the Borrower, and the Permanent Phase Project Loan Agreement and the Permanent Phase Project Note will secure the Funding Loan in substitution for the Construction Phase Project Loan Agreement and Construction Project Note, respectively at which time the Construction Phase Project Loan Agreement will terminate and the Permanent Phase Project Note will be executed and delivered in substitution of the Construction Phase Project Note.

H. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Construction Phase Project Loan will convert from the Construction Phase Project Loan to the Permanent Phase Project Loan on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Construction Phase Project Loan will not convert from the Construction Phase Project Loan to the Permanent Phase Project Loan, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will

have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Construction Phase Project Note will be amended and restated into the Permanent Phase Project Note, the Security Instrument will be amended and restated, and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the "**Freddie Mac Continuing Covenant Agreement**"), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the "**Freddie Mac Purchase Date**").

K. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, this Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. The Freddie Mac Seller/Servicer will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Purchase Date.

L. The Governmental Lender has determined that all things necessary to incur the Funding Loan and to execute and deliver the Governmental Note, when executed by the Governmental Lender and authenticated by the Fiscal Agent and issued in accordance with this Funding Loan Agreement, the valid, binding and legal obligation of the Governmental Lender and to constitute this Funding Loan Agreement a valid lien on the properties, interests, revenues and payments herein pledged to the payment of the principal of, premium, if any, and interest on, the Governmental Note, have been duly taken, and the creation, execution and delivery of this Funding Loan Agreement and the execution and delivery of the Governmental Note, subject to the terms of this Funding Loan Agreement, have been duly authorized by the Governmental Lender.

M. The Fiscal Agent has the power and authority to enter into this Funding Loan Agreement, including corporate trust powers to accept the trusts hereunder and to accept and assume its other responsibilities hereunder as Fiscal Agent as evidenced by its execution of this Funding Loan Agreement.

**NOW, THEREFORE**, in consideration of the premises and of the origination and funding of the Funding Loan by the Initial Funding Lender, and for other good and valuable consideration, the receipt of which is hereby acknowledged, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** The terms used in this Funding Loan Agreement (except as herein otherwise expressly provided or unless the context otherwise requires) for all purposes of

this Funding Loan Agreement and of any amendment or supplement hereto shall have the respective meanings specified below. Terms used herein not otherwise defined shall have the respective meanings set forth in the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable.

*"Act"* means, collectively, Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida on February 26, 1980, as amended, and Resolution 80-25 adopted by the Board on March 11, 1980, as amended.

*"Actual Project Loan Amount"* has the meaning set forth in the Construction Phase Financing Agreement.

*"Administration Fund"* means the Administration Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Advance Request"* shall mean a request by the Borrower to the Initial Funding Lender that the Initial Funding Lender disburse proceeds of the Funding Loan to the Fiscal Agent as provided hereunder, which request shall be in the form prescribed by the Construction Continuing Covenant Agreement.

*"Advance Termination Date"* means the earliest to occur of (i) the date when the sum of the aggregate advances of the Funding Loan made by the Initial Funding Lender equals the Authorized Amount, (ii) the date that is three (3) years after the Delivery Date, (iii) the Conversion Date, (iv) the date of a Determination of Taxability or (v) the occurrence of an Event of Default hereunder.

*"Assignment"* means the Assignment of Security Instrument dated as of the date hereof by the Governmental Lender assigning its interest in the Security Instrument to the Fiscal Agent.

*"Authorized Amount"* shall mean \$[16,000,000], the maximum principal amount of the Funding Loan authorized under this Funding Loan Agreement.

*"Authorized Officer"* means (a) when used with respect to the Governmental Lender, the Chair, Vice-Chair, any Assistant Secretary or the Executive Director of the Governmental Lender and such additional Person or Persons, if any, duly designated by the Governmental Lender in writing to act on its behalf, (b) when used with respect to the Borrower, any authorized manager or member of the Borrower and such additional Person or Persons, if any, duly designated by the Borrower in writing to act on its behalf, (c) when used with respect to the Fiscal Agent, any authorized signatory of the Fiscal Agent, or any Person who is authorized in writing to take the action in question on behalf of the Fiscal Agent, (d) when used with respect to the Servicer, any Person or Persons duly designated by the Servicer in writing to act on its behalf, (e) when used with respect to the Funding Lender Representative, any Person who is authorized in writing to take the action in question on behalf of the Funding Lender Representative, and (f) when used with respect to the Governmental Lender Servicer, any Person who is authorized in writing to take the action in question on behalf of the Governmental Lender Servicer.

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

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

**"Borrower"** means San Marcos Heights, LLC, a limited liability company duly organized and existing under the laws of the State, or any of its permitted successors or assigns, as owner of the Project.

**"Borrower Equity Account"** means the Borrower Equity Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

**"Borrower Equity Deposit"** means \$[\_\_\_\_\_], which shall be comprised of sources other than the proceeds of the Project Loans.

**"Business Day"** means any day other than (a) a Saturday or a Sunday, or (b) a day on which (i) banking institutions in the City of New York or in the city in which the Principal Office of the Fiscal Agent is located are authorized or obligated by law or executive order to be closed or (ii) the New York Stock Exchange is closed.

**"Certificate of the Governmental Lender"** and **"Request of the Governmental Lender"** mean, respectively, a written certificate or request signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender or such other Person as may be designated and authorized to sign for the Governmental Lender. Any such instrument and supporting opinions or representations, if any, may, but need not, be combined in a single instrument with any other instrument, opinion or representation, and the two or more so combined shall be read and construed as a single instrument.

**"Code"** means the Internal Revenue Code of 1986 and the regulations promulgated thereunder.

**"Conditions to Conversion"** has the meaning given to that term in the Construction Phase Financing Agreement.

**"Construction Continuing Covenant Agreement"** means the Construction Disbursement Agreement dated the Delivery Date by and between the Borrower and the Initial Funding Lender, as the same may be amended, modified or supplemented from time to time.

**"Construction Loan Documents"** means the Construction Phase Financing Agreement, the Construction Continuing Covenant Agreement, and all other documents to be executed and delivered by Borrower to the Initial Funding Lender in connection with the Project.

**"Construction Phase"** means the period of time during the Construction Phase Project Loan, which time period shall commence on the Delivery Date and remain in effect to, but not including, the Conversion Date.



*"Construction Phase Financing Agreement"* means the Construction Phase Financing Agreement dated as of the date hereof by and among the Initial Funding Lender, Freddie Mac, and the Freddie Mac Seller/Servicer, and acknowledged and agreed to by the Borrower, as the same may be amended, modified or supplemented from time to time.

*"Construction Phase Interest Rate"* has the meaning set forth on Exhibit F.

*"Construction Phase Project Loan Agreement"* means the Construction Phase Project Loan Agreement dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, as amended, supplemented or restated from time to time.

*"Construction Phase Project Note"* means the Project Note dated the Delivery Date from the Borrower, including all riders and addenda thereto, evidencing the Borrower's obligation to repay the Construction Phase Project Loan, which Construction Phase Project Note will be delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan, as the same will be amended and restated into the Permanent Phase Project Note in the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, restated, supplemented or otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

*"Continuing Covenant Agreement"* means (i) prior to the Conversion Date, the Construction Continuing Covenant Agreement, and (ii) from and after the Conversion Date, the Freddie Mac Continuing Covenant Agreement.

*"Conversion"* means conversion of the Construction Phase Project Loan to the Permanent Phase Project Loan on the Conversion Date.

*"Conversion Date"* means the date the Freddie Mac Seller/Servicer purchases the Funding Loan from the Initial Funding Lender upon the satisfaction of the Conditions to Conversion, as such Conversion Date is specified by the Freddie Mac Seller/Servicer in the Notice of Conversion, which date shall be at least ten (10) days following the date on which the Notice of Conversion is delivered.

*"Cost," "Costs" or "Costs of the Project"* means costs paid with respect to the Project that (i) are properly chargeable to capital account (or would be so chargeable with a proper election by the Borrower or but for a proper election by the Borrower to deduct such costs) in accordance with general federal income tax principles and in accordance with United States Treasury Regulations Section 1.103-8(a)(1), (ii) are paid with respect to a qualified residential rental project or projects within the meaning of Section 142(d) of the Code, (iii) are paid after the earlier of (A) 60 days prior to the date of a resolution of the Governmental Lender to reimburse costs of the Project with proceeds of the Loans or (B) the Delivery Date, and (iv) if the Costs of the Project were previously paid and are to be reimbursed with proceeds of the Loans such costs were (A) Costs of Issuance of the Governmental Note, (B) preliminary capital expenditures (within the meaning of United States Treasury Regulations Section 1.150-2(f)(2)) with respect to the Project (such as architectural, engineering and soil testing services) incurred before commencement of acquisition

or construction of the Project that do not exceed twenty percent (20%) of the issue price of the Governmental Note (as defined in United States Treasury Regulations Section 1.148-1), or (C) were capital expenditures with respect to the Project that are reimbursed no later than eighteen (18) months after the later of the date the expenditure was paid or the date the Project is placed in service (but no later than three (3) years after the expenditure is paid); provided however, that if any portion of the Project is being constructed or developed by the Borrower or an affiliate (whether as a developer, a general contractor or a subcontractor), "Cost," "Costs" or "Costs of the Project" shall include only (a) the actual out-of-pocket costs incurred by the Borrower or such affiliate in developing or constructing the Project (or any portion thereof), (b) any reasonable fees for supervisory services actually rendered by the Borrower or such affiliate (but excluding any profit component) and (c) any overhead expenses incurred by the Borrower or such affiliate which are directly attributable to the work performed on the Project, and shall not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of Section 1504 of the Code) participating in the acquisition, construction or development of the Project or payments received by such affiliate due to early completion of the Project (or any portion thereof).

"*Cost of Issuance Fund*" means the Cost of Issuance Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

"*Costs of Issuance*" means, as applicable, (i) the fees (excluding ongoing fees), costs and expenses of (a) the Governmental Lender, the Governmental Lender's counsel and the Governmental Lender's financial advisor, (b) Bond Counsel, (c) the Fiscal Agent and the Fiscal Agent's counsel, (d) the Initial Funding Lender and the Initial Funding Lender's counsel (e) the Freddie Mac Seller/Servicer and the Freddie Mac Seller/Servicer's counsel, (f) Freddie Mac and Freddie Mac's counsel, (g) the Borrower's counsel attributable to the funding of the Loans and the Borrower's financial advisor, if any, and (h) the Governmental Lender Servicer; and (ii) all other fees, costs and expenses directly associated with the Funding Loan and the Project Loans, including, without limitation, printing costs, costs of reproducing documents, filing and recording fees.

"*Costs of Issuance Deposit*" means the deposit to be made by the Borrower with the Fiscal Agent on the Delivery Date, which deposit shall equal \$[ ] and shall be comprised of \$[ ] of the Borrower Equity Deposit and \$[ ] of proceeds of the Project Loans.

"*Default Rate*" means (a) during the Construction Phase, an interest rate equal to the lower of (i) four percent (4%) per annum above the Construction Phase Interest Rate or (ii) the Maximum Interest Rate, and (b) during the Permanent Phase, an interest rate equal to the lower of (i) four percent (4%) per annum above the Permanent Phase Interest Rate or (ii) the Maximum Interest Rate.

"*Delivery Date*" means February [ ], 2021, the date of funding of the initial advance of the Funding Loan and the delivery of the Governmental Note by the Governmental Lender to the Initial Funding Lender.

"*Determination of Taxability*" shall mean, (a) a determination by the Commissioner or any District Director of the Internal Revenue Service, (b) a private ruling or Technical Advice Memorandum issued by the National Office of the Internal Revenue Service in which

Governmental Lender and Borrower were afforded the opportunity to participate, (c) a determination by any court of competent jurisdiction, (d) the enactment of legislation or (e) receipt by Fiscal Agent or Funding Lender Representative, at the request of Governmental Lender, Borrower, Fiscal Agent or Funding Lender Representative, of an opinion of Bond Counsel, in each case to the effect that the interest on the Governmental Note is includable in gross income for federal income tax purposes of the Funding Lender or any former Funding Lender other than a Funding Lender who is a "substantial user" of the Project or a "related person" (as such terms are defined in Section 147(a) of the Code); provided, however, that no such Determination of Taxability under clause (a) or (c) shall be deemed to have occurred if the Governmental Lender (at the sole expense of the Borrower) or the Borrower is contesting such determination, has elected to contest such determination in good faith and is proceeding with all applicable dispatch to prosecute such contest until the earliest of (i) a final determination from which no appeal may be taken with respect to such determination, (ii) abandonment of such appeal by the Governmental Lender or the Borrower, as the case may be, or (iii) one year from the date of initial determination.

*"Electronic Notice"* means delivery of notice in a Word format or a Portable Document Format (PDF) by electronic mail to the electronic mail addresses listed in Section 11.04 hereof; provided, that if a sender receives notice that the electronic mail is undeliverable, notice must be sent as otherwise required by Section 11.04 hereof.

*"Event of Default"* or *"event of default"* means any of those events specified in and defined by the applicable provisions of Article VI hereof to constitute an event of default.

*"Extraordinary Fiscal Agent's Fees and Expenses"* means all those fees, expenses and reimbursements earned or incurred by the Fiscal Agent as described under Section 7.06 hereof during any Year for Extraordinary Services, as set forth in a detailed invoice to the Borrower, the Servicer and the Funding Lender Representative.

*"Extraordinary Services"* means and includes, but not by way of limitation, services, actions and things carried out and all expenses incurred by the Fiscal Agent, in respect of or to prevent default under this Funding Loan Agreement or the Project Loan Documents, including any reasonable attorneys' or agents' fees and expenses and other litigation costs that are entitled to reimbursement under the terms of the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, and other actions taken and carried out by the Fiscal Agent which are not expressly set forth in this Funding Loan Agreement or the Project Loan Documents.

*"Fair Market Value"* means the price at which a willing buyer would purchase the investment from a willing seller in a bona fide, arm's length transaction (determined as of the date the contract to purchase or sell the investment becomes binding) if the investment is traded on an established securities market (within the meaning of Section 1273 of the Code) and, otherwise, the term "Fair Market Value" means the acquisition price in a bona fide arm's length transaction (as referenced above) if (a) the investment is a certificate of deposit that is acquired in accordance with applicable regulations under the Code, (b) the investment is an agreement with specifically negotiated withdrawal or reinvestment provisions and a specifically negotiated interest rate (for example, a guaranteed investment contract, a forward supply contract or other investment agreement) that is acquired in accordance with applicable regulations under the Code, (c) the

investment is a United States Treasury Security--State and Local Government Series that is acquired in accordance with applicable regulations of the United States Bureau of Public Debt, or (d) any commingled investment fund in which the Governmental Lender and related parties do not own more than a ten percent (10%) beneficial interest therein if the return paid by the fund is without regard to the source of investment.

*"Fee Component"* has the meaning set forth in the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable.

*"Financing Documents"* means, collectively, this Funding Loan Agreement, the Governmental Note, the Tax Certificate, the Project Loan Documents, the Construction Loan Documents (during the Construction Phase) and all other documents or instruments evidencing, securing or relating to the Loans.

*"Fiscal Agent"* means The Bank of New York Mellon Trust Company, N.A., and its successors hereunder.

*"Final Credit Underwriting Report"* means the Housing Finance Authority of St. Johns County Credit Underwriting Report for the Project prepared by the Governmental Lender Servicer, dated February [ ], 2021.

*"Forward Commitment Maturity Date"* means [March 1, 2023], subject to extension by Freddie Mac as provided in the Construction Phase Financing Agreement.

*"Freddie Mac"* means the Federal Home Loan Mortgage Corporation, a shareholder-owned, government-sponsored enterprise organized and existing under the laws of the United States of America, and its successors and assigns.

*"Freddie Mac Commitment"* means the commitment from Freddie Mac to the Freddie Mac Seller/Servicer pursuant to which Freddie Mac has agreed to purchase the Funding Loan following the Conversion Date, subject to the terms and conditions set forth therein, as such commitment may be amended, modified or supplemented from time to time.

*"Freddie Mac Continuing Covenant Agreement"* means the Continuing Covenant Agreement to be delivered on the Conversion Date by and between the Borrower and the Freddie Mac Seller/Servicer, as the same may be amended, modified or supplemented from time to time, in the form attached to the Construction Phase Financing Agreement.

*"Freddie Mac Purchase Date"* means the date on which Freddie Mac purchases the Funding Loan from the Freddie Mac Seller/Servicer upon satisfaction of the conditions set forth in the Construction Phase Financing Agreement and the Freddie Mac Commitment.

*"Freddie Mac Seller/Servicer"* means Walker & Dunlop, LLC, as Freddie Mac's seller/servicer under the Freddie Mac Commitment, or any of its successors or assigns under the Freddie Mac Commitment.

*"Funding Lender"* means any Person who is the holder of the Governmental Note.

*"Funding Lender Representative"* means the Funding Lender or any Person designated by the Funding Lender to act on behalf of the Funding Lender as provided in Section 11.05, or an assignee of such Person as provided in Section 11.05. The initial Funding Lender Representative shall be the Initial Funding Lender. The Freddie Mac Seller/Servicer shall become the Funding Lender Representative upon the occurrence of the Conversion Date, and Freddie Mac shall become the Funding Lender Representative upon the occurrence of the Freddie Mac Purchase Date.

*"Funding Loan"* means the loan in the maximum aggregate principal amount of \$[16,000,000] made to the Governmental Lender pursuant to this Funding Loan Agreement by the Initial Funding Lender.

*"Funding Loan Amortization Schedule"* means the Funding Loan Amortization Schedule attached as Schedule 1 to the Governmental Note.

*"Government Obligations"* means investments meeting the requirements of clause (a) or (b) of the definition of *"Qualified Investments"* herein.

*"Governmental Lender"* means the Housing Finance Authority of St. Johns County, Florida, a public body corporate and politic organized and existing under the laws of the State.

*"Governmental Lender Fee"* means, collectively, (i) on the Delivery Date, the one-time closing fee payable by the Borrower to the Governmental Lender in the amount of \$[20,000], (ii) from the Delivery Date through and including the Conversion Date, the annual fee of the Governmental Lender, payable by the Borrower to the Fiscal Agent in the annual amount of twelve and one-half basis points (0.125%) of the outstanding principal amount of the Funding Loan (calculated on the Business Day prior to any principal reduction of the Construction Phase Project Loan) payable in semi-annual installments in arrears on each March 1 and September 1, commencing on March 1, 2022 (subject to proration), (iii) on the earlier to occur of the mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(iv) hereof (but only upon receipt of an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that the payment of such Conversion Fee will not adversely affect the tax-exempt status of the Governmental Note) or the Conversion Date, the one-time conversion fee (the *"Conversion Fee"*) in the amount of \$[160,000], payable by the Borrower to the Fiscal Agent, and (iv) on and after the Conversion Date, the annual fee of the Governmental Lender, payable by the Borrower to the Fiscal Agent in the amount of twenty-five basis points (0.25%) of the outstanding principal amount of the Funding Loan (calculated on the Business Day prior to any principal reduction of the Permanent Phase Project Loan) payable in semi-annual installments in arrears on each March 1 and September 1, commencing on the first March 1 or September 1 following the Conversion Date (subject to proration); provided, however, that such fee does not include amounts due, if any, for extraordinary services and expenses of the Governmental Lender, or fees and expenses of the Fiscal Agent, the Governmental Lender Servicer, Bond Counsel, counsel to the Governmental Lender, the Fiscal Agent's counsel, or the Rebate Analyst, all of which shall be paid directly by the Borrower in accordance with this Funding Loan Agreement and pursuant to the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable.

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

*"Governmental Lender Servicer Fee"* means the following fees and expenses: (a) payable directly by the Borrower to the Governmental Lender Servicer: (i) during construction of the Project, an on-site inspection fee of \$186.00 per hour for services rendered, but not to exceed \$1,844.00 per disbursement, (ii) during construction of the Project, an in-house review fee of \$186.00 per hour for services rendered and (iii) a fee for extraordinary services rendered of \$186.00 per hour.

*"Governmental Note"* means the Multifamily Mortgage Revenue Note dated the Delivery Date, executed by the Governmental Lender and authenticated by the Fiscal Agent in favor of the Initial Funding Lender, in the form attached hereto as Exhibit A, as the same may be amended, restated, supplemented or otherwise modified from time to time, or any mortgage note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

*"Guide"* means the Freddie Mac Multifamily Seller/Servicer Guide, as the same may be amended, modified or supplemented from time to time.

*"Initial Debt Service Deposit"* means an amount equal to the interest payable on the Funding Loan for the period commencing on the Delivery Date to but not including the first day of the third calendar month immediately succeeding the Delivery Date.

*"Initial Funding Lender"* means Bank of America, N.A., a national banking association, as initial holder of the Governmental Note.

*"Interest Payment Date"* means (i) the first day of each calendar month, commencing [April 1, 2021], (ii) the date of any prepayment of the Funding Loan, but only with respect to the portion of the Funding Loan subject to prepayment, and (iii) the Maturity Date.

*"Investment Income"* means the earnings and profits derived from the investment of money pursuant to Section 4.08 hereof.

*"Loans"* means, together, the Project Loans and the Funding Loan.

*"Loan Payment Fund"* means the Loan Payment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Loan Prepayment Fund"* means the Loan Prepayment Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

*"Maturity Date"* means the maturity date of the Funding Loan set forth in Section 2.01(e) hereof.

*"Maximum Interest Rate"* means the rate of interest which results in the maximum amount of interest allowed by applicable law.

*"Moody's"* means Moody's Investors Service, Inc., its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

*"Net Proceeds"* when used with respect to any insurance or condemnation award, means the proceeds from the insurance or condemnation award with respect to which that term is used remaining after payment of all reasonable expenses incurred in the collection of such insurance proceeds or condemnation award, including reasonable attorneys' fees.

*"Notes"* means, together, the Construction Phase Project Note or Permanent Phase Project Note, as applicable, and the Governmental Note.

*"Notice of Conversion"* means a written notice to be delivered not less than ten (10) days prior to the Conversion Date by the Freddie Mac Seller/Service to the Governmental Lender, the Fiscal Agent, the Borrower, the Initial Funding Lender and Freddie Mac (i) stating that the Conditions to Conversion have been satisfied on or before the Forward Commitment Maturity Date or, if any Condition to Conversion has not been satisfied on or before the Forward Commitment Maturity Date, stating that such Condition to Conversion has been waived in writing by Freddie Mac (if a waiver is permitted and is granted by Freddie Mac, in its sole and absolute discretion) on or before the Forward Commitment Maturity Date, (ii) confirming the Conversion Date and (iii) providing for updated amortization schedules for the Permanent Phase Project Note and the Governmental Note in the event the Borrower makes a Pre-Conversion Loan Equalization Payment at Conversion.

*"Ordinary Fiscal Agent's Fees and Expenses"* means the annual administration fee for the Fiscal Agent's ordinary fees and expenses in rendering its services under this Funding Loan Agreement during each twelve month period, which fee is equal to (and shall not exceed) \$4,000 and shall be payable semi-annually in advance on the Delivery Date and each March 1 and September 1 thereafter, commencing September 1, 2021.

*"Permanent Phase"* means the period of time during the Permanent Phase Project Loan, which time period shall commence on the Conversion Date and remain in effect through the remaining term of the Permanent Phase Project Loan.

*"Permanent Phase Interest Rate"* means, during the Permanent Phase, the fixed interest rate of [ ]% per annum; provided during the continuance of any Event of Default hereunder, the Permanent Phase Interest Rate shall be the Default Rate, in each case computed on the basis of a 360-day year and actual number of days elapsed.

*"Permanent Phase Project Loan Agreement"* means the Project Loan Agreement, dated as of the date hereof among the Borrower, the Governmental Lender and the Fiscal Agent, which shall be effective on and after the Conversion Date, as amended, supplemented or restated from time to time.

*"Permanent Phase Project Note"* means the Amended and Restated Project Note dated the Conversion Date from the Borrower, including all riders and addenda thereto, evidencing the

Borrower's obligation to repay the Permanent Phase Project Loan, which Permanent Phase Project Note (which will be an amendment and restatement in its entirety of the Construction Phase Project Note) will be delivered to the Fiscal Agent in substitution of the Construction Phase Project Note, as an amendment and restatement of the Construction Phase Project Note, as the same may be amended, restated, supplemented otherwise modified from time to time, or any note executed in substitution therefor, as such substitute note may be amended, restated, supplemented or otherwise modified from time to time.

*"Person"* means an individual, a corporation, a partnership, an association, a joint stock company, a joint venture, a trust, an unincorporated association, a limited liability company or a government or any agency or political subdivision thereof, or any other organization or entity (whether governmental or private).

*"Pledged Security"* has the meaning given to that term in Section 2.02 hereof.

*"Pre-Conversion Loan Equalization Payment"* means a prepayment of the Construction Phase Project Loan by the Borrower (and corresponding prepayment of the Funding Loan hereunder) prior to the Forward Commitment Maturity Date in order to equalize the principal amount of the Permanent Phase Project Loan and the Funding Loan to the Actual Project Loan Amount.

*"Prepayment Premium"* means any premium payable hereunder in connection with a prepayment of the Funding Loan, which premium shall be in an amount equal to (i) during the Construction Phase, the amount of premium payable by the Borrower under the Construction Phase Project Note and Section 2.3 of the Construction Continuing Covenant Agreement, if any, and (ii) during the Permanent Phase, the amount of premium payable by the Borrower under Section 10 of the Permanent Phase Project Note, in each case in connection with a prepayment of the applicable Project Loan.

*"Principal Office of the Fiscal Agent"* means the office of the Fiscal Agent referenced in Section 11.04(a) hereof, or such other office or offices as the Fiscal Agent may designate in writing from time to time, or the office of any successor Fiscal Agent where it principally conducts its business of serving as Fiscal Agent under indentures pursuant to which municipal or governmental obligations are issued.

*"Project"* means, collectively, the land and residential rental apartment units, and related fixtures, equipment, furnishings and site improvements known as San Marcos Heights located at 127 Adair Road, St. Augustine, Florida, in unincorporated St. Johns County, Florida, including the real estate described in the Security Instrument.

*"Project Account"* means the Project Account of the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

*"Project Loan"* means the loan made by the Governmental Lender to the Borrower pursuant to the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, in the maximum aggregate principal amount of \$[16,000,000], as evidenced by the Construction Phase Project Note or Permanent Phase Project Note, as applicable.



**"Project Loan Documents"** means the Security Instrument, the Construction Phase Project Note or Permanent Phase Project Note, as applicable, the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Tax Regulatory Agreement, the Assignment, the Construction Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loan or any portion thereof.

**"Project Loan Fund"** means the Project Loan Fund established by the Fiscal Agent pursuant to Section 2.11 hereof.

**"Qualified Investments"** means any of the following if and to the extent permitted by law: (a) direct and general obligations of the United States of America; (b) obligations of any agency or instrumentality of the United States of America the payment of the principal of and interest on which are unconditionally guaranteed by the full faith and credit of the United States of America; (c) senior debt obligations of Freddie Mac; (d) senior debt obligations of Fannie Mae; (e) demand deposits or time deposits with, or certificates of deposit issued by, the Fiscal Agent or its affiliates or any bank organized under the laws of the United States of America or any state or the District of Columbia which has combined capital, surplus and undivided profits of not less than \$50,000,000; provided that the Fiscal Agent or such other institution has been rated at least "VMIG-1"/"A-1+" by Moody's or S&P which deposits or certificates are fully insured by the Federal Deposit Insurance Corporation or collateralized pursuant to the requirements of the Office of the Comptroller of the Currency; (f) investment agreements with a bank or any insurance company or other financial institution which has a rating assigned by Moody's or S&P to its outstanding long-term unsecured debt which is the highest rating (as defined below) for long-term unsecured debt obligations assigned by Moody's or S&P, and which are approved by the Funding Lender Representative; (g) shares or units in any money market mutual fund rated "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security) (including mutual funds of the Fiscal Agent or its affiliates or for which the Fiscal Agent or an affiliate thereof serves as investment advisor or provides other services to such mutual fund receives reasonable compensation therefor) registered under the Investment Company Act of 1940, as amended, whose investment portfolio consists solely of (A) direct obligations of the government of the United States of America, or (B) tax-exempt obligations; (h)(i) tax-exempt obligations rated in the highest short term rating category by Moody's or S&P, or (ii) shares of a tax-exempt municipal money market mutual fund or other collective investment fund registered under the federal Investment Company Act of 1940, whose shares are registered under the federal Securities Act of 1933, having assets of at least \$100,000,000, and having a rating of "Aaa"/"AAA" by Moody's or S&P (or if a new rating scale is implemented, the equivalent rating category given by the Rating Agency for that general category of security), for which at least 95% of the income paid to the holders on interest in such money market fund will be excludable from gross income under Section 103 of the Code, including money market funds for which the Fiscal Agent or its affiliates receive a fee for investment advisory or other services to the fund; or (i) any other investments approved in writing by the Funding Lender Representative. For purposes of this definition, the "highest rating" means a rating of at least "VMIG-1"/"A-1+" for obligations with less than one year maturity; at least "Aaa"/"VMIG-1"/"AAA"/"A-1+" for obligations with a maturity of one year or greater but less than three years; and at least "Aaa"/"AAA" for obligations with a maturity of three years or greater. Qualified Investments must be limited to instruments that have a predetermined fixed-dollar

amount of principal due at maturity that cannot vary or change and interest, if tied to an index, shall be tied to a single interest rate index plus a single fixed spread, if any, and move proportionately with such index. Ratings of Qualified Investments shall be determined at the time of purchase of such Qualified Investments and without regard to ratings subcategories, and the Fiscal Agent shall have no responsibility to monitor the ratings of Qualified Investments after the initial purchase of such Qualified Investments.

**"Rating Agency"** means Moody's or S&P, as applicable, or any successor rating service thereof.

**"Rebate Analyst"** means a certified public accountant, financial analyst or bond counsel, or any firm of the foregoing, or financial institution (which may include the Fiscal Agent) experienced in making the arbitrage and rebate calculations required pursuant to Section 148 of the Code, selected and retained by the Borrower at the expense of the Borrower, with the prior written consent of the Governmental Lender, to make the rebate computations required under this Funding Loan Agreement and the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable; the fees of the Rebate Analyst shall be paid by the Borrower. The initial Rebate Analyst shall be Arbitrage Rebate Company.

**"Rebate Fund"** means the Rebate Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

**"Rebate Year"** means each one-year period that ends at the close of business on the day in the calendar year that is selected by Borrower as indicated in the Tax Certificate. The first and last Rebate Years may be short periods. If no day is selected by Borrower before the earlier of the Maturity Date or the date that is five years after the Delivery Date, each Rebate Year ends on each anniversary of the Delivery Date and on the Maturity Date or date of earlier payment in full of the Governmental Note.

**"Requisition"** means, with respect to the Project Loan Fund, the requisition in the form of Exhibit E to this Funding Loan Agreement required to be submitted in connection with disbursements from the Project Account and/or the Borrower Equity Account of the Project Loan Fund, and with respect to the Cost of Issuance Fund, the requisition in the form of Exhibit D to this Funding Loan Agreement required to be submitted in connection with disbursements from the Cost of Issuance Fund.

**"Resolution"** means the resolutions adopted by the Governmental Lender authorizing the Funding Loan, the Project Loan and the execution and delivery of the Financing Documents to which it is a party.

**"Responsible Officer"** means any officer of the Fiscal Agent employed within or otherwise having regular responsibility in connection with the corporate trust department of the Fiscal Agent and the trusts created hereunder.

**"Revenue Fund"** means the Revenue Fund established by the Fiscal Agent pursuant to Section 4.01 hereof.

**"Revenues"** means (a) all payments made with respect to the Project Loan pursuant to the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Construction Phase Project Note or Permanent Phase Project Note, as applicable, or the Security Instrument, including but not limited to all casualty or other insurance benefits and condemnation awards paid in connection therewith and all payments obtained through the exercise of remedies under the Financing Documents, and (b) all money and securities held by the Fiscal Agent in the funds and accounts established pursuant to this Funding Loan Agreement (excluding money or securities designated for deposit into and held in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund), together with all investment earnings thereon.

**"Security Instrument"** means the Mortgage, Security Agreement and Assignment of Rents, Leases and Profits dated as of the date hereof, by the Borrower, granting a first priority mortgage and security interest in the Project to the Governmental Lender to secure the repayment of the Project Loan and related obligations, which Security Instrument has been assigned by the Governmental Lender to the Fiscal Agent pursuant to the Assignment as security for the Funding Loan, as the same will be amended and restated into the form attached to the Construction Phase Financing Agreement upon the occurrence of the Conversion Date, as the same may be further amended, supplemented or restated.

**"S&P"** means S&P Global Ratings, a business unit of Standard & Poor's Financial Services LLC, and its successors and assigns, if such successors and assigns continue to perform the services of a securities rating agency.

**"Servicer"** means any entity appointed by the Funding Lender Representative to service the Loans and any successor in such capacity as appointed by the Funding Lender Representative pursuant to Section 3.02 of the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable. During the Construction Phase, the Servicer shall be Bank of America, N.A. During the Permanent Phase, the Servicer shall be the Freddie Mac Seller/Servicer.

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

**"Subordination Agreement"** means any subordination or intercreditor agreement(s) entered into with respect to any subordinate financing related to the Project, as the same may be amended, supplemented or restated.

**"Tax Certificate"** means that certain Tax Certificate and Agreement by and between the Government Lender and the Borrower relating to the Governmental Note, including all exhibits and other attachments thereto as may be amended from time to time.

**"Tax Regulatory Agreement"** means the Land Use Restriction Agreement dated as of February 1, 2021 among the Governmental Lender, the Fiscal Agent and the Borrower.

**"Transferee Representations Letter"** has the meaning set forth in Section 2.08 hereof.

**"Unassigned Rights"** means all of the rights of the Governmental Lender and its directors, officers, commissioners, elected officials, attorneys, accountants, employees, agents and consultants to be held harmless and indemnified, to be paid its fees and expenses, to give or

withhold consent to amendments, changes, modifications and alterations, to receive notices and the right to enforce such rights.

*"Window Period"* means the three (3) consecutive months prior to the Maturity Date.

**Section 1.02 Interpretation.** The words "hereof," "herein," "hereunder," and other words of similar import refer to this Funding Loan Agreement as a whole and not to any particular Article, Section or other subdivision. Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with generally accepted accounting principles as in effect from time to time. References to Articles, Sections, and other subdivisions of this Funding Loan Agreement are to the designated Articles, Sections and other subdivisions of this Funding Loan Agreement as originally executed. The headings of this Funding Loan Agreement are for convenience only and shall not define or limit the provisions hereof.

## ARTICLE II

### THE FUNDING LOAN

#### **Section 2.01 Terms.**

(a) The total principal amount of the Funding Loan is hereby expressly limited to the Authorized Amount. The Funding Loan shall be originated and funded by the Initial Funding Lender to the Governmental Lender in accordance with Section 2.01(b) below. The proceeds of the Funding Loan shall be deposited with Fiscal Agent and disbursed in accordance with this Funding Loan Agreement and subject to the terms and conditions of the Construction Continuing Covenant Agreement. The Funding Loan shall be evidenced by the Governmental Note and shall bear interest and be paid in accordance with the payment terms set forth in the Governmental Note and this Funding Loan Agreement.

(b) The Funding Loan shall be originated by the Initial Funding Lender on a draw-down basis. The proceeds of the Funding Loan shall be advanced by the Initial Funding Lender in installments directly to the Fiscal Agent (except as set forth below) for deposit to the Project Account upon receipt of an Advance Request and the satisfaction of the conditions to such advance set forth in the Construction Continuing Covenant Agreement and the Governmental Lender Servicer Agreement and the form of requisition attached as Exhibit E hereto. Proceeds of the Funding Loan advanced to pay for interest due on the Funding Loan and fees due to the Funding Lender during the Construction Phase shall not be directed to the Fiscal Agent for deposit under this Funding Loan Agreement, but rather disbursed directly to the Funding Lender to pay such interest or fee due. The Fiscal Agent may rely fully on any such requisition approved by the Funding Lender and shall not be required to make any investigation in connection therewith. Upon the advancement of the proceeds of the Funding Loan in accordance with the terms hereof, the principal amount of the Governmental Note in a principal amount equal to the amount so advanced shall be deemed to be increased automatically and without further acts on the part of the Governmental Lender or the Fiscal Agent. The initial installment of the Funding Loan shall be in

the amount of \$[\_\_\_\_\_], which amount shall be advanced by the Initial Funding Lender and deposited in the Project Loan Fund on the Delivery Date for application as provided in Section 2.11. Notwithstanding anything in this Funding Loan Agreement to the contrary, no additional amounts of the Funding Loan may be drawn down and funded hereunder after the Advance Termination Date. Any extension of the Advance Termination Date shall be subject to the receipt by the Fiscal Agent of (i) the prior written consent of the Initial Funding Lender and Freddie Mac and (ii) an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that such extension will not adversely affect the tax-exempt status of the Governmental Note.

(c) The Fiscal Agent shall maintain in its books a log which shall reflect the principal amount of the Funding Loan advanced by the Initial Funding Lender from time to time in accordance with the provisions of Section 2.01(b) above (the "Record of Advances"). The principal amount due on the Governmental Note shall be only such amount as has been advanced by the Initial Funding Lender as reflected in the Record of Advances and not otherwise prepaid pursuant to the terms of this Funding Loan Agreement. The records maintained by the Fiscal Agent in such regard will be conclusive evidence of the principal amount of the Funding Loan (absent manifest error). The Fiscal Agent shall notify the Governmental Lender, the Freddie Mac Seller/Service, Freddie Mac and the Borrower if any advance of the proceeds of the Funding Loan is not made by the Initial Funding Lender when due hereunder.

(d) The Funding Loan shall bear interest payable on each Interest Payment Date at (i) the Construction Phase Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase. Interest shall accrue on the principal amount of the Funding Loan which has been advanced hereunder and is outstanding as reflected on the Record of Advances.

(e) The Funding Loan shall mature on [March 1, 2038], subject to scheduled monthly principal payments, and to optional and mandatory prepayment prior to maturity as provided in Article III hereof. The unpaid principal balance of the Funding Loan shall be paid on the dates and in the amounts set forth on the initial Funding Loan Amortization Schedule provided on the Delivery Date and attached as Schedule 1 to the Governmental Note if the Conversion Date occurs on or prior to the initial Forward Commitment Maturity Date. If the Forward Commitment Maturity Date is extended by Freddie Mac in accordance with the Freddie Mac Commitment and the Construction Phase Financing Agreement, the first principal payment date under the Funding Loan Amortization Schedule shall automatically be extended to the first day of the month immediately succeeding the Conversion Date (with the succeeding principal installments remaining consistent with the original schedule but for them occurring on later dates). Additionally, in the event the outstanding amount of the Funding Loan on the Conversion Date is less than the starting principal amount set forth in the initial Funding Loan Amortization Schedule, a new Funding Loan Amortization Schedule will be generated on the Conversion Date at such lesser outstanding principal amount based on the parameters set forth in the Freddie Mac Commitment. In the event the initial Funding Loan Amortization Schedule is modified in accordance with this Section 2.01(e), a replacement Funding Loan Amortization Schedule will be provided by the Freddie Mac Seller/Service which will be attached to the Governmental Note on the Conversion Date. All unpaid principal and all accrued and unpaid interest outstanding under the Funding Loan shall be due and payable on the Maturity Date.

(f) Payment of principal of, premium, if any, and interest on the Funding Loan shall be paid by wire transfer in immediately available funds to an account within the United States of America designated by the Funding Lender (unless otherwise directed by the Funding Lender).

(g) Subject to Section 2.12 hereof, on or before the date fixed for payment, money shall be deposited by the Borrower with the Fiscal Agent to pay, and the Fiscal Agent is hereby authorized and directed to apply such money to the payment of, the Funding Loan, together with accrued interest thereon to the date of payment.

(h) In no contingency or event whatsoever shall the aggregate of all amounts deemed interest hereunder and charged or collected pursuant to the terms of this Funding Loan Agreement exceed the highest rate permissible under any law which a court of competent jurisdiction shall, in a final determination, deem applicable hereto. In the event that such court determines the Funding Lender has charged or received interest hereunder in excess of the highest applicable rate, the Funding Lender shall apply, in its sole discretion, and set off such excess interest received by the Funding Lender against other obligations due or to become due under the Financing Documents and such rate shall automatically be reduced to the Maximum Interest Rate.

**Section 2.02 Pledged Security.** To secure the payment of the principal of, premium, if any, and interest on the Funding Loan according to its tenor and effect, and the performance and observance by the Governmental Lender of all the covenants expressed or implied herein and in the Governmental Note, and the payment and performance of all amounts and obligations under the Continuing Covenant Agreement, the Governmental Lender does hereby grant, bargain, sell, convey, pledge and assign a security interest, unto the Fiscal Agent, and its successors in such capacity and its and their assigns in and to the following (said property being herein referred to as the "Pledged Security") for the benefit of the Funding Lender:

(a) All right, title and interest of the Governmental Lender in and to all Revenues;

(b) All right, title and interest of the Governmental Lender in and to the Construction Phase Project Loan Agreement prior to the Conversion Date and the Permanent Phase Project Loan Agreement, on and after the Conversion Date, the Construction Phase Project Note prior to the Conversion Date and the Permanent Phase Project Note, on and after the Conversion Date, the Security Instrument and the other Project Loan Documents (other than the Unassigned Rights), including all extensions and renewals of the terms thereof, if any, including, but without limiting the generality of the foregoing, the present and continuing right to receive, receipt for, collect or make claim for any of the money, income, revenues, issues, profits and other amounts payable or receivable thereunder (including all casualty insurance benefits or condemnation awards), whether payable under the above referenced documents or otherwise, to bring actions and proceedings thereunder or for the enforcement thereof, and to do any and all things which the Governmental Lender or any other Person is or may become entitled to do under said documents; and

(c) Except for funds, money or securities in the Cost of Issuance Fund, the Administration Fund and the Rebate Fund, all funds, money and securities and any and all other rights and interests in property whether tangible or intangible from time to time hereafter by delivery or by writing of any kind, conveyed, mortgaged, pledged, assigned or transferred as and for additional security hereunder for the Funding Loan by the Governmental Lender or by anyone

on its behalf or with its written consent to the Fiscal Agent, which is hereby authorized to receive any and all such property at any and all times and to hold and apply the same subject to the terms hereof.

The foregoing notwithstanding, if the Governmental Lender or its successors or assigns shall pay or cause to be paid to the Funding Lender in full the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner provided in Article IX hereof, and if the Governmental Lender shall keep, perform and observe, or cause to be kept, performed and observed, all of its covenants, warranties and agreements contained herein, then these presents and the estate and rights hereby granted shall, at the option of the Governmental Lender, cease, terminate and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, and, subject to the provisions of Sections 4.11 and 4.12 hereof and Article IX hereof, reconvey to the Governmental Lender the estate hereby conveyed, and assign and deliver to the Governmental Lender any property at the time subject to the lien of this Funding Loan Agreement which may then be in its possession, except for the Rebate Fund and cash held by the Fiscal Agent for the payment of interest on and principal of the Governmental Note; otherwise this Funding Loan Agreement to be and shall remain in full force and effect.

**Section 2.03 Revenue Obligations.** The obligations of the Governmental Lender with respect to the Governmental Note are not general or special obligations of the Governmental Lender but are revenue obligations of the Governmental Lender payable by the Governmental Lender solely from the Pledged Security. The Governmental Note shall not be a debt of the State, St. Johns County, Florida (the "County"), the Governmental Lender or of any other political subdivision of the State, and none of the State, the County, the Governmental Lender, or any other political subdivision of the State shall be liable for the payment of the Governmental Note. The faith and credit of the State, the County or of any other political subdivision of the State are not pledged to the payment of the principal of or interest on the Governmental Note. The Governmental Lender has no taxing power.

**Section 2.04 Funding Loan Agreement Constitutes Contract.** In consideration of the origination and funding of the Funding Loan by the Initial Funding Lender, the provisions of this Funding Loan Agreement shall be part of the contract of the Governmental Lender with the Initial Funding Lender and any successors or assigns thereof in such capacity from time to time.

**Section 2.05 Form and Execution.** The Governmental Note shall be in substantially the form attached as **Exhibit A**. The Governmental Note shall be executed on behalf of the Governmental Lender by the manual or facsimile signature of the Chair or Vice-Chair of the Governmental Lender, attested by the manual or facsimile signature of any Assistant Secretary of the Governmental Lender, and sealed with an impression or a facsimile of the seal of the Governmental Lender. Any facsimile signatures shall have the same force and effect as if said officers had manually signed the Governmental Note. Any reproduction of the official seal of the Governmental Lender on the Governmental Note shall have the same force and effect as if the official seal of the Governmental Lender had been impressed on the Governmental Note.

**Section 2.06 Authentication.** The Governmental Note shall not be valid or obligatory for any purpose or entitled to any security or benefit under this Funding Loan Agreement unless a certificate of authentication on the Governmental Note, substantially in the form set forth in Exhibit A, shall have been duly executed by an Authorized Officer of the Fiscal Agent; and such executed certificate of authentication upon the Governmental Note shall be conclusive evidence that the Governmental Note has been duly executed, registered, authenticated and delivered under this Funding Loan Agreement.

**Section 2.07 Mutilated, Lost, Stolen or Destroyed Governmental Note.** In the event the Governmental Note is mutilated, lost, stolen or destroyed, the Governmental Lender shall execute and the Fiscal Agent shall authenticate a new Governmental Note substantially in the form set forth in Exhibit A in exchange and substitution for and upon cancellation of the mutilated Governmental Note or in lieu of and in substitution for such lost, stolen or destroyed Governmental Note, upon payment by the Funding Lender of any applicable tax or governmental charge and the reasonable expenses and charges of the Governmental Lender and the Fiscal Agent in connection therewith, and in the case where the Governmental Note is lost, stolen or destroyed, the filing with the Fiscal Agent of evidence satisfactory to it that the Governmental Note was lost, stolen or destroyed, and of the ownership thereof, and furnishing the Governmental Lender and the Fiscal Agent with indemnity satisfactory to each of them. In the event where the Governmental Note shall have matured, instead of delivering a new Governmental Note the Governmental Lender may pay the same without surrender thereof.

**Section 2.08 Registration; Transfer of Funding Loan; Transferee Representations Letter.**

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

(b) After full funding, the Funding Lender shall have the right to sell, assign or otherwise transfer in whole its interest in the Funding Loan or to grant a participation interest in the Funding Loan in a percentage of not less than twenty-five percent (25%) of the outstanding principal amount of the Funding Loan; provided that the Funding Loan may be transferred, or any participation interest therein granted, only to an "accredited investor" as that term is defined in Rule 501 of Regulation D under the Securities Act or a "qualified institutional buyer" as that term is defined under Rule 144A of the Securities Act (such "accredited investor" or "qualified institutional buyer" a "Qualified Transferee") that delivers a letter to the Fiscal Agent substantially in the form attached hereto as Exhibit C setting forth certain representations with respect to such Qualified Transferee (the "Transferee Representations Letter"). Notwithstanding the preceding sentence, no Transferee Representations Letter shall be required



for the Funding Lender Representative to (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold or transferred except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better. In connection with any sale, assignment or transfer of the Funding Loan, the Funding Lender shall give notice of such sale, assignment or transfer to the Fiscal Agent and the Fiscal Agent shall record such sale, assignment or transfer on its books or other records maintained for the registration of transfer of the Funding Loan. In connection with any such transfer (A) it shall not be necessary to present, exchange or re-authenticate the Governmental Note, and (B) the Funding Lender shall provide the Fiscal Agent with the name and date of registration, together with a copy of the Transferee Representations Letter of the transferee, so that the Fiscal Agent may maintain the registration records.

The transferor shall also provide or cause to be provided to the Trustee all information necessary to allow the Trustee to comply with any applicable tax reporting obligations, including without limitation any cost basis reporting obligations under Internal Revenue Code Section 6045. The Trustee may rely on the information provided to it and shall have no responsibility to verify or endure the accuracy of such information.

**Section 2.09 TEL Securitization; Allocation of Funding Loan Interest.** In accordance with the provisions of Section 2.08 hereof, the Funding Lender may transfer the Funding Loan to a Qualified Transferee in connection with the securitization of the Funding Loan, in which event the Funding Lender Representative may direct the Fiscal Agent to make all future payments with respect to the Funding Loan to the appointed master servicer for that securitization (or an account designated by such master servicer), and the Fiscal Agent shall accept such direction from the Funding Lender Representative. In the event that the Funding Lender transfers the Funding Loan to a Qualified Transferee in accordance with the provisions of Section 2.08 hereof, the Funding Lender Representative may also give notice to the Fiscal Agent that the Funding Lender has agreed to allow the Servicer to retain a portion of the monthly interest payable on the Funding Loan as additional compensation for the servicing of the Funding Loan ("Additional Servicing Fee"), which Additional Servicing Fee will equal no more than an annual 2 basis points (0.02%) with respect to the unpaid principal balance of the Governmental Note, in which event the Fiscal Agent shall accept and pay to the Funding Lender such lesser amount of interest received from the Servicer and shall consider such payment to be in full compliance with the terms of the Governmental Note, the Project Note and all other Financing Documents with regard to the interest owed on the Funding Loan.

**Section 2.11 Funding Loan Closing Conditions; Delivery of Governmental Note.** Closing of the Funding Loan on the Delivery Date shall be conditioned upon, and the Governmental Lender shall only execute and deliver to the Fiscal Agent, and the Fiscal Agent shall only authenticate the Governmental Note and deliver the Governmental Note to the Initial Funding Lender upon, receipt by the Fiscal Agent of the following:

(a) executed counterparts of this Funding Loan Agreement, the Construction Phase Project Loan Agreement, the Tax Regulatory Agreement and the Tax Certificate;

(b) an opinion of Bond Counsel or counsel to the Governmental Lender to the effect that the Governmental Lender is duly organized and existing under the laws of the State and has duly authorized, executed and delivered this Funding Loan Agreement, the Governmental Note and the other Financing Documents to which it is a party, and such documents are valid and binding special, limited obligations of the Governmental Lender enforceable in accordance with their terms subject to customary exceptions;

(c) the initial advance of the proceeds of the Funding Loan by the Initial Funding Lender in the amount set forth in Section 2.01(b) hereof;

(d) the executed Construction Phase Project Note and an endorsement of the Construction Phase Project Note by the Governmental Lender in favor of the Fiscal Agent;

(e) a copy of the executed Security Instrument, the Assignment, and the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement;

(f) an opinion of counsel to the Borrower to the effect that the Borrower is duly organized and validly existing and in good standing under the laws of the state in which it has been organized and in good standing under the laws of each other state in which the Borrower transacts business and has full power and authority to enter into the Financing Documents to which it is a party, that its execution and delivery of and performance of its covenants in such documents do not contravene law or any provision of any other documents to which it is a party or by which it or such property is bound or affected, and that all such agreements have been duly authorized, executed and delivered by the Borrower, and are legal, valid and binding obligations of the Borrower enforceable against the Borrower in accordance with their respective terms;

(g) a customary approving opinion of Bond Counsel, including but not limited to an opinion to the effect that the interest on the Governmental Note, under laws in effect on the date of such opinion, is excluded from gross income for federal income tax purposes and, where applicable, for State income tax purposes;

(h) a certified copy of the Resolution;

(i) the written request and authorization to the Fiscal Agent by the Governmental Lender to authenticate and deliver the Governmental Note to the Initial Funding Lender upon funding to the Fiscal Agent of the initial advance of proceeds of the Funding Loan;

(j) receipt by the Fiscal Agent of the amounts specified in Section 2.11 of this Funding Loan Agreement and Section 3.03 of the Construction Phase Project Loan Agreement;

(k) receipt by the Fiscal Agent of a Transferee Representations Letter from the Initial Funding Lender substantially in the form attached hereto as Exhibit C; and

(l) a letter of the Governmental Lender Servicer acknowledging that all contingencies listed in the Final Credit Underwriting Report have been satisfied.

**Section 2.12 Establishment of Project Loan Fund; Application of Funding Loan Proceeds and Other Money.**

(a) The Fiscal Agent shall establish, maintain and hold in trust and there is hereby established with the Fiscal Agent a Project Loan Fund and therein a Project Account, a Borrower Equity Account and a Capitalized Interest Account. No amount shall be charged against the Project Loan Fund except as expressly provided in this Section 2.11 and Section 4.02 hereof.

(b) Upon compliance by the Borrower with all applicable conditions in the Construction Continuing Covenant Agreement, the proceeds of the Funding Loan shall be delivered by the Initial Funding Lender to the Fiscal Agent on behalf of the Governmental Lender in the initial installment on the Delivery Date and thereafter on a drawdown basis as provided for in Section 2.01(b) hereof. Upon receipt, the Fiscal Agent shall deposit such proceeds into the credit of the Project Account of the Project Loan Fund. Amounts in the Project Loan Fund shall be disbursed as provided in subparagraph (d) below, subject to the conditions set forth in Section 3.01 of the Construction Phase Project Loan Agreement. Upon the disbursement of all amounts in the Project Loan Fund, the Fiscal Agent shall close the Project Loan Fund.

(c) The Governmental Lender shall cause the Borrower to deliver from sources other than the Loans, to the Fiscal Agent, on or prior to one Business Day prior to the Delivery Date, the Costs of Issuance Deposit for deposit into the credit of the Cost of Issuance Fund and the remainder of the Borrower Equity Deposit for deposit to the credit of the Borrower Equity Account. The Fiscal Agent shall also deposit in the Borrower Equity Account any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein, excluding any proceeds of the Loans.

(d) Upon the making of the initial deposits described above in this Section 2.11, the Governmental Lender shall originate the Construction Phase Project Loan pursuant to the Construction Phase Project Loan Agreement and the Fiscal Agent shall make the initial disbursements of amounts in the Project Loan Fund to the Borrower or otherwise as provided in Section 4.02 hereof.

**Section 2.13 *Direct Loan Payments to Funding Lender; Servicer Disbursement of Fees.***

(a) Notwithstanding any provision in this Funding Loan Agreement to the contrary, during any period that a Servicer is engaged with respect to the Loans, the Governmental Lender and the Fiscal Agent agree that all payments of principal of, Prepayment Premium, if any, and interest on the Funding Loan and all fees due hereunder and under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, shall be paid by the Borrower to the Servicer; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof during the Construction Phase. Prior to Conversion, the Fiscal Agent shall remit all payments of principal of, Prepayment Premium, if any, and interest (to the extent not advanced as contemplated by Section 3.02(c) of the Construction Phase Project Loan Agreement) on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender Representative. Following Conversion, the Servicer shall remit all payments collected from the Borrower of principal, of Prepayment Premium, if any, and interest on the Funding Loan, together with other amounts due to the Funding Lender, directly to the Funding Lender (without payment through the Fiscal Agent) per the instructions of the Funding Lender Representative. The Servicer

shall be entitled to retain its Servicing Fee (if any) collected from the Borrower. The Fiscal Agent or the Servicer, as applicable, shall annually calculate and remit the Governmental Lender Fee to the Governmental Lender, and shall remit the Ordinary Fiscal Agent's Fees and Expenses to the Fiscal Agent, together with any other amounts due to the Governmental Lender and the Fiscal Agent collected by the Servicer from the Borrower, in each case in accordance with their respective instructions. Any payment made in accordance with the provisions of this Section shall be accompanied by sufficient information to identify the source and proper application of such payment. The Servicer shall promptly notify the Fiscal Agent, the Funding Lender Representative, the Borrower, and the Governmental Lender in writing of any failure of the Borrower to make any payment of principal of, Prepayment Premium, if any, and interest on the Funding Loan when due or to pay any fees due hereunder or under the Permanent Phase Project Loan Agreement, and the Fiscal Agent and the Governmental Lender shall not be deemed to have any notice of such failure unless it has received such notice in writing.

(b) If the Governmental Note is sold or transferred as provided in Section 2.08, the Funding Lender Representative shall notify the Fiscal Agent and the Borrower in writing of the name and address of the transferee.

(c) So long as payments of principal of, Prepayment Premium, if any, and interest on the Governmental Note and all fees due hereunder and under the Permanent Phase Project Loan Agreement are being made to the Servicer in accordance with this Section 2.12 and no Event of Default has occurred of which the Fiscal Agent has been given, or been deemed to have, notice thereof pursuant to this Funding Loan Agreement, the Fiscal Agent shall have no obligations to collect loan payments with respect to the Funding Loan, nor shall it be obligated to collect loan payments or fee payments pursuant to the Permanent Phase Project Loan Agreement, except at the express written direction of the Funding Lender Representative; provided, however, the Fiscal Agent shall be responsible for making the debt service and fee payments out of the Project Loan Fund as required under Section 4.02 hereof during the Construction Phase Project Loan. Notwithstanding the foregoing, the Funding Lender Representative may elect to have the Fiscal Agent collect and remit loan payments and fee payments hereunder and under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, upon written notice of such election to the Fiscal Agent, the Borrower and the Governmental Lender.

**Section 2.14 Conversion.** If the Notice of Conversion is issued in the timeframe required under the Construction Phase Financing Agreement, Conversion will occur on the Conversion Date indicated in such Notice of Conversion. If the Notice of Conversion is not so issued, Conversion will not occur, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligations with respect to the purchase of the Funding Loan or otherwise with respect to the Loans or the Project.

### ARTICLE III

#### PREPAYMENT OF THE FUNDING LOAN

##### **Section 3.01 *Prepayment of the Funding Loan Prior to Maturity.***

(a) **Optional Prepayment.** The Funding Loan, together with accrued interest thereon, is subject to optional prepayment in whole upon optional prepayment of the Construction Phase Project Loan in accordance with the notice and other prepayment provisions set forth in the Construction Phase Project Note, the Construction Continuing Covenant Agreement or Permanent Phase Project Note, as applicable.

(b) **Mandatory Prepayment.** The Funding Loan, together with accrued interest thereon, and together with Prepayment Premium (to the extent payable under the Construction Phase Project Note, Construction Continuing Covenant Agreement or Permanent Phase Project Note, as applicable), is subject to mandatory prepayment on any Business Day, in whole or in part as indicated below, at the earliest practicable date upon the occurrence of any of the following:

(i) in whole or in part, upon the occurrence of a mandatory prepayment of the Project Loan pursuant to the Construction Phase Project Note, Construction Continuing Covenant Agreement or Permanent Phase Project Note, as applicable, and receipt by the Fiscal Agent of a written direction by the Funding Lender Representative that the Funding Loan shall be subject to mandatory payment as a result thereof;

(ii) in part, on the Interest Payment Date next following the completion of construction of the Project, to the extent amounts remaining in the Project Account or the Capitalized Interest Account of the Project Loan Fund are transferred to the Loan Prepayment Fund pursuant to Section 4.02(e) hereof;

(iii) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; or

(iv) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender (and upon receipt of an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that the payment of the Conversion Fee will not adversely affect the tax-exempt status of the Governmental Note), if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

**Section 3.02 Notice of Prepayment.** Notice of the intended prepayment of the Funding Loan shall be given by the Fiscal Agent by first class mail, postage prepaid, or by overnight delivery service, to the Funding Lender, the Governmental Lender, and the Governmental Lender Servicer. All such prepayment notices shall be given not less than ten (10) days (not less than thirty (30) days in the case of optional prepayment) nor more than sixty (60) days prior to the date fixed for prepayment. Notices of prepayment shall state (i) the prepayment date, (ii) the prepayment amount, and (iii) the place or places where amounts due upon such prepayment will be payable.

Notice of such prepayment shall also be sent by first class mail, postage prepaid, or by overnight delivery service, to the Servicer, not later than the time of mailing of notices required by the first paragraph above, and in any event no later than simultaneously with the mailing of notices required by the first paragraph above; provided, that neither failure to receive such notice nor any

defect in any notice so mailed shall affect the sufficiency of the proceedings for the prepayment of the Funding Loan.

Notwithstanding the foregoing, in the event the Fiscal Agent is not collecting and remitting loan payments hereunder, the Fiscal Agent shall have no obligation to send prepayment notices pursuant to this Section 3.02.

#### ARTICLE IV

#### REVENUES AND FUNDS

**Section 4.01 *Pledge of Revenues and Assets; Establishment of Funds.*** The pledge and assignment of and the security interest granted in the Pledged Security pursuant to Section 2.02 hereof shall attach, be perfected and be valid and binding from and after the time of the closing of the Funding Loan and delivery of the Governmental Note by the Fiscal Agent or by any Person authorized by the Fiscal Agent to deliver the Governmental Note. The Pledged Security so pledged and then or thereafter received by the Fiscal Agent shall immediately be subject to the lien of such pledge and security interest without any physical delivery thereof or further act, and the lien of such pledge and security interest shall be valid and binding and prior to the claims of any and all parties having claims of any kind in tort, contract or otherwise against the Governmental Lender irrespective of whether such parties have notice thereof.

In addition to the Project Loan Fund established pursuant to Section 2.11 hereof, the Fiscal Agent shall establish, maintain and hold in trust the following funds and accounts, each of which is hereby established and each of which shall be disbursed and applied only as herein authorized:

- (a) Revenue Fund;
- (b) Loan Payment Fund;
- (c) Loan Prepayment Fund;
- (d) Administration Fund (and therein a Governmental Lender Fee Account);
- (e) Cost of Issuance Fund; and
- (f) Rebate Fund.

The funds and accounts established pursuant to Section 2.11 and this Section 4.01 shall be maintained in the corporate trust department of the Fiscal Agent as segregated trust accounts, separate and identifiable from all other funds held by the Fiscal Agent. The Fiscal Agent shall, at the written direction of an Authorized Officer of the Governmental Lender, and may, in its discretion, establish such additional accounts within any Fund, and subaccounts within any of the accounts, as the Governmental Lender or the Fiscal Agent may deem necessary or useful for the purpose of identifying more precisely the sources of payments into and disbursements from that Fund and its accounts, or for the purpose of complying with the requirements of the Code relating to arbitrage, but the establishment of any such account or subaccount shall not alter or modify any

of the requirements of this Funding Loan Agreement with respect to a deposit or use of money in the funds established hereunder, or result in commingling of funds not permitted hereunder.

**Section 4.02 Project Loan Fund.**

(a) Deposit. The Fiscal Agent shall deposit the proceeds of the Funding Loan into the Project Account of the Project Loan Fund upon receipt of each advance thereof as provided in Section 2.11(b) hereof; provided, however, that the Funding Lender Representative may, prior to completion of the Project in accordance with the Construction Continuing Covenant Agreement, direct the Fiscal Agent to deposit into the Capitalized Interest Account a portion of the proceeds of any advance of the Funding Loan for purposes of paying interest due on the Funding Loan. The Fiscal Agent shall deposit the Borrower Equity Deposit into the Borrower Equity Account of the Project Loan Fund, as well as any additional amounts delivered from time to time to the Fiscal Agent and directed by the Borrower or Servicer to be deposited therein (excluding any proceeds of the Governmental Note), as provided in Section 2.11(c) hereof.

(b) Disbursements. Amounts on deposit in the Project Loan Fund shall be disbursed from time to time by the Fiscal Agent for the purpose of: (i) paying interest on the Funding Loan and the Fee Component in each case when due during the Construction Phase and (ii) paying Costs of the Project. In addition, amounts in the Project Loan Fund shall be transferred to the Loan Prepayment Fund, the Rebate Fund and the Borrower at the times and in the manner provided in subsection (e) of this Section 4.02.

(c) Transfers and Requisitions. The Fiscal Agent shall automatically transfer amounts from the Borrower Equity Account of the Project Loan Fund to the Administration Fund to pay to the appropriate party its accrued fees that are included in the Fee Component that are due and payable as set forth herein or upon receipt of an invoice, without any need for a Requisition or other written direction. Upon the written direction of the Initial Funding Lender, the Fiscal Agent shall transfer amounts in the Project Loan Account or the Borrower Equity Account of the Project Loan Fund to the Loan Payment Fund to pay interest on the Project Loan and Funding Loan without any need for a Requisition. The Fiscal Agent shall make disbursements from the respective accounts of the Project Loan Fund for purposes described in subsection (b)(ii) of this Section 4.02 only upon the receipt of Requisitions signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer (signifying the consent to the Requisition by the Servicer) and countersigned by an Authorized Officer of the Governmental Lender Servicer (signifying the consent to the Requisition by the Governmental Lender Servicer). The Fiscal Agent shall have no right or duty to determine whether any requested disbursement from the Project Loan Fund complies with the terms, conditions and provisions of the Construction Continuing Covenant Agreement. The countersignature of the Authorized Officer of the Servicer on a Requisition shall be deemed a certification and, insofar as the Fiscal Agent and the Governmental Lender are concerned, constitute conclusive evidence, that all of the terms, conditions and requirements of the Construction Continuing Covenant Agreement applicable to such disbursement have been fully satisfied or waived. The Fiscal Agent shall, immediately upon each receipt of a completed Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer and the Governmental Lender Servicer, initiate procedures with the provider of a Qualified Investment to make withdrawals as necessary to fund the Requisition.

Notwithstanding anything to the contrary contained herein, no signature of an Authorized Officer of the Borrower or an Authorized Officer of the Governmental Lender Servicer shall be required during any period in which a default has occurred and is then continuing under the Loans or any Financing Document (notice of which default has been given in writing by the Funding Lender Representative or the Servicer to the Fiscal Agent, the Borrower, and the Governmental Lender, and the Fiscal Agent shall be entitled to conclusively rely on any such written notice as to the occurrence and continuation of such a default).

(d) If a Requisition signed by an Authorized Officer of the Borrower and countersigned by an Authorized Officer of the Servicer or Governmental Lender Servicer or (as permitted hereunder) solely by an Authorized Officer of the Servicer, is received by the Fiscal Agent, the requested disbursement shall be paid by the Fiscal Agent as soon as practicable, but in no event later than three (3) Business Days following receipt thereof by the Fiscal Agent. Upon final disbursement of all amounts on deposit in the Project Loan Fund, including all interest accrued therein, the Fiscal Agent shall close the Project Loan Fund.

(e) Immediately prior to any mandatory prepayment of the Funding Loan pursuant to Section 3.01(b)(i) hereof, any amount then remaining in the Project Loan Fund shall, at the written direction of the Funding Lender Representative, be transferred to the Loan Prepayment Fund to pay amounts due on the Funding Loan, if any. In addition, any amount remaining in the Project Account of the Project Loan Fund following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement, evidenced by an instrument signed by the Funding Lender Representative or the Servicer, shall be transferred to the Loan Prepayment Fund and used to prepay the Funding Loan in accordance with Section 3.01(b)(ii) hereof, unless the Fiscal Agent receives an opinion of Bond Counsel (which shall also be addressed to the Funding Lender Representative) to the effect that a use of such money for other than prepayment of the Funding Loan will not adversely affect the tax-exempt status of the Governmental Note; provided, that any amounts in the Project Account of the Project Loan Fund in excess of the amount needed to fund the related prepayment of the Funding Loan shall be transferred to the Rebate Fund. In the event there are funds remaining in the Borrower Equity Account following completion of the construction of the Project in accordance with the Construction Continuing Covenant Agreement and the Conversion Date has occurred, and provided no default by the Borrower exists under this Funding Loan Agreement or any Project Loan Document, such funds shall be paid by the Fiscal Agent to the Borrower at the written direction of the Funding Lender Representative or the Servicer.

(f) Amounts on deposit in the Project Loan Fund shall be invested as provided in Section 4.08 hereof. All Investment Income on amounts on deposit in the Project Loan Fund shall be retained in and credited to and become a part of the amounts on deposit in the Project Loan Fund, and shall constitute part of any transfers required by subsection (b) or (e) of this Section 4.02.

#### **Section 4.03 *Application of Revenues.***

(a) All Revenues received by the Fiscal Agent shall be deposited by the Fiscal Agent, promptly upon receipt thereof, to the Revenue Fund, except (i) the proceeds of the Funding Loan received by the Fiscal Agent pursuant to Section 2.01(b), which shall be applied in accordance



with the provisions of Section 2.11 hereof; (ii) as otherwise specifically provided in subsection (c) of this Section 4.03 with respect to certain deposits into the Loan Prepayment Fund; (iii) with respect to Investment Income to the extent required under the terms hereof to be retained in the funds and accounts to which they are attributable; and (iv) with respect to amounts required to be transferred between funds and accounts as provided in this Article IV.

(b) Subject to Section 2.12 hereof, on each Interest Payment Date or any other date on which payment of principal of or interest on the Funding Loan becomes due and payable, the Fiscal Agent, out of money in the Revenue Fund, shall credit the following amounts to the following funds, but in the order and within the limitations hereinafter indicated with respect thereto, as follows:

**FIRST:** to the Loan Payment Fund, an amount equal to the principal of and interest due on the Funding Loan on such date (including scheduled principal pursuant to the Funding Loan Amortization Schedule); and

**SECOND:** to the Loan Prepayment Fund, an amount equal to the principal and interest due on the Funding Loan on such date with respect to a mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b) hereof (other than any extraordinary mandatory prepayment as described in Section 4.03(c)(i) or (iii) below).

(c) Promptly upon receipt, the Fiscal Agent shall deposit directly to the Loan Prepayment Fund (i) Net Proceeds representing casualty insurance proceeds or condemnation awards paid as a prepayment of the Project Loan, such amount to be applied to provide for the extraordinary mandatory prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(b)(i) hereof; (ii) funds paid to the Fiscal Agent to be applied to the optional prepayment of all or a portion of the Funding Loan pursuant to Section 3.01(a); (iii) amounts transferred to the Loan Prepayment Fund from the Project Loan Fund pursuant to Section 4.02(e) hereof and (iv) amounts transferred to the Loan Prepayment Fund from the Governmental Lender Fee Account of the Administration Fund pursuant to Section 4.06 hereof.

(d) Subject to Section 2.12 hereof, should the amount in the Loan Payment Fund be insufficient to pay the amount due on the Funding Loan on any given Interest Payment Date, the Fiscal Agent shall credit to the Loan Payment Fund the amount of such deficiency by charging the following funds and accounts in the following order of priority: (1) the Revenue Fund; and (2) the Loan Prepayment Fund, except no such charge to the Loan Prepayment Fund shall be made from money to be used to effect a prepayment for which notice of prepayment has been provided for hereunder.

**Section 4.04 Application of Loan Payment Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall charge the Loan Payment Fund, on each Interest Payment Date, an amount equal to the unpaid interest and principal due on the Funding Loan on such Interest Payment Date as provided in Section 4.03(a) and (b), and shall cause the same to be applied to the payment of such interest and principal when due. Any money remaining in the Loan Payment Fund on any Interest Payment Date after application as provided in the preceding sentence may, to the extent there shall exist any deficiency in the Loan Prepayment Fund to prepay the Funding Loan if called for

prepayment on such Interest Payment Date, be transferred to the Loan Prepayment Fund to be applied for such purpose.

Any Investment Income on amounts on deposit in the Loan Payment Fund shall be deposited by the Fiscal Agent upon receipt thereof in the Revenue Fund.

No amount shall be charged against the Loan Payment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.05 Application of Loan Prepayment Fund.** Any money credited to the Loan Prepayment Fund shall be applied as set forth in Sections 4.03(b) and 4.03(c) hereof; provided, however, that to the extent any money credited to the Loan Prepayment Fund is in excess of the amount necessary to effect the prepayments described in Sections 4.03(b) and 4.03(c) hereof it shall be applied to make up any deficiency in the Loan Payment Fund on any Interest Payment Date, to the extent money then available in accordance with Section 4.03(d) hereof in the Revenue Fund is insufficient to make up such deficiency; provided that no money to be used to effect a prepayment for which a notice of prepayment has been provided shall be so transferred to the Loan Payment Fund.

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Loan Prepayment Fund shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Loan Prepayment Fund except as expressly provided in this Article IV and in Section 6.05 hereof.

**Section 4.06 Administration Fund.** Subject to Section 2.12 hereof, the Fiscal Agent shall deposit into the Administration Fund, promptly upon receipt thereof, all amounts received from the Servicer (or the Borrower if no Servicer exists for the Loans) designated for deposit into such fund, together with amounts transferred by the Fiscal Agent from the Project Loan Fund for deposit to the Administration Fund pursuant to Section 4.02. Amounts in the Administration Fund shall be withdrawn or maintained, as appropriate, by the Fiscal Agent and used **FIRST**, to pay to the Fiscal Agent when due the Ordinary Fiscal Agent's Fees and Expenses; **SECOND**, to pay to the Governmental Lender when due the Governmental Lender Fee; **THIRD**, to pay when due the reasonable fees and expenses of a Rebate Analyst in connection with the computations relating to arbitrage rebate required under this Funding Loan Agreement and the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, upon receipt of an invoice from the Rebate Analyst; **FOURTH**, to pay to the Fiscal Agent any Extraordinary Fiscal Agent's Fees and Expenses due and payable from time to time, as set forth in an invoice submitted to the Borrower and the Servicer; **FIFTH**, to pay to the Governmental Lender any extraordinary expenses it may incur in connection with the Loans or this Funding Loan Agreement from time to time, as set forth in an invoice submitted to the Fiscal Agent and the Servicer; **SIXTH**, to pay to the Funding Lender Representative any unpaid amounts due under the Continuing Covenant Agreement, as certified in writing by the Funding Lender Representative to the Fiscal Agent; **SEVENTH**, to make up any deficiency in the Loan Prepayment Fund on any prepayment date of the Funding Loan, to the extent money then available in accordance with Section 4.03(d) hereof in the Loan Prepayment Fund is insufficient to prepay the Funding Loan scheduled for prepayment

on such prepayment date; and **EIGHTH**, to transfer any remaining balance after application as aforesaid to the Revenue Fund.

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

On or before each Interest Payment Date, any Investment Income on amounts on deposit in the Administration Fund not needed to pay the foregoing amounts shall be credited by the Fiscal Agent to the Revenue Fund.

No amount shall be charged against the Administration Fund except as expressly provided in this Article IV and Section 6.05-hereof.

Notwithstanding the foregoing, on the Delivery Date, the Fiscal Agent shall credit to the Governmental Lender Fee Account of the Administration Fund the Conversion Fee component of the Governmental Lender Fee delivered by the Borrower to the Fiscal Agent on the Delivery Date. The amounts held in the Governmental Lender Fee Account shall be used to pay the Conversion Fee component of the Governmental Lender Fee and for no other purpose. Investment Income on amounts on deposit in the Governmental Lender Fee Account of the Administration Fund shall be credited by the Fiscal Agent to the Loan Repayment Fund on each Interest Payment Date. On the earlier to occur of the Conversion Date or the date on which the Funding Loan is prepaid pursuant to Section 3.01(b)(iv) hereof, the Fiscal Agent shall transfer all amounts on deposit in the Governmental Lender Fee Account to the Governmental Lender as payment for the Conversion Fee component of the Governmental Lender Fee and such Governmental Lender Fee Account shall be closed.

**Section 4.07 [Reserved].**

**Section 4.08 *Investment of Funds.*** The money held by the Fiscal Agent shall constitute trust funds for the purposes hereof. Any money attributable to each of the funds and accounts hereunder shall be, except as otherwise expressly provided herein, invested by the Fiscal Agent, at the written direction of the Borrower (or, in the case of the Rebate Fund, as provided in Section 5.07(b)), in Qualified Investments which mature or shall be subject to prepayment or withdrawal at par without penalty on or prior to the earlier of (i) six months from the date of investment and (ii) the date such money is needed; provided, that if the Fiscal Agent shall have entered into any investment agreement requiring investment of money in any fund or account hereunder in accordance with such investment agreement and if such investment agreement constitutes a Qualified Investment, such money shall be invested in accordance with such requirements. Such investments may be made through the investment or securities department of the Fiscal Agent. The Fiscal Agent may purchase from or sell to itself or an affiliate, as principal or agent, securities herein authorized. The Fiscal Agent shall be entitled to assume, absent receipt by the Fiscal Agent

of written notice to the contrary, that any investment which at the time of purchase is a Qualified Investment remains a Qualified Investment thereafter.

Qualified Investments representing an investment of money attributable to any fund or account shall be deemed at all times to be a part of said fund or account, and, except as otherwise may be provided expressly in other Sections hereof, the interest thereon and any profit arising on the sale thereof shall be credited to the Revenue Fund, and any loss resulting on the sale thereof shall be charged against the Revenue Fund. Such investments shall be sold at the best price obtainable (but not less than par) whenever it shall be necessary so to do in order to provide money to make any transfer, withdrawal, payment or disbursement from said fund or account. In the case of any required transfer of money to another such fund or account, such investments may be transferred to that fund or account in lieu of the required money if permitted hereby as an investment of money in that fund or account. The Fiscal Agent shall not be liable or responsible for any loss resulting from any investment made in accordance herewith.

The Governmental Lender and Borrower acknowledge that to the extent that regulations of the Comptroller of the Currency or other applicable regulatory agency grant the Governmental Lender and Borrower the right to receive brokerage confirmations of the security transactions as they occur, to the extent permitted by law, the Governmental Lender and Borrower specifically waive compliance with 12 C.F.R. 12 and hereby notifies the Fiscal Agent hereunder, that no brokerage confirmations need be sent relating to the security transactions as they occur.

In computing for any purpose hereunder the amount in any fund or account on any date, obligations so purchased shall be valued at Fair Market Value.

The Fiscal Agent may conclusively rely upon the Borrower's written instructions as to both the suitability and legality of the directed investments. In the absence of investment instructions from the Borrower, the Fiscal Agent shall hold the moneys held by it hereunder uninvested.

**Section 4.09 [Reserved].**

**Section 4.10 Accounting Records.** The Fiscal Agent shall maintain accurate books and records for all funds and accounts established hereunder.

**Section 4.11 Amounts Remaining in Funds.** After full payment of the Funding Loan (or provision for payment thereof having been made in accordance with Section 9.01 hereof) and full payment of the fees, charges and expenses of the Governmental Lender, the Fiscal Agent, the Rebate Analyst, the Funding Lender and the Servicer and other amounts required to be paid hereunder or under any Project Loan Document, including, but not limited to, the Continuing Covenant Agreement (as certified in writing to the Fiscal Agent by the Governmental Lender with respect to amounts due to the Governmental Lender and by the Funding Lender Representative or the Servicer on its behalf with respect to amounts owed under the Continuing Covenant Agreement and by the Rebate Analyst with respect to amounts due to the Rebate Analyst), any amounts remaining in any fund or account hereunder other than the Rebate Fund shall be paid to the Borrower.

**Section 4.12 Rebate Fund; Compliance with Tax Certificate.** The Rebate Fund shall be established by the Fiscal Agent and held and applied as provided in this Section 4.12. On any date

on which any amounts are required by applicable federal tax law to be rebated to the federal government, amounts shall be deposited into the Rebate Fund by the Borrower for such purpose. All money at any time deposited in the Rebate Fund shall be held by the Fiscal Agent in trust, to the extent required to satisfy the rebate requirement (as set forth in the Tax Certificate) and as calculated by the Rebate Analyst, for payment to the government of the United States of America, and neither the Governmental Lender, the Borrower nor the Funding Lender shall have any rights in or claim to such money. All amounts deposited into or on deposit in the Rebate Fund shall be governed by this Section 4.12 and by the Tax Certificate. The Fiscal Agent shall conclusively be deemed to have complied with such provisions if it follows the written instructions of the Governmental Lender, Bond Counsel or the Rebate Analyst, including supplying all necessary information in the manner set forth in the Tax Certificate, and shall not be required to take any actions under the Tax Certificate in the absence of written instructions from the Governmental Lender, Bond Counsel or the Rebate Analyst.

Within 55 days of the end of each fifth Rebate Year, the Borrower shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage, in accordance with Section 148(f)(2) of the Code and Section 1.148-3 of the Treasury Regulations (taking into account any exceptions with respect to the computation of the rebatable arbitrage, described, if applicable, in the Tax Certificate (e.g., the temporary investments exceptions of Section 148(f)(4)(B) and (C) of the Code)), for this purpose treating the last day of the applicable Rebate Year as a (computation) date, within the meaning of Section 1.148-1(b) of the Treasury Regulations (the "**Rebatable Arbitrage**"). Pursuant to Section 2.04 of the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender. In the event that the Borrower fails to provide such information to the Fiscal Agent and the Governmental Lender within 55 days of the end of each fifth Rebate Year, the Fiscal Agent, at the expense of the Borrower, shall select the Rebate Analyst, with the prior written approval of the Governmental Lender, and shall cause the Rebate Analyst to calculate the amount of rebatable arbitrage as required herein.

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

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

- (i) Not later than 60 days after the end of (A) the fifth Rebate Year, and (B) each applicable fifth Rebate Year thereafter, an amount equal to at least 90% of the Rebatable Arbitrage calculated as of the end of such Rebate Year; and
- (ii) Not later than 60 days after the payment in whole of the Funding Loan, an amount equal to 100% of the Rebatable Arbitrage calculated as of the end of such applicable Rebate Year, and any income attributable to the Rebatable Arbitrage, computed in accordance with Section 148(f) of the Code.

Each payment required to be made under this Section shall be made to the Internal Revenue Service Center, Ogden, Utah 84201 (or such other address provided in such direction), on or before the date on which such payment is due, and shall be accompanied by Internal Revenue Service Form 8038-T, which shall be prepared by the Rebate Analyst and provided to the Fiscal Agent.

Notwithstanding any provision of this Funding Loan Agreement to the contrary, the obligation to remit payment of the Rebatable Arbitrage to the United States of America and to comply with all other requirements of Sections 2.04 and 4.03 of the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, and this Section 4.12, and the requirements of the Tax Certificate shall survive the defeasance or payment in full of the Funding Loan.

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

The Fiscal Agent shall obtain and keep such records of the computations made pursuant to this Section 4.12 as are required under Section 148(f) of the Code to the extent furnished to the Fiscal Agent. The Borrower shall or shall cause the Rebate Analyst to provide to the Governmental Lender and the Fiscal Agent copies of all rebate computations made pursuant to this Section 4.12. The Fiscal Agent shall keep and make available to the Borrower such records concerning the investments of the gross proceeds of the Funding Loan and the investments of earnings from those investments made by the Fiscal Agent as may be requested by the Borrower in order to enable the Borrower to cause the Rebate Analyst to make the aforesaid computations as are required under Section 148(f) of the Code.

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

**Section 4.13 Cost of Issuance Fund.** The Fiscal Agent shall use money on deposit to the credit of the Cost of Issuance Fund to pay the Costs of Issuance on the Delivery Date or as soon as practicable thereafter in accordance with a Requisition in the form of Exhibit D to be given to the Fiscal Agent by the Borrower on the Delivery Date, along with appropriate invoices for such expenses. Investment Income on amounts on deposit in the Cost of Issuance Fund shall be retained in such fund. Amounts remaining on deposit in the Cost of Issuance Fund six (6) months after the Delivery Date shall be transferred to the Borrower. Upon such final disbursement, the Fiscal Agent shall close the Cost of Issuance Fund.

**Section 4.14 Reports From the Fiscal Agent.** The Fiscal Agent shall, on or before the fifteenth (15th) day of each month, file with the Funding Lender Representative, the Servicer, the Governmental Lender (at its written request) and the Borrower a statement setting forth in respect of the preceding calendar month:

(i) the amount withdrawn or transferred by it, and the amount deposited within or on account of each fund and account held by it under the provisions of this Funding Loan Agreement, including the amount of investment income on each fund and account;

(ii) the amount on deposit with it at the end of such month to the credit of each fund and account;

(iii) a brief description of all obligations held by it as an investment of money in each such fund and account; and

(iv) any other information which the Funding Lender Representative or the Governmental Lender may reasonably request and to which the Fiscal Agent has access in the ordinary course of its operations.

Upon the written request of the Funding Lender, the Fiscal Agent, at the cost of the Borrower, shall provide a copy of such statement to Funding Lender. All records and files pertaining to the Pledged Security shall be open at all reasonable times to the inspection of the Borrower, the Governmental Lender and the Funding Lender Representative or the Servicer and their agents and representatives upon reasonable prior notice during normal business hours.

## ARTICLE V

### GENERAL COVENANTS AND REPRESENTATIONS

**Section 5.01 *Payment of Principal and Interest.*** The Governmental Lender covenants that it will promptly pay or cause to be paid, but only from the sources identified herein, sufficient amounts to provide for the payment of the principal of, premium, if any, and interest on the Funding Loan at the place, on the dates and in the manner provided herein and in the Governmental Note, according to the true intent and meaning thereof.

**Section 5.02 *Performance of Covenants.*** The Governmental Lender covenants that it will faithfully perform at all times any and all of its covenants, undertakings, stipulations and provisions contained in this Funding Loan Agreement, in the Governmental Note and in all proceedings pertaining thereto.

**Section 5.03 *Instruments of Further Assurance.*** The Governmental Lender covenants that it will do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered, such supplements hereto, and such further acts, instruments and transfers as may be reasonably required for the better assuring, transferring, conveying, pledging, assigning and confirming unto the Fiscal Agent all and singular its interest in the property herein described and the revenues, receipts and other amounts pledged hereby to the payment of the principal of, premium, if any, and interest on the Funding Loan. Any and all interest in property hereafter acquired which is of any kind or nature herein provided to be and become subject to the lien hereof shall and without any further conveyance, assignment or act on the part of the Governmental Lender or the Fiscal Agent, become and be subject to the lien of this Funding Loan Agreement as fully and completely as though specifically described herein, but nothing in this sentence contained shall be deemed to modify or change the obligations of the Governmental Lender under this Section 5.03. The Governmental Lender covenants and agrees that, except as herein otherwise

expressly provided, it has not and will not sell, convey, mortgage, encumber or otherwise dispose of any part of its interest in the Pledged Security or the revenues or receipts therefrom.

The Governmental Lender will promptly notify the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any of the following:

- (i) the submission of any claim or the initiation of any legal process, litigation or administrative or judicial investigation against the Governmental Lender with respect to the Loans;
- (ii) any change in the location of the Governmental Lender's principal office or any change in the location of the Governmental Lender's books and records relating to the transactions contemplated hereby;
- (iii) the occurrence of any default or Event of Default of which the Governmental Lender has actual knowledge;
- (iv) the commencement of any proceedings or any proceedings instituted by or against the Governmental Lender in any federal, state or local court or before any governmental body or agency, or before any arbitration board, relating to the Notes; or
- (v) the commencement of any proceedings by or against the Governmental Lender under any applicable bankruptcy, reorganization, liquidation, rehabilitation, insolvency or other similar law now or hereafter in effect or of any proceeding in which a receiver, liquidator, conservator, trustee or similar official shall have been, or may be, appointed or requested for the Governmental Lender or any of its assets relating to the Loans.

**Section 5.04 *Inspection of Project Books.*** The Governmental Lender covenants and agrees that all books and documents in its possession relating to the Project shall, upon reasonable prior notice, during normal business hours, be open to inspection and copying by such accountants or other agents as the Fiscal Agent or the Funding Lender Representative may from time to time reasonably designate.

**Section 5.05 *No Modification of Security; Additional Indebtedness.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) alter, modify or cancel, or agree to consent to alter, modify or cancel any agreement to which the Governmental Lender is a party, or which has been assigned to the Governmental Lender, and which relates to or affects the security for the Loans or the payment of any amount owed under the Financing Documents; or
- (ii) create or suffer to be created any lien upon the Pledged Security or any part thereof other than the lien created hereby and by the Security Instrument.



**Section 5.06 *Damage, Destruction or Condemnation.*** Net Proceeds resulting from casualty to or condemnation of the Project shall be applied as provided in the Continuing Covenant Agreement and, to the extent consistent therewith, Section 3.01(b)(i) hereof.

**Section 5.07 *Tax Covenants.***

(a) ***Governmental Lender's Covenants.*** The Governmental Lender covenants to and for the benefit of the Funding Lender that it will:

(i) neither make or use nor cause to be made or used any investment or other use of the proceeds of the Funding Loan or the money and investments held in the funds and accounts in any manner which would cause the Governmental Note to be an "arbitrage bond" under Section 148 of the Code and the Regulations issued under Section 148 of the Code (the "**Regulations**") or which would otherwise cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(ii) enforce or cause to be enforced all obligations of the Borrower under the Tax Regulatory Agreement in accordance with its terms and seek to cause the Borrower to correct any violation of the Tax Regulatory Agreement within a reasonable period after it first discovers or becomes aware of any such violation;

(iii) not take or cause to be taken any other action or actions, or fail to take any action or actions, if the same would cause the interest payable on the Governmental Note to be includable in gross income for federal income tax purposes;

(iv) at all times do and perform all acts and things permitted by law and necessary or desirable in order to assure that interest paid by the Governmental Lender on the Funding Loan will be excluded from the gross income for federal income tax purposes, of the Funding Lender pursuant to the Code, except in the event where the Funding Lender is a "substantial user" of the facilities financed with the Loans or a "related person" within the meaning of the Code; and

(v) not take any action or permit or suffer any action to be taken if the result of the same would be to cause the Governmental Note to be "federally guaranteed" within the meaning of Section 149(b) of the Code and the Regulations.

In furtherance of the covenants in this Section 5.07, the Governmental Lender and the Borrower shall execute, deliver and comply with the provisions of the Tax Certificate, which is by this reference incorporated into this Funding Loan Agreement and made a part of this Funding Loan Agreement as if set forth in this Funding Loan Agreement in full, and by its acceptance of this Funding Loan Agreement the Fiscal Agent acknowledges receipt of the Tax Certificate and acknowledges its incorporation into this Funding Loan Agreement by this reference and agrees to comply with the terms specifically applicable to it.

(b) ***Fiscal Agent's Covenants.*** The Fiscal Agent agrees that it will invest funds held under this Funding Loan Agreement in accordance with the covenants and terms of this Funding Loan Agreement and the Tax Certificate (this covenant shall extend through the term of the Funding Loan, to all funds and accounts created under this Funding Loan Agreement and all money

on deposit to the credit of any such fund or account). The Fiscal Agent covenants to and for the benefit of the Funding Lender that, notwithstanding any other provisions of this Funding Loan Agreement or of any other Financing Document, it will not knowingly make or cause to be made any investment or other use of the money in the funds or accounts created hereunder which would cause the Governmental Note to be classified as an "arbitrage bond" within the meaning of Sections 103(b) and 148 of the Code or would cause the interest on the Governmental Note to be includable in gross income for federal income tax purposes; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, the Funding Lender Representative, Bond Counsel or the Rebate Analyst. This covenant shall extend, throughout the term of the Funding Loan, to all funds created under this Funding Loan Agreement and all money on deposit to the credit of any such fund. Pursuant to this covenant, with respect to the investments of the funds and accounts under this Funding Loan Agreement, the Fiscal Agent obligates itself to comply throughout the term of the Funding Loan with the requirements of Sections 103(b) and 148 of the Code; provided that the Fiscal Agent shall be deemed to have complied with such requirements and shall have no liability to the extent it reasonably follows the written directions of the Borrower, the Governmental Lender, Bond Counsel or the Rebate Analyst. The Fiscal Agent further covenants that should the Governmental Lender or the Borrower file with the Fiscal Agent (it being understood that neither the Governmental Lender nor the Borrower has an obligation to so file), or should the Fiscal Agent receive, an opinion of Bond Counsel to the effect that any proposed investment or other use of proceeds of the Funding Loan would cause the Governmental Note to become an "arbitrage bond," then the Fiscal Agent will comply with any written instructions of the Governmental Lender, the Borrower, the Funding Lender Representative or Bond Counsel regarding such investment (which shall, in any event, be a Qualified Investment) or use so as to prevent the Governmental Note from becoming an "arbitrage bond," and the Fiscal Agent will bear no liability to the Governmental Lender, the Borrower, the Funding Lender or the Funding Lender Representative for investments made in accordance with such instructions.

**Section 5.08 Representations and Warranties of the Governmental Lender.** The Governmental Lender hereby represents and warrants as follows:

(a) The Governmental Lender is a public body corporate and politic duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to issue the Governmental Note and to execute and deliver this Funding Loan Agreement, the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The revenues and assets pledged for the repayment of the Funding Loan are and will be free and clear of any pledge, lien or encumbrance prior to, or equal with, the pledge created by this Funding Loan Agreement, and all action on the part of the Governmental Lender to that end has been duly and validly taken.

(d) The Financing Documents to which the Governmental Lender is a party have been validly authorized, executed and delivered by the Governmental Lender, and assuming due authorization, execution and delivery by the other parties thereto, constitute valid and binding obligations of the Governmental Lender, enforceable against the Governmental Lender in accordance with their respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

## ARTICLE VI

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

**Section 6.01 *Events of Default.*** Each of the following shall be an event of default with respect to the Funding Loan (an "Event of Default") under this Funding Loan Agreement:

(a) failure to pay the principal of, premium, if any, or interest on the Funding Loan when due, whether on an Interest Payment Date, at the stated maturity thereof, by proceedings for prepayment thereof, by acceleration or otherwise; or

(b) failure to observe the covenants set forth in Section 5.05 hereof; or

(c) failure to observe or perform any of the covenants, agreements or conditions on the part of the Governmental Lender (other than those set forth in Sections 5.01 and 5.05 hereof) set forth in this Funding Loan Agreement or in the Governmental Note and the continuance thereof for a period of thirty (30) days (or such longer period, if any, as is specified herein for particular defaults) after written notice thereof to the Governmental Lender from the Fiscal Agent or the Funding Lender Representative specifying such default and requiring the same to be remedied; provided that if such default cannot be cured within such thirty (30) day period through the exercise of diligence and the Governmental Lender commences the required cure within such thirty (30) day period and continues the cure with diligence and the Governmental Lender reasonably anticipates that the default could be cured within sixty (60) days, the Governmental Lender shall have sixty (60) days following receipt of such notice to effect the cure; or

(d) receipt by the Fiscal Agent of written notice from the Funding Lender Representative of the occurrence of an "Event of Default" under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, or the Continuing Covenant Agreement.

The Fiscal Agent will promptly notify the Borrower, the Governmental Lender, the Servicer and the Funding Lender Representative after a Responsible Officer obtains actual knowledge of the occurrence of an Event of Default or obtains actual knowledge of the occurrence of an event which would become an Event of Default with the passage of time or the giving of notice or both.

**Section 6.02 *Acceleration; Other Remedies Upon Event of Default.***

Upon the occurrence of an Event of Default, the Fiscal Agent shall, upon the written request of the Funding Lender Representative, by notice in writing delivered to the Governmental Lender, declare the principal of the Funding Loan and the interest accrued thereon immediately due and payable, and interest shall continue to accrue thereon until such amounts are paid.

At any time after the Funding Loan shall have been so declared due and payable, and before any judgment or decree for the payment of the money due shall have been obtained or entered, the Fiscal Agent may, but only if directed in writing by the Funding Lender Representative, by written notice to the Borrower, the Governmental Lender and the Fiscal Agent, rescind and annul such declaration and its consequences if the Governmental Lender or the Borrower shall pay to or deposit with the Fiscal Agent a sum sufficient to pay all principal on the Funding Loan then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on the Funding Loan then due, with interest at the rate borne by the Funding Loan on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable fees and expenses of the Fiscal Agent (including its counsel) shall have been made good or cured or adequate provision shall have been made therefor, and all outstanding amounts then due and unpaid under the Financing Documents (collectively, the "Cure Amount") shall have been paid in full, and all other defaults hereunder shall have been made good or cured or waived in writing by the Funding Lender Representative; but no such rescission and annulment shall extend to or shall affect any subsequent default, nor shall it impair or exhaust any right or power consequent thereon.

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

- (i) by mandamus or other suit, action or proceeding at law or in equity, to enforce the payment of the principal of, premium, if any, or interest on the Funding Loan and to require the Governmental Lender to carry out any covenants or agreements with or for the benefit of the Funding Lender and to perform its duties under the Act, this Funding Loan Agreement, the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, or the Tax Regulatory Agreement (as applicable) to the extent permitted under the applicable provisions thereof;
- (ii) by pursuing any available remedies under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Tax Regulatory Agreement or any other Financing Document;
- (iii) by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder; and

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

No remedy by the terms of this Funding Loan Agreement conferred upon or reserved to the Fiscal Agent or to the Funding Lender is intended to be exclusive of any other remedy, but each and every such remedy shall be cumulative and shall be in addition to any other remedy given to the Fiscal Agent or the Funding Lender hereunder or under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Tax Regulatory Agreement, the Continuing Covenant Agreement or any other Financing Document, as applicable, or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or shall be construed to be a waiver of any such 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. No waiver of any Event of Default hereunder, whether by the Fiscal Agent or the Funding Lender, shall extend to or shall affect any subsequent default or event of default or shall impair any rights or remedies consequent thereto.

**Section 6.03 *Funding Lender Representative Control of Proceedings.*** If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Funding Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Funding Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender (and in connection therewith the Fiscal Agent shall transfer or assign to the Funding Lender Representative all of its interest in the Pledged Security at the request of the Funding Lender Representative). In no event shall the exercise of any of the foregoing rights result in an acceleration of the Funding Loan without the express direction of the Funding Lender Representative.

**Section 6.04 *Waiver by Governmental Lender.*** Upon the occurrence of an Event of Default, to the extent that such right may then lawfully be waived, neither the Governmental Lender nor anyone claiming through or under it shall set up, claim or seek to take advantage of any appraisal, valuation, stay, extension or prepayment laws now or hereinafter in force, in order to prevent or hinder the enforcement of this Funding Loan Agreement; and the Governmental Lender, for itself and all who may claim through or under it, hereby waives, to the extent that it lawfully may do so, the benefit of all such laws and all right of appraisal and prepayment to which it may be entitled under the laws of the State and the United States of America.

**Section 6.05 *Application of Money After Default.*** All money collected by the Fiscal Agent at any time pursuant to this Article shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Fiscal Agent to the Revenue Fund. Such

money so credited to the Revenue Fund and all other money from time to time credited to the Revenue Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article IV hereof and this Section 6.05.

In the event that at any time the money credited to the Revenue Fund, the Loan Payment Fund and the Loan Prepayment Fund available for the payment of interest or principal then due with respect to the Governmental Note shall be insufficient for such payment, such money shall be applied as follows and in the following order of priority:

(a) For payment of all amounts due to the Fiscal Agent incurred in performance of its duties under this Funding Loan Agreement, including, without limitation, the payment of all reasonable fees and expenses of the Fiscal Agent incurred in exercising any remedies under this Funding Loan Agreement.

(b) To the extent directed in writing by the Funding Lender Representative, to the reimbursement of any unreimbursed advances made by or on behalf of the Funding Lender pursuant to the Continuing Covenant Agreement or the Security Instrument.

(c) Unless the full principal amount of the Funding Loan shall have become or have been declared due and payable:

**FIRST:** to the Funding Lender, all installments of interest then due on the Funding Loan in the order of the maturity of such installments; and

**SECOND:** to the Funding Lender, unpaid principal of and premium, if any, on the Funding Loan which shall have become due, whether at maturity or by call for prepayment, in the order in which they became due and payable.

(d) If the full principal amount of the Governmental Note shall have become or have been declared due and payable, to the Funding Lender for the payment of the principal of, premium, if any, and interest then due and unpaid on the Funding Loan 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.

**Section 6.06 Remedies Not Exclusive.** No right or remedy conferred upon or reserved to the Fiscal Agent, the Funding Lender or the Funding Lender Representative by the terms of this Funding Loan Agreement is intended to be exclusive of any other right or remedy, but each and every such remedy shall be cumulative and shall be in addition to every other right or remedy given to the Fiscal Agent, the Funding Lender or the Funding Lender Representative under this Funding Loan Agreement or existing at law or in equity or by statute (including the Act).

**Section 6.07 Fiscal Agent May Enforce Rights Without Governmental Note.** All rights of action and claims, including the right to file proof of claims, under this Funding Loan Agreement may be prosecuted and enforced by the Fiscal Agent at the written direction of the Funding Lender Representative without the possession of the Governmental Note or the production thereof in any trial or other proceedings relating thereto. Subject to the rights of the Funding Lender Representative to direct proceedings hereunder, any such suit or proceeding instituted by the Fiscal Agent shall be brought in its name as Fiscal Agent without the necessity of joining as plaintiffs or

defendants any Funding Lender, and any recovery or judgment shall be for the benefit as provided herein of the Funding Lender.

**Section 6.08 [Reserved].**

**Section 6.09 Termination of Proceedings.** In case the Fiscal Agent (at the direction of the Funding Lender Representative) or the Funding Lender Representative shall have proceeded to enforce any right under this Funding Loan Agreement by the appointment of a receiver, by entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely; then and in every such case the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower and the Funding Lender shall be restored to their former positions and rights hereunder with respect to the Pledged Security herein conveyed, and all rights, remedies and powers of the Fiscal Agent and the Funding Lender Representative shall continue as if no such proceedings had been taken.

**Section 6.10 Waivers of Events of Default.** The Fiscal Agent shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of and interest on the Funding Loan upon the written direction of the Funding Lender Representative. In case of any such waiver or rescission, or in case any proceeding taken by the Fiscal Agent on account of any such Event of Default shall have been discontinued or abandoned or determined adversely, then and in every such case the Governmental Lender, the Fiscal Agent, the Borrower, the Servicer, the Funding Lender Representative and the Funding Lender shall be restored to their former positions and rights hereunder, respectively, but no such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto.

**Section 6.11 Interest on Unpaid Amounts and Default Rate for Nonpayment.** In the event that principal of or interest payable on the Funding Loan is not paid when due, there shall be payable on the amount not timely paid, on each Interest Payment Date, interest at the Default Rate, to the extent permitted by law. Interest on the Funding Loan shall accrue at the Default Rate until the unpaid amount, together with interest thereon, shall have been paid in full.

**Section 6.12 Assignment of Project Loan; Remedies Under the Project Loan.**

(a) The Funding Lender Representative shall have the right, with respect to the Project Loan, in its sole and absolute discretion, without directing the Fiscal Agent to effect an acceleration of the Funding Loan, to instruct the Fiscal Agent in writing to assign the Construction Phase Project Note or Permanent Phase Project Note, as applicable, the Security Instrument and the other Project Loan Documents to the Funding Lender Representative, in which event the Fiscal Agent shall (a) endorse and deliver the Construction Phase Project Note or Permanent Phase Project Note, as applicable, to the Funding Lender Representative and assign (in recordable form) the Security Instrument, (b) execute and deliver to the Funding Lender Representative all documents prepared by the Funding Lender Representative necessary to assign (in recordable form) all other Project Loan Documents to the Funding Lender Representative and (c) execute all such documents prepared by the Funding Lender Representative as are necessary to legally and validly effectuate the assignments provided for in the preceding clauses (a) and (b). The Fiscal Agent's assignments to the Funding Lender Representative pursuant to this Section 6.12 shall be without recourse or warranty except that the Fiscal Agent shall represent and warrant in connection therewith (A) that

the Fiscal Agent has not previously endorsed or assigned any such documents or instruments and (B) that the Fiscal Agent has the corporate authority to endorse and assign such documents and instruments and such endorsements and assignments have been duly authorized.

(b) The Funding Lender Representative shall have the right, in its own name or on behalf of the Governmental Lender or the Fiscal Agent, to declare any default and exercise any remedies under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Construction Phase Project Note or Permanent Phase Project Note, as applicable, or the Security Instrument, whether or not the Governmental Note has been accelerated or declared due and payable by reason of an Event of Default or the occurrence of a mandatory prepayment.

**Section 6.13 Substitution.** Upon receipt of written notice from the Funding Lender Representative and the approval of the Governmental Lender as and to the extent permitted under the Tax Regulatory Agreement, the Fiscal Agent shall exchange the Construction Phase Project Note or Permanent Phase Project Note, as applicable, and the Security Instrument for a new Construction Phase Project Note or Permanent Phase Project Note, as applicable, and Security Instrument, evidencing and securing a new loan (the "New Project Loan"), which may be executed by a person other than the Borrower (the "New Borrower"), provided that if the Fiscal Agent, the Funding Lender or a nominee of the Fiscal Agent or the Funding Lender has acquired the Project through foreclosure, by accepting a deed in lieu of foreclosure or by comparable conversion of the Project, no approval from the Governmental Lender of such exchange shall be required. Prior to accepting a New Project Loan, the Fiscal Agent shall have received (i) written evidence that the New Borrower shall have executed and recorded a document substantially in the form of the Tax Regulatory Agreement (or executed and recorded an assumption of all of the Borrower's obligations under the Tax Regulatory Agreement) and that the Project Loan Documents have been modified as necessary to be applicable to the New Project Loan, and (ii) an opinion of Bond Counsel, to the effect that such exchange and modification, in and of itself, shall not affect the exclusion, from gross income, for federal income tax purposes of the interest payable on the Governmental Note.

## ARTICLE VII

### CONCERNING THE FISCAL AGENT

**Section 7.01 Standard of Care.** The Fiscal Agent, prior to an Event of Default as defined in Section 6.01 hereof and after the curing or waiver of all such events which may have occurred, shall perform such duties and only such duties as are specifically set forth in this Funding Loan Agreement and no implied covenants or obligations should be read into this Funding Loan Agreement against the Fiscal Agent. The Fiscal Agent, during the existence of any such Event of Default (which shall not have been cured or waived), shall exercise such rights and powers vested in it by this Funding Loan Agreement and use the same degree of care and skill in its exercise as a prudent Person would exercise or use under similar circumstances in the conduct of such Person's own affairs.

The permissive right of the Fiscal Agent to do things enumerated in this Funding Loan Agreement or the Construction Phase Project Loan Agreement or Permanent Phase Project Loan



Agreement, as applicable, shall not be construed as a duty. No provision of this Funding Loan Agreement shall be construed to relieve the Fiscal Agent from liability for its own negligence or willful misconduct, except that:

(a) prior to an Event of Default hereunder, and after the curing or waiver of all such Events of Default which may have occurred:

(i) the duties and obligations of the Fiscal Agent shall be determined solely by the express provisions of this Funding Loan Agreement, and the Fiscal Agent shall not be liable except with regard to the performance of such duties and obligations as are specifically set forth in this Funding Loan Agreement; and

(ii) in the absence of bad faith on the part of the Fiscal Agent, the Fiscal Agent may conclusively rely, as to the truth of the statements and the correctness of the opinions expressed therein, upon any certificate or opinion furnished to the Fiscal Agent by the Person or Persons authorized to furnish the same;

(b) at all times, regardless of whether or not any such Event of Default shall exist:

(i) the Fiscal Agent shall not be liable for any error of judgment made in good faith by an officer or employee of the Fiscal Agent except for willful misconduct or negligence by the officer or employee of the Fiscal Agent as the case may be; and

(ii) the Fiscal Agent shall not be liable with respect to any action taken or omitted to be taken by it in good faith in accordance with the direction of the Funding Lender Representative relating to the time, method and place of conducting any proceeding for any remedy available to the Fiscal Agent, or exercising any trust or power conferred upon the Fiscal Agent under this Funding Loan Agreement.

Before taking any action under this Funding Loan Agreement relating to an Event of Default or in connection with its duties under this Funding Loan Agreement other than making payments of principal and interest on the Governmental Note as they become due or causing an acceleration of the Governmental Note whenever required by the Funding Loan Agreement, the Fiscal Agent may require that satisfactory indemnity be furnished to it for the reimbursement of all expenses to which it may be put and to protect it against all liability, including, but not limited to, any liability arising directly or indirectly under any federal, state or local statute, rule, law or ordinance related to the protection of the environment or hazardous substances, but except for liability which is adjudicated to have resulted from the Fiscal Agent's own negligence or willful misconduct in connection with any action so taken.

When the Fiscal Agent incurs expenses or renders services after the occurrence of an Event of Default, such expenses and the compensation for such services are intended to constitute expenses of administration under any federal or state bankruptcy, insolvency, arrangement, moratorium, reorganization or other debtor relief law.

**Section 7.02 *Reliance Upon Documents.*** Except as otherwise provided in Section 7.01 hereof:

(a) the Fiscal Agent may rely upon the authenticity or truth of the statements and the correctness of the opinions expressed in, and shall be protected in acting and relying upon any resolution, certificate, statement, instrument, opinion (including an opinion of independent counsel), report, notice, notarial seal, stamp, affidavit, letter, telegram acknowledgment, verification, request, consent, order, bond or other paper or document in good faith deemed by it to be genuine and correct and to have been signed or sent by the proper party or parties, including any Electronic Notice as permitted hereunder or under the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable;

(b) any notice, request, direction, election, order or demand of the Governmental Lender mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender by an Authorized Officer of the Governmental Lender (unless other evidence in respect thereof be herein specifically prescribed), and any resolution of the Governmental Lender may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by an Authorized Officer of the Governmental Lender;

(c) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Borrower mentioned herein shall be sufficiently evidenced by an instrument purporting to be signed in the name of the Borrower by any Authorized Officer of the Borrower (unless other evidence in respect thereof be herein specifically prescribed), and any resolution or certification of the Borrower may be evidenced to the Fiscal Agent by a copy of such resolution duly certified by a secretary or other authorized representative of the Borrower;

(d) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Servicer by an Authorized Officer of the Servicer (unless other evidence in respect thereof be herein specifically prescribed);

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

(f) any notice, request, certificate, statement, requisition, direction, election, order or demand of the Governmental Lender Servicer mentioned herein shall be sufficiently evidenced by an instrument signed in the name of the Governmental Lender Servicer by an Authorized Officer of the Governmental Lender Servicer (unless other evidence in respect thereof be herein specifically prescribed);

(g) Notwithstanding anything contained herein or in the Mortgage to the contrary, upon the occurrence and continuance of an Event of Default, before taking any foreclosure action or any action which may subject the Fiscal Agent to liability under any environmental law, statute, regulation or similar requirement relating to the environment, the Fiscal Agent may require that a satisfactory indemnity bond, indemnity or environmental impairment insurance be furnished for the payment or reimbursement of all expenses to which it may be put and to protect it against all liability resulting from any claims, judgments, damages, losses, penalties, fines, liabilities (including strict liability) and expenses which may result from such foreclosure or other action.

The Fiscal Agent shall not be required to take any action to foreclose or otherwise enforce the mortgage unless indemnified to its satisfaction and will not be required to foreclose if doing so will subject it to environmental liability or will require the approval of a governmental regulator that cannot be obtained;

(h) in the administration of the trusts of this Funding Loan Agreement, (i) the Fiscal Agent may execute any of the trusts or powers hereby granted directly or through its agents, custodians, nominees, receivers or attorneys appointed with due care, and (ii) the Fiscal Agent may consult with counsel (who may be counsel for the Governmental Lender, the Servicer or the Funding Lender Representative) concerning all matters of trusts hereof and duties hereunder, and the opinion or advice of such counsel shall be full and complete authorization and protection in respect of any action taken, suffered or omitted by it hereunder in good faith and in accordance with the opinion of such counsel;

(i) whenever in the administration of the trusts of this Funding Loan Agreement, the Fiscal Agent shall deem it necessary or desirable that a matter be proved or established prior to taking or permitting any action hereunder, such matters (unless other evidence in respect thereof be herein specifically prescribed), may in the absence of negligence or willful misconduct on the part of the Fiscal Agent; be deemed to be conclusively proved and established by a certificate of an officer or authorized agent of the Governmental Lender or the Borrower and such certificate shall in the absence of bad faith on the part of the Fiscal Agent be full warrant to the Fiscal Agent for any action taken or permitted by it under the provisions of this Funding Loan Agreement, but in its discretion the Fiscal Agent may in lieu thereof accept other evidence of such matter or may require such further or additional evidence as it may deem reasonable;

(j) the recitals herein and in the Governmental Note (except the Fiscal Agent's certificate of authentication thereon) shall not be considered as made by or imposing any obligation or liability upon the Fiscal Agent. The Fiscal Agent makes no representations as to the value or condition of the Pledged Security or any part thereof, or as to the title of the Governmental Lender or the Borrower to the Pledged Security, or as to the security of this Funding Loan Agreement, or of the Governmental Note issued hereunder, and the Fiscal Agent shall incur no liability or responsibility in respect of any of such matters;

(k) the Fiscal Agent shall not be personally liable for debts contracted or liability for damages incurred in the management or operation of the Pledged Security except for its own willful misconduct or negligence; and every provision of this Funding Loan Agreement relating to the conduct or affecting the liability of or affording protection to the Fiscal Agent shall be subject to the provisions of this Section 7.02(k);

(l) the Fiscal Agent shall not be required to ascertain or inquire as to the performance or observance of any of the covenants or agreements (except to the extent they obligate the Fiscal Agent) herein or in any contracts or securities assigned or conveyed to or pledged with the Fiscal Agent hereunder, except Events of Default that are evident under Section 6.01(a) hereof. The Fiscal Agent shall not be required to take notice or be deemed to have notice or actual knowledge of any default or Event of Default specified in Section 6.01 hereof (except defaults under Section 6.01(a) hereof to the extent they are collecting loan payments hereunder) unless the Fiscal Agent shall receive from the Governmental Lender or the Funding Lender Representative written notice

stating that a default or Event of Default has occurred and specifying the same, and in the absence of such notice the Fiscal Agent may conclusively assume that there is no such default. Every provision contained in this Funding Loan Agreement or related instruments or in any such contract or security wherein the duty of the Fiscal Agent depends on the occurrence and continuance of such default shall be subject to the provisions of this Section 7.02(1);

(m) the Fiscal Agent shall be under no duty to confirm, review or verify any financial or other statements or reports or certificates furnished pursuant to any provisions hereof, except to the extent such statement or reports are furnished by or under the direction of the Fiscal Agent, and shall be under no other duty in respect of the same except to retain the same in its files and permit the inspection of the same at reasonable times by the Funding Lender. The Fiscal Agent shall not be deemed to have notice of any information contained therein, default or event of default which may be disclosed therein in any manner; and

(n) the Fiscal Agent shall be under no obligation to exercise those rights or powers vested in it by this Funding Loan Agreement, other than such rights and powers which it shall be obliged to exercise in the ordinary course of acting as Fiscal Agent under the terms and provisions of this Funding Loan Agreement and as required by law, at the request or direction of the Funding Lender Representative pursuant to Section 6.03 hereof, unless the Funding Lender Representative shall have offered to the Fiscal Agent reasonable security or indemnity against the costs, expenses and liabilities which might be incurred by it in the compliance with such request or direction.

None of the provisions contained in this Funding Loan Agreement shall require the Fiscal Agent to expend or risk its own funds or otherwise incur personal financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

The Fiscal Agent is authorized and directed to execute in its capacity as Fiscal Agent, the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, and the Tax Regulatory Agreement and shall have no responsibility or liability with respect to any information, statement or recital in any offering memorandum or other disclosure material prepared or distributed with respect to the delivery of the Governmental Note. In acting or omitting to act pursuant to the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Tax Regulatory Agreement or any other documents executed in connection herewith, the Fiscal Agent shall be entitled to all of the rights, immunities and indemnities accorded to it under this Funding Loan Agreement, including, but not limited to, this Article VII.

The Fiscal Agent or any of its affiliates may act as advisor or sponsor with respect to any Qualified Investments.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

Any resolution, certification, notice, request, direction, election, order or demand delivered to the Fiscal Agent pursuant to this Section 7.02 shall remain in effect until the Fiscal Agent receives written notice to the contrary from the party that delivered such instrument accompanied by revised information for such party.

The Fiscal Agent shall have no responsibility for the value of any collateral or with respect to the perfection or priority of any security interest in any collateral except as otherwise provided in Section 7.17 hereof.

**Section 7.03 Use of Proceeds.** The Fiscal Agent shall not be accountable for the use or application of the Governmental Note authenticated or delivered hereunder or of the proceeds of the Funding Loan except as provided herein.

**Section 7.04 Escrowed Funds.** In connection with the issuance of the Governmental Note, certain moneys will be deposited with the Fiscal Agent before the closing date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Fiscal Agent subject to the terms and conditions of this Funding Loan Agreement in addition to terms provided in such letter(s) of instruction. For such purpose the standards of care, provisions regarding responsibilities, and indemnification and other sections relating to the Fiscal Agent contained in this Funding Loan Agreement (the "Effective Provisions") shall be effective as of the first date of receipt by the Fiscal Agent of such moneys. The Effective Provisions shall be deemed incorporated into such letter(s) of instructions.

**Section 7.05 Trust Imposed.** All money received by the Fiscal Agent shall, until used or applied as herein provided, be held in trust for the purposes for which it was received.

**Section 7.06 Compensation of Fiscal Agent.** The Fiscal Agent shall be entitled to its Ordinary Fiscal Agent's Fees and Expenses in connection with the services rendered by it in the execution of the trusts hereby created and in the exercise and performance of any of the powers and duties of the Fiscal Agent hereunder or under any Financing Document to the extent money is available therefor, in accordance with Section 4.06 hereof, exclusive of Extraordinary Services. The Fiscal Agent shall be entitled to Extraordinary Fiscal Agent's Fees and Expenses in connection with any Extraordinary Services performed consistent with the duties hereunder or under any of the Financing Documents; provided the Fiscal Agent shall not incur any Extraordinary Fiscal Agent's Fees and Expenses without the consent of the Funding Lender Representative. If any property, other than cash, shall at any time be held by the Fiscal Agent subject to this Funding Loan Agreement, or any supplement hereto, as security for the Funding Loan, the Fiscal Agent, if and to the extent authorized by a receivership, bankruptcy, or other court of competent jurisdiction or by the instrument subjecting such property to the provisions of this Funding Loan Agreement as such security for the Funding Loan, shall be entitled to make advances for the purpose of preserving such property or of discharging tax liens or other liens or encumbrances thereon. Payment to the Fiscal Agent for its services and reimbursement to the Fiscal Agent for its expenses, disbursements, liabilities and advances, shall be limited to the sources described in the Construction Phase Project Loan Agreement or the Permanent Phase Project Loan Agreement, as applicable, and in Sections 4.06, 4.11 and 6.05 hereof. The Governmental Lender shall have no liability for Fiscal Agent's fees, costs or expenses. Subject to the provisions of Section 7.09 hereof, the Fiscal Agent agrees that it shall continue to perform its duties hereunder and under the Financing Documents even in the event that money designated for payment of its fees shall be insufficient for such purposes or in the event that the Borrower fails to pay the Ordinary Fiscal Agent's Fees and Expenses or, if applicable, the Extraordinary Fiscal Agent's Fees and Expenses as required by the Construction Phase Project Loan Agreement or the Permanent Phase Project Loan Agreement, as applicable.

The Borrower shall indemnify and hold harmless the Fiscal Agent and its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants and servants, past, present or future, from and against (a) any and all claims by or on behalf of any person arising from any cause whatsoever in connection with this Funding Loan Agreement or transactions contemplated hereby, the Project, or the delivery of the Governmental Note or the Loans; (b) any and all claims arising from any act or omission of the Borrower or any of its agents, contractors, servants, employees or licensees in connection with the Project, or the delivery of the Governmental Note or the Loans; and (c) all costs, counsel fees, expenses or liabilities incurred in connection with any such claim or proceeding brought thereon; except that the Borrower shall not be required to indemnify any person for damages caused by the gross negligence, willful misconduct or unlawful acts of such person or which arise from events occurring after the Borrower ceases to own the Project. In the event that any action or proceeding is brought or claim made against the Fiscal Agent, or any of its officers, directors, officials, employees, agents, receivers, attorneys, accountants, advisors, consultants or servants, with respect to which indemnity may be sought hereunder, the Borrower, upon written notice thereof from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The indemnified party shall have the right to approve a settlement to which it is a party and to employ separate counsel in any such action or proceedings and to participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel. The provisions of this Section 7.06 shall survive the termination of this Funding Loan Agreement.

**Section 7.07 *Qualifications of Fiscal Agent.*** There shall at all times be a Fiscal Agent hereunder which shall be an association or a corporation organized and doing business under the laws of the United States of America or any state thereof, authorized under such laws to exercise corporate trust powers. Any successor Fiscal Agent shall have a combined capital and surplus of at least \$50,000,000 (or shall be a wholly owned subsidiary of an association or corporation that has such combined capital and surplus), and be subject to supervision or examination by federal or state authority, or shall have been appointed by a court of competent jurisdiction pursuant to Section 7.11 hereof. If such association or corporation publishes reports of condition at least annually, pursuant to law or to the requirements of any supervising or examining authority referred to above, then for the purposes of this Section 7.07, the combined capital and surplus of such association or corporation shall be deemed to be its combined capital and surplus as set forth in its most recent report of condition so published. In case at any time the Fiscal Agent shall cease to be eligible in accordance with the provisions of this Section 7.07 and another association or corporation is eligible, the Fiscal Agent shall resign immediately in the manner and with the effect specified in Section 7.09 hereof.

**Section 7.08 *Merger of Fiscal Agent.*** Any association or corporation into which the Fiscal Agent may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its corporate trust business and assets as a whole or substantially as a whole, or any association or corporation resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party shall, *ipso facto*, be and become successor Fiscal Agent hereunder and vested with all the title to the whole property or Pledged Security and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instruments or any further act, deed or conveyance on the part of any of

the parties hereto, anything herein to the contrary notwithstanding, and shall also be and become successor Fiscal Agent in respect of the legal interest of the Fiscal Agent in the Loans.

**Section 7.09 *Resignation by the Fiscal Agent.*** The Fiscal Agent may at any time resign from the trusts hereby created by giving written notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative. Such notice to the Governmental Lender, the Borrower, the Servicer and the Funding Lender Representative may be served personally or sent by certified mail or overnight delivery service. The resignation of the Fiscal Agent shall not be effective until a successor Fiscal Agent has been appointed as provided herein and such successor Fiscal Agent shall have agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.10 *Removal of the Fiscal Agent.*** The Fiscal Agent may be removed at any time, either with or without cause, with the consent of the Funding Lender Representative (which consent of the Funding Lender Representative shall not be unreasonably withheld), by a written instrument signed by the Governmental Lender and delivered to the Fiscal Agent, the Servicer and the Borrower. The Fiscal Agent may also be removed by a written instrument signed by the Funding Lender Representative and delivered to the Fiscal Agent, the Servicer, the Governmental Lender and the Borrower. In each case written notice of such removal shall be given to the Servicer, the Borrower and to the Funding Lender. Any such removal shall take effect on the day specified in such written instrument(s), but the Fiscal Agent shall not be discharged from the trusts hereby created until a successor Fiscal Agent has been appointed and has accepted such appointment and has agreed in writing to be bound by the duties and obligations of the Fiscal Agent hereunder.

**Section 7.11 *Appointment of Successor Fiscal Agent.***

(a) In case at any time the Fiscal Agent shall resign or be removed, or be dissolved, or shall be in course of dissolution or liquidation, or otherwise become incapable of acting hereunder, or shall be adjudged a bankrupt or insolvent, or if a receiver of the Fiscal Agent or of its property shall be appointed, or if a public supervisory office shall take charge or control of the Fiscal Agent or of its property or affairs, a vacancy shall forthwith and ipso facto be created in the office of such Fiscal Agent hereunder, and the Governmental Lender, with the written consent of the Funding Lender Representative, shall promptly appoint a successor Fiscal Agent. Any such appointment shall be made by a written instrument executed by an Authorized Officer of the Governmental Lender. If the Governmental Lender fails to appoint a successor Fiscal Agent within ten (10) days following the resignation or removal of the Fiscal Agent pursuant to Section 7.09 or Section 7.10 hereunder, as applicable, the Funding Lender Representative may appoint a successor Fiscal Agent.

(b) If, in a proper case, no appointment of a successor Fiscal Agent shall be made pursuant to subsection (a) of this Section 7.11 within sixty (60) days following delivery of all required notices of resignation given pursuant to Section 7.09 hereof or of removal of the Fiscal Agent pursuant to Section 7.10 hereof, the retiring Fiscal Agent may apply to any court of competent jurisdiction to appoint a successor Fiscal Agent. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Fiscal Agent.

**Section 7.12 Concerning Any Successor Fiscal Agent.** Every successor Fiscal Agent appointed hereunder shall execute, acknowledge and deliver to its predecessor and also to the Governmental Lender a written instrument accepting such appointment hereunder, and thereupon such successor, without any further act, deed or conveyance, shall become fully vested with all the Pledged Security and the rights, powers, trusts, duties and obligations of its predecessor; but such predecessor shall, nevertheless, on the written request of the Governmental Lender, the Borrower or the Funding Lender Representative, or of its successor, and upon payment of all amounts due such predecessor, including but not limited to fees and expenses of counsel, execute and deliver such instruments as may be appropriate to transfer to such successor Fiscal Agent all the Pledged Security and the rights, powers and trusts of such predecessor hereunder; and every predecessor Fiscal Agent shall deliver all securities and money held by it as Fiscal Agent hereunder to its successor. Should any instrument in writing from the Governmental Lender be required by a successor Fiscal Agent for more fully and certainly vesting in such successor the Pledged Security and all 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 Governmental Lender. The resignation of any Fiscal Agent and the instrument or instruments removing any Fiscal Agent and appointing a successor hereunder, together with all other instruments provided for in this Article, shall be filed and/or recorded by the successor Fiscal Agent in each recording office where this Funding Loan Agreement shall have been filed and/or recorded. Each successor Fiscal Agent shall mail notice by first class mail, postage prepaid, at least once within 30 days of such appointment, to the Funding Lender.

**Section 7.13 Successor Fiscal Agent.** In the event of a change in the office of Fiscal Agent, the predecessor Fiscal Agent which shall have resigned or shall have been removed shall cease to be Fiscal Agent with respect to the Governmental Note, and the successor Fiscal Agent shall become such Fiscal Agent.

**Section 7.14 Appointment of Co-Fiscal Agent or Separate Fiscal Agent.** It is the intent of the Governmental Lender and the Fiscal Agent 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 Fiscal Agent in such jurisdiction. It is recognized that in case of litigation under or connected with this Funding Loan Agreement, the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, or any of the other Financing Documents, and, in particular, in case of the enforcement of any remedies on default, or in case the Fiscal Agent 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 or therein granted to the Fiscal Agent or hold title to the properties in trust, as herein granted, or take any other action which may be desirable or necessary in connection therewith, it may be necessary that the Fiscal Agent, with the consent of the Governmental Lender and the Funding Lender Representative, appoint an additional individual or institution as a co-fiscal agent or separate fiscal agent.

In the event that the Fiscal Agent appoints an additional individual or institution as a co-fiscal agent or separate fiscal agent, in the event of the incapacity or lack of authority of the Fiscal Agent, by reason of any present or future law of any jurisdiction, to exercise any of the rights, powers, trusts and remedies granted to the Fiscal Agent herein or to hold title to the Pledged Security or to take any other action that may be necessary or desirable in connection therewith,



each and every remedy, power, right, obligation, claim, demand, cause of action, immunity, estate, title, interest and lien expressed or intended by this Funding Loan Agreement to be imposed upon, exercised by or vested in or conveyed to the Fiscal Agent with respect thereto shall be imposed upon, exercisable by and vest in such separate fiscal agent or co-fiscal agent, but only to the extent necessary to enable such co-fiscal agent or separate fiscal agent to exercise such powers, rights, trusts and remedies, and every covenant and obligation necessary to the exercise thereof by such co-fiscal agent or separate fiscal agent shall run to and be enforceable by either of them, subject to the remaining provisions of this Section 7.14. Such co-fiscal agent or separate fiscal agent shall deliver an instrument in writing acknowledging and accepting its appointment hereunder to the Borrower, the Governmental Lender and the Fiscal Agent.

Should any instrument in writing from the Governmental Lender be required by the co-fiscal agent or separate fiscal agent so appointed by the Fiscal Agent for more fully and certainly vesting in and confirming to him or it such properties, rights, powers, trusts, duties and obligations, any and all such instruments in writing shall, on request, be executed, acknowledged and delivered by the Governmental Lender, the Fiscal Agent and the Borrower. If the Governmental Lender shall fail to deliver the same within thirty (30) days of such request, the Fiscal Agent is hereby appointed attorney-in-fact for the Governmental Lender to execute, acknowledge and deliver such instruments in the Governmental Lender's name and stead. In case any co-fiscal agent or separate fiscal agent, 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 co-fiscal agent or separate fiscal agent, so far as permitted by law, shall vest in and be exercised by the Fiscal Agent until the appointment of a new Fiscal Agent or successor to such co-fiscal agent or separate fiscal agent.

Every co-fiscal agent or separate fiscal agent shall, to the extent permitted by law, but to such extent only, be appointed subject to the following terms, namely:

(a) the Governmental Note shall be authenticated and delivered, and all rights, powers, trusts, duties and obligations by this Funding Loan Agreement conferred upon the Fiscal Agent in respect of the custody, control or management of money, papers, securities and other personal property shall be exercised solely by the Fiscal Agent;

(b) all rights, powers, trusts, duties and obligations conferred or imposed upon the Fiscal Agent shall be conferred or imposed upon or exercised or performed by the Fiscal Agent, or by the Fiscal Agent and such co-fiscal agent, or separate fiscal agent jointly, as shall be provided in the instrument appointing such co-fiscal agent or separate fiscal agent, except to the extent that under the law of any jurisdiction in which any particular act or acts are to be performed the Fiscal Agent shall be incompetent or unqualified to perform such act or acts, in which event such act or acts shall be performed by such co-fiscal agent or separate fiscal agent;

(c) any request in writing by the Fiscal Agent to any co-fiscal agent or separate fiscal agent to take or to refrain from taking any action hereunder shall be sufficient warrant for the taking or the refraining from taking of such action by such co-fiscal agent or separate fiscal agent;

(d) any co-fiscal agent or separate fiscal agent to the extent permitted by law shall delegate to the Fiscal Agent the exercise of any right, power, trust, duty or obligation, discretionary or otherwise;

(e) the Fiscal Agent at any time by an instrument in writing with the concurrence of the Governmental Lender evidenced by a certified resolution may accept the resignation of or remove any co-fiscal agent or separate fiscal agent appointed under this Section 7.14 and in case an Event of Default shall have occurred and be continuing, the Fiscal Agent shall have power to accept the resignation of or remove any such co-fiscal agent or separate fiscal agent without the concurrence of the Governmental Lender, and upon the request of the Fiscal Agent, the Governmental Lender shall join with the Fiscal Agent in the execution, delivery and performance of all instruments and agreements necessary or proper to effectuate such resignation or removal. A successor to any co-fiscal agent or separate fiscal agent so resigned or removed may be appointed in the manner provided in this Section 7.14;

(f) no Fiscal Agent or co-fiscal agent hereunder shall be personally liable by reason of any act or omission of any other Fiscal Agent hereunder;

(g) any demand, request, direction, appointment, removal, notice, consent, waiver or other action in writing executed by the Funding Lender Representative and delivered to the Fiscal Agent shall be deemed to have been delivered to each such co-fiscal agent or separate fiscal agent; and

(h) any money, papers, securities or other items of personal property received by any such co-fiscal agent or separate fiscal agent hereunder shall forthwith, so far as may be permitted by law, be turned over to the Fiscal Agent.

The total compensation of the Fiscal Agent and any co fiscal agent or separate fiscal agent shall be as, and may not exceed the amount, provided in Section 7.06 hereof.

**Section 7.15 *Notice of Certain Events.*** The Fiscal Agent shall give written notice to the Borrower, the Governmental Lender, the Servicer, the Equity Investor and the Funding Lender Representative of any failure by the Borrower to comply with the terms of the Tax Regulatory Agreement or any Determination of Taxability of which a Responsible Officer has actual knowledge.

**Section 7.16 *Pre-Closing Deposits.*** In connection with the Funding Loan and delivery of the Governmental Note, certain moneys may be deposited with the Fiscal Agent before the Delivery Date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Fiscal Agent subject to the terms and conditions of this Funding Loan Agreement in addition to terms provided in such letter(s) of instruction. For such purpose the standards of care, provisions regarding responsibilities and indemnification and other sections relating to the Fiscal Agent contained in the Funding Loan Agreement and the Project Loan Agreement (the "Effective Provisions") shall be effective as of the first date of receipt by the Fiscal Agent of such moneys. The Effective Provisions shall be deemed incorporated into such letter(s) of instructions.

**Section 7.17 *Filing of Financing Statements.*** The Fiscal Agent shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Funding Loan on which it is listed as a secured party, and which was filed at the time of the issuance thereof, in such manner and in such places as the initial filings (copies of which shall be provided to the Fiscal Agent by the Governmental Lender) were made. The Borrower shall be responsible for the reasonable costs incurred by the Fiscal Agent in the preparation and filing of all such continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Fiscal Agent shall not be responsible for any initial filings of any financing statements or the information contained therein (including the exhibits thereto), the perfection of any such security interests, or the accuracy or sufficiency of any description of collateral in such initial filings or for filing any modifications or amendments to the initial filings required by any amendments to Article 9 of the Uniform Commercial Code, and unless the Fiscal Agent shall have been notified by the Funding Lender that any such initial filing or description of collateral was or has become defective, the Fiscal Agent shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 7.17 and in filing any continuation statements in the same filing offices as the initial filings were made.

**Section 7.18 *USA Patriot Act Requirements of the Fiscal Agent.*** To help the government of the United States of America fight the funding of terrorism and money laundering activities, federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For a non-individual Person such as a business entity, a charity, a trust, or other legal entity, the Fiscal Agent may request documentation to verify such Person's formation and existence as a legal entity. The Fiscal Agent may also request financial statements, licenses, identification and authorization documents from individuals claiming authority to represent such Person or other relevant documentation.

## ARTICLE VIII

### AMENDMENTS OF CERTAIN DOCUMENTS

**Section 8.01 *Amendments to this Funding Loan Agreement.*** Any of the terms of this Funding Loan Agreement and the Governmental Note may be amended or waived only by an instrument signed by the Fiscal Agent and the Governmental Lender, and with the prior written consent of the Funding Lender Representative.

**Section 8.02 *Amendments to Financing Documents Require Consent of Funding Lender Representative.*** Neither the Governmental Lender nor the Fiscal Agent shall consent to any amendment, change or modification of any Financing Document without the prior written consent of the Funding Lender Representative. The Fiscal Agent shall enter into such amendments to the Financing Documents as shall be directed by the Funding Lender Representative, including entering into the amendments attached as exhibits to the Construction Phase Financing Agreement on the Conversion Date.

**Section 8.03 *Opinion of Bond Counsel Required.*** No amendment to this Funding Loan Agreement, the Governmental Note, the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable, the Construction Phase Project Note or

Permanent Phase Project Note, as applicable, the Security Instrument or the Tax Regulatory Agreement shall become effective unless and until (i) the Funding Lender Representative shall have consented to the same in writing in its sole discretion and (ii) the Funding Lender Representative, the Governmental Lender and the Fiscal Agent shall have received, at the expense of the Borrower, (A) an opinion of Bond Counsel to the effect that such amendment, change or modification will not, in and of itself, cause interest on the Governmental Note to be includable in gross income of the holders thereof for federal income tax purposes, and (B) an opinion of counsel acceptable to the Funding Lender Representative to the effect that any such proposed such amendment, change or modification is authorized and complies with the provisions of this Funding Loan Agreement and is a legal, valid and binding obligation of the parties thereto, subject to normal exceptions relating to bankruptcy, insolvency and equitable principles limitations.

## ARTICLE IX

### SATISFACTION AND DISCHARGE OF FUNDING LOAN AGREEMENT

**Section 9.01 Discharge of Lien.** If the Governmental Lender shall pay or cause to be paid to the Funding Lender the principal, interest and premium, if any, to become due with respect to the Funding Loan at the times and in the manner stipulated herein and in the Governmental Note, in any one or more of the following ways:

(a) by the payment of all unpaid principal of (including Prepayment Premium, if any) and interest on the Funding Loan; or

(b) after the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement) and prior to the Window Period by the deposit to the account of the Fiscal Agent, in trust, of money or securities in the necessary amount to pay the principal, Prepayment Premium and interest to the Maturity Date; or

(c) by the delivery of the Governmental Note by the Funding Lender to the Fiscal Agent for cancellation;

and shall have paid all amounts due and owing under the other Financing Documents, and shall have paid all fees and expenses of and any other amounts due to the Fiscal Agent, the Servicer and the Rebate Analyst, and if the Governmental Lender shall keep, perform and observe all and singular the covenants and promises in the Governmental Note and in this Funding Loan Agreement expressed as to be kept, performed and observed by it or on its part, then these presents and the estates and rights hereby granted shall cease, determine and be void, and thereupon the Fiscal Agent shall cancel and discharge the lien of this Funding Loan Agreement and execute and deliver to the Governmental Lender such instruments in writing as shall be requisite to satisfy the lien hereof, except amounts held by the Fiscal Agent for the payment of principal of, interest and premium, if any, on the Governmental Note, the payment of any amounts owed to the United States of America pursuant to Section 4.12 hereof.

After the Conversion Date (or, if the Conversion Date does not occur, the latest date on which Conversion was permitted to occur under the Construction Phase Financing Agreement)

and prior to the Window Period and subject to the satisfaction of the conditions set forth in Section 4.04(c) of the Permanent Phase Project Loan Agreement, the Funding Loan shall, prior to the Maturity Date, be deemed to have been paid within the meaning and with the effect expressed in the first paragraph of this Section 9.01 based on a deposit of moneys or securities with the Fiscal Agent pursuant to Section 9.01(b) if, under circumstances which do not cause interest on the Governmental Note to become includable in the holders' gross income for purposes of federal income taxation, the following conditions shall have been fulfilled: (a) there shall be on deposit with the Fiscal Agent either money or noncallable and nonprepayable direct obligations of the United States of America (or other defeasance securities constituting Qualified Investments approved in writing by the Funding Lender Representative) in an amount, together with anticipated earnings thereon (but not including any reinvestment of such earnings), which will be sufficient to pay, when due, the principal and interest due and to become due on the Funding Loan up to and on the Maturity Date; (b) the Fiscal Agent shall have received a verification report of a firm of certified public accountants or financial analyst reasonably acceptable to the Fiscal Agent and the Funding Lender Representative as to the adequacy of the amounts or securities so deposited to fully pay the Funding Loan; (c) the Fiscal Agent and the Funding Lender Representative shall have received a written opinion of nationally recognized counsel experienced in bankruptcy matters to the effect that if the Borrower, any general partner, member or guarantor of the Borrower, or the Governmental Lender were to become a debtor in a proceeding under the Bankruptcy Code (x) payment of such money to the Funding Lender would not constitute a voidable preference under Section 547 of the Bankruptcy Code and (y) the automatic stay provisions of Section 362(a) of the Bankruptcy Code would not prevent application of such money to the payment of the Funding Loan; (d) the Fiscal Agent and the Funding Lender Representative shall have received an opinion of Bond Counsel to the effect that the defeasance of the Funding Loan is in accordance with the provisions of the Funding Loan Agreement and that such defeasance will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes; and (e) the Fiscal Agent shall have received written confirmation that all fees, expenses or reimbursement of any advances due to the Funding Lender and the Servicer under the Financing Documents have been fully paid.

**Section 9.02 Discharge of Liability on Funding Loan.** Upon the deposit with the Fiscal Agent, in trust, at or before maturity, of money or securities in the necessary amount (as provided in Section 9.01 above) to pay or prepay the Funding Loan (whether upon or prior to their maturity or the prepayment date of the Funding Loan) provided that, if the Funding Loan is to be prepaid prior to the maturity thereof, notice of such prepayment shall have been given as in Article III provided or provision satisfactory to the Fiscal Agent shall have been made for the giving of such notice, all liability of the Governmental Lender in respect of the Funding Loan shall cease, terminate and be completely discharged, except only that thereafter the Funding Lender shall be entitled to payment by the Governmental Lender, and the Governmental Lender shall remain liable for such payment, but only out of the money or securities deposited with the Fiscal Agent as aforesaid for their payment, subject, however, to the provisions of Section 9.03 hereof.

**Section 9.03 Payment of Funding Loan After Discharge of Funding Loan Agreement.** Notwithstanding any provisions of this Funding Loan Agreement, and subject to applicable unclaimed property laws of the State, any money deposited with the Fiscal Agent or any paying agent in trust for the payment of the principal of, interest or premium on the Governmental Note remaining unclaimed for one (1) year after the maturity or earlier payment date: to the extent

permitted by applicable law, shall be paid to the Borrower, whereupon all liability of the Governmental Lender and the Fiscal Agent with respect to such money shall cease, and the Funding Lender shall thereafter look solely to the Borrower for payment of any amounts then due. All money held by the Fiscal Agent and subject to this Section 9.03 shall be held uninvested and without liability for interest thereon.

## ARTICLE X

### INTENTIONALLY OMITTED

## ARTICLE XI

### MISCELLANEOUS

**Section 11.01 *Servicing of the Loans.*** The Funding Lender Representative may appoint a Servicer (which may be the Funding Lender Representative if the Funding Lender Representative elects to service the Loans) to service the Loans as provided in Section 3.02 of the Construction Phase Project Loan Agreement or Permanent Phase Project Loan Agreement, as applicable.

**Section 11.02 *Limitation of Rights.*** With the exception of rights herein expressly conferred, nothing expressed or to be implied from this Funding Loan Agreement or the Governmental Note is intended or shall be construed to give to any Person other than the Parties hereto, the Funding Lender, the Funding Lender Representative, the Servicer and the Borrower, any legal or equitable right, remedy or claim under or in respect to this Funding Loan Agreement or any covenants, conditions and provisions hereof.

**Section 11.03 *Construction of Conflicts; Severability.*** Notwithstanding anything provided herein, or in any of the documents referred to herein, in the event that any contracts or other documents executed by the Borrower or any other arrangements agreed to by the Borrower in order to finance or refinance the Project with the proceeds of the Funding Loan, the interest on which is excluded from gross income for federal income tax purposes under Section 103(a) of the Code are inconsistent with the Project Loan Documents, then the Project Loan Documents shall be controlling in all respects. If any provision of this Funding Loan Agreement shall be held or deemed to be, or shall in fact be inoperative or unenforceable as applied in any particular case in any jurisdiction or jurisdictions or in all jurisdictions, or in all cases because it conflicts with any other provision or provisions hereof or any constitution, statute, rule of law or public policy, or for any other reason, such circumstances shall not have the effect of rendering the provision in question inoperative or unenforceable in any other case or 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 in this Funding Loan Agreement contained, shall not affect the remaining portions of this Funding Loan Agreement, or any part thereof.

**Section 11.04 Notices.**

(a) Whenever in this Funding Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the Person entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth below or as may be required or permitted by this Funding Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

The Governmental Lender: Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, Florida 32084  
Attention: Executive Director  
Email: [ ]  
Telephone: ( ) [ ]-[ ]  
Facsimile: ( ) [ ]-[ ]

The Fiscal Agent: The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: [ ]  
Telephone: (904) 645-19[ ]  
Facsimile: (904) 645-19[ ]

The Borrower: San Marcos Heights, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhienzy.com  
Telephone: (561) 859-8520

with a copy to: (which copy shall not constitute notice to Borrower)

Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, FL 33131  
Attention: Robert Cheng, Esq.

and a copy to: (which copy shall not constitute notice to Borrower)

Bank of America, N.A.  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attention: Tax Credit Asset Management (San Marcos Heights)

with a copy to: (which copy shall not constitute notice to Borrower)

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: Sara C. Heskett, Esq.

Funding Lender  
Representative  
(during the Construction Phase):

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

With a copy to:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: CREB Loan Administration  
Fax Number: (704) 719-8659

Funding Lender (from Conversion Date  
to Freddie Mac Purchase Date) and  
Servicer (as of Freddie Mac Purchase Date):

Walker & Dunlop, LLC  
7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814  
Attention: Loan Servicing

Funding Lender  
Representative  
(as of Freddie Mac Purchase Date):



Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903-2000

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and by any party to the Funding Lender Representative to the Servicer.

(b) The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Funding Loan Agreement.

(c) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default pursuant to Section 6.01 hereof and (ii) any written information or other written communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative and the Servicer for any such information or other communication.

(d) The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions (“**Instructions**”) given pursuant to this Agreement and related financing documents and delivered using Electronic Means; provided, however, that the Issuer and/or the Borrower, as applicable, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions (“**Authorized Officers**”) and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Issuer and/or the Borrower, as applicable, whenever a person is to be added or deleted from the listing. If the Issuer and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent’s understanding of such Instructions shall be deemed controlling. The Issuer and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Issuer and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Issuer, the Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly

or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder.

**Section 11.05 Funding Lender Representative.**

(a) The Initial Funding Lender is the initial Funding Lender Representative with respect to the Governmental Note. Upon the Conversion Date, the Freddie Mac Seller/Servicer shall become the Funding Lender Representative and upon the Freddie Mac Purchase Date, Freddie Mac shall become the Funding Lender Representative. The Funding Lender Representative shall be entitled to all the rights and privileges of the Funding Lender hereunder and under the other Financing Documents.

(b) The Funding Lender Representative may provide written notice to the Fiscal Agent designating particular individuals or Persons authorized to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative, and such notice may be amended or rescinded by the Funding Lender Representative at any time by subsequent written notice. The Funding Lender Representative may be removed and a successor appointed by a written notice in the form of Exhibit B hereto given by the Funding Lender to the Fiscal Agent, the Governmental Lender, the Servicer and the Borrower. The removal and reappointment shall be effective immediately upon receipt of such notice by the Fiscal Agent. The Funding Lender may appoint any Person to act as Funding Lender Representative, including, without limitation, the Servicer. If, for any reason, a Funding Lender Representative resigns by written notice provided to the Fiscal Agent, the Funding Lender, the Governmental Lender, the Servicer and the Borrower, all references to Funding Lender Representative herein and in the other Financing Documents shall be deemed to refer to the Funding Lender until a successor Funding Lender Representative is appointed by the Funding Lender.

(c) Whenever pursuant to this Funding Loan Agreement or any other Financing Document, the Funding Lender Representative exercises any right given to it to approve or disapprove, any arrangement or term hereof, the decision of the Funding Lender Representative to approve or disapprove or to decide whether arrangements or terms are acceptable or not acceptable shall be in the sole discretion of the Funding Lender Representative, except as otherwise specifically indicated.

(d) Each Funding Lender, by their purchase or other acquisition of the Funding Loan, shall be deemed to have acknowledged and agreed to the provisions of this Funding Loan Agreement and the other Financing Documents with respect to the Funding Lender Representative and the rights and privileges thereof, including but not limited to the right to control all remedies in respect of the Governmental Note and the Loans.

**Section 11.06 Payments Due on Non-Business Days.** In any case where a date of payment with respect to the Funding Loan shall be a day other than a Business Day, then such payment need not be made on such date but may be made on the next succeeding Business Day with the same force and effect as if made on such date, and no interest shall accrue for the period after such date provided that payment is made on such next succeeding Business Day.

**Section 11.07 Counterparts.** This Funding Loan Agreement may be executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

**Section 11.08 Laws Governing Funding Loan Agreement.** The effect and meanings of this Funding Loan Agreement and the rights of all parties hereunder shall be governed by, and construed according to, the internal laws of the State without regard to conflicts of laws principles.

**Section 11.09 No Recourse.** No recourse under or upon any obligation, covenant or agreement contained in this Funding Loan Agreement or in the Governmental Note shall be had against any member, officer, commissioner, director or employee (past, present or future) of the Governmental Lender, either directly or through the Governmental Lender or its governing body or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, or otherwise, of any sum that may be due and unpaid by the Governmental Lender or its governing body upon the Governmental Note. Any and all personal liability of every nature whether at common law or in equity or by statute or by constitution or otherwise of any such member, officer, commissioner, director or employee, as such, to respond by reason of any act of omission on his/her part or otherwise, for the payment for or to the Funding Lender or otherwise of any sum that may remain due and unpaid with respect to the Funding Loan hereby secured is, by the acceptance hereof, expressly waived and released as a condition of and in consideration for the execution of this Funding Loan Agreement and the delivery of the Governmental Note.

**Section 11.10 Successors and Assigns.** All the covenants and representations contained in this Funding Loan Agreement by or on behalf of the parties hereto shall bind and inure to the benefit of their successors and assigns, whether so expressed or not.

[Signature Pages Follow]

**IN WITNESS WHEREOF**, the Governmental Lender, the Initial Funding Lender and the Fiscal Agent have caused this Funding Loan Agreement to be executed and delivered by duly authorized officers thereof as of the day and year first written above.

**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA**, as Governmental  
Lender

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: Michael O'Donnell  
Title: Chair

By: \_\_\_\_\_  
Name: Linda DeGrande  
Title: Secretary

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO  
SAN MARCOS HEIGHTS FUNDING LOAN AGREEMENT]

**BANK OF AMERICA, N.A., as Funding Lender'**

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

[INITIAL FUNDING LENDER'S SIGNATURE PAGE TO  
SAN MARCOS HEIGHTS FUNDING LOAN AGREEMENT]

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent**

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

**[FISCAL AGENT'S SIGNATURE PAGE TO  
SAN MARCOS HEIGHTS FUNDING LOAN AGREEMENT]**

**EXHIBIT A**

**FORM OF GOVERNMENTAL NOTE**

**UNITED STATES OF AMERICA  
HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA**

**Multifamily Mortgage Revenue Note, Series 2021  
(San Marcos Heights)**

US \$[16,000,000]

February [ ], 2021

FOR VALUE RECEIVED, the undersigned, HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "**Obligor**"), promises to pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement referenced below) to the order of BANK OF AMERICA, N.A. (the "**Funding Lender**"), and its assigns, the maximum principal sum of SIXTEEN MILLION AND NO/100 DOLLARS (US \$[16,000,000]), plus premium, if any, and interest thereon and to pay the other amounts owing from time to time hereunder, all as set forth below.

This Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (this "**Note**") is being delivered pursuant to that certain Funding Loan Agreement dated as of February 1, 2021 (together with any and all amendments, modifications, supplements and restatements, the "**Funding Loan Agreement**"), among the Funding Lender, the Obligor and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "**Fiscal Agent**"), pursuant to which the Obligor has incurred a loan in the maximum aggregate principal amount of \$[16,000,000] (the "**Funding Loan**"), and this Note is entitled to the benefits of the Funding Loan Agreement and is subject to the terms, conditions and provisions thereof. The Obligor is using the proceeds of the Funding Loan to make a loan to San Marcos Heights, LLC a Florida limited liability company (the "**Borrower**") pursuant to the Construction Phase Project Loan Agreement dated as of February 1, 2021 (the "**Construction Phase Project Loan Agreement**") and a Project Loan Agreement dated as of February 1, 2021 and effective as of the Conversion Date (the "**Permanent Phase Project Loan Agreement**"), each among the Obligor, the Borrower and the Fiscal Agent. The outstanding principal balance of this Note at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender under the Funding Loan Agreement and not otherwise prepaid.

1. **Defined Terms.** As used in this Note, (i) the term "Funding Lender" means the holder of this Note, and (ii) the term "Indebtedness" means the principal of, premium, if any, and interest on or any other amounts due at any time under this Note or the Funding Loan Agreement. "Event of Default" and other capitalized terms used but not defined in this Note shall have the meanings given to such term in the Funding Loan Agreement.

2. **Payments of Principal and Interest.** The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) (a) during the Construction Phase, the first day of each month, commencing April 1, 2021 and (b) during the Permanent Phase, the first day of each month, interest on this Note at (i) the Construction Phase

Interest Rate during the Construction Phase and (ii) the Permanent Phase Interest Rate during the Permanent Phase, and shall also pay interest on this Note at the foregoing rates on the date of any optional or mandatory prepayment or acceleration of all or part of the Funding Loan pursuant to the Funding Loan Agreement, in an amount equal to the accrued and unpaid interest to the date of prepayment on the portion of this Note subject to prepayment (each such date for payment an "Interest Payment Date"). Interest shall accrue on the principal amount of the Funding Loan which has been advanced under the Funding Loan Agreement and is outstanding as reflected on the Record of Advances.

The Obligor shall pay (but solely from the sources and in the manner provided for in the Funding Loan Agreement) the outstanding principal of this Note in full on [March 1, 2038] (the "Maturity Date") and in monthly installments on each date set forth on the Funding Loan Amortization Schedule attached as Schedule 1 hereto in an amount equal to the corresponding amounts set forth thereon (as such Schedule 1 may be replaced by a new Funding Loan Amortization Schedule provided by the Freddie Mac Seller/Servicer on the Conversion Date as provided in Section 2.01(e) of the Funding Loan Agreement) or at such earlier times and in such amounts as may be required, in the event of an optional or mandatory prepayment or acceleration of the Funding Loan pursuant to the Funding Loan Agreement. The outstanding principal hereof is subject to acceleration at the time or times and under the terms and conditions, and with notice, if any, as provided under the Funding Loan Agreement.

3. **Manner of Payment.** All payments under this Note shall be made in lawful currency of the United States and in immediately available funds as provided for herein and in the Funding Loan Agreement.

4. **Application of Payments.** If at any time the Funding Lender receives any amount applicable to the Indebtedness which is less than all amounts due and payable at such time, the Funding Lender may apply that payment to amounts then due and payable in any manner and in any order determined by the Funding Lender, in the Funding Lender's discretion. Neither the Funding Lender's acceptance of a payment in an amount that is less than all amounts then due and payable nor the Funding Lender's application of such payment shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction.

5. **Security.** The Indebtedness is secured by, among other things, the Pledged Security pledged pursuant to the Funding Loan Agreement.

6. **Acceleration.** If an Event of Default has occurred and is continuing, the entire unpaid principal balance, any accrued interest, and all other amounts payable under this Note shall at once become due and payable, at the option of the Funding Lender, as governed by the Funding Loan Agreement, without any prior notice to the Obligor (unless required by applicable law). The Funding Lender may exercise this option to accelerate regardless of any prior forbearance.

7. **Prepayment; Prepayment Premium.** This Note is subject to prepayment as specified in the Funding Loan Agreement. Prepayment Premium shall be payable as specified in the Funding Loan Agreement.



8. **Forbearance.** Any forbearance by the Funding Lender in exercising any right or remedy under this Note or any other document evidencing or securing the Funding Loan or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of that or any other right or remedy. The acceptance by the Funding Lender of any payment after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of the Funding Lender's right to require prompt payment when due of all other payments or to exercise any right or remedy with respect to any failure to make prompt payment. Enforcement by the Funding Lender of any security for the obligations under this Note shall not constitute an election by the Funding Lender of remedies so as to preclude the exercise of any other right or remedy available to the Funding Lender.

9. **Waivers.** Presentment, demand, notice of dishonor, protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, grace and diligence in collecting the Indebtedness are waived by the Obligor and all endorsers and guarantors of this Note and all other third-party obligors.

10. **Loan Charges.** Neither this Note nor any of the other Financing Documents will be construed to create a contract for the use, forbearance, or detention of money requiring payment of interest at a rate greater than the rate of interest which results in the maximum amount of interest allowed by applicable law (the "**Maximum Interest Rate**"). If any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor in connection with the Funding Loan is interpreted so that any interest or other charge provided for in any Financing Document, whether considered separately or together with other charges provided for in any other Financing Document, violates that law, and Obligor is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate that violation. The amounts, if any, previously paid to Funding Lender in excess of the permitted amounts will be applied by Funding Lender to reduce the unpaid principal balance of this Note. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Obligor has been violated, all indebtedness that constitutes interest, as well as all other charges made in connection with the indebtedness that constitute interest, will be deemed to be allocated and spread ratably over the stated term of this Note. Unless otherwise required by applicable law, such allocation and spreading will be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of this Note.

11. **Governing Law.** This Note shall be governed by the internal law of the State of Florida (the "**Property Jurisdiction**").

12. **Captions.** The captions of the paragraphs of this Note are for convenience only and shall be disregarded in construing this Note.

13. **Address for Payment.** All payments due under this Note shall be payable at the principal office of the Funding Lender as designated by the Funding Lender in writing to the Fiscal Agent and the Servicer.

14. **Default Rate.** So long as (a) any monthly installment under this Note remains past due, or (b) any other Event of Default has occurred and is continuing, interest under this Note shall accrue on the unpaid principal balance from the earlier of the due date of the first unpaid monthly

installment or the occurrence of such other Event of Default, as applicable, at a rate (the "Default Rate") equal to the lesser of (i) the Construction Phase Interest Rate or Permanent Phase Interest Rate, as applicable, otherwise in effect notwithstanding the default plus four percent (4%) per annum or (ii) the Maximum Interest Rate. If the unpaid principal balance and all accrued interest are not paid in full on the Maturity Date, the unpaid principal balance and all accrued interest shall bear interest from the Maturity Date at the Default Rate.

15. **Revenue Obligation.** THE OBLIGATIONS OF THE OBLIGOR WITH RESPECT TO THIS NOTE ARE NOT GENERAL OR SPECIAL OBLIGATIONS OF THE OBLIGOR BUT ARE REVENUE OBLIGATIONS OF THE OBLIGOR PAYABLE BY THE OBLIGOR SOLELY FROM THE PLEDGED SECURITY. THIS NOTE SHALL NOT BE A DEBT OF THE STATE, ST. JOHNS COUNTY, FLORIDA (THE "COUNTY"), THE OBLIGOR OR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE, AND NONE OF THE STATE, THE COUNTY, THE OBLIGOR, OR ANY OTHER POLITICAL SUBDIVISION OF THE STATE SHALL BE LIABLE FOR THE PAYMENT OF THIS NOTE. THE FAITH AND CREDIT OF THE STATE, THE COUNTY OR OF ANY OTHER POLITICAL SUBDIVISION OF THE STATE ARE NOT PLEDGED TO THE PAYMENT OF THE PRINCIPAL OF OR INTEREST ON THIS NOTE. THE OBLIGOR HAS NO TAXING POWER.

[Signature page follows]

IN WITNESS WHEREOF, the Obligor has caused this Note to be duly executed by the manual or facsimile signature of its Chair and attested by the manual or facsimile signature of its Vice Chair.

**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA**

[SEAL]

ATTEST:

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

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

**CERTIFICATE OF AUTHENTICATION**

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

Date of Authentication: \_\_\_\_\_

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.**

By: \_\_\_\_\_  
Authorized Signatory

SCHEDULE 1  
FUNDING LOAN AMORTIZATION SCHEDULE

**EXHIBIT B**

**FORM OF NOTICE OF APPOINTMENT  
OF FUNDING LENDER REPRESENTATIVE**

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department

San Marcos Heights, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith

Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, FL 32084  
Attention: Executive Director

Walker & Dunlop, LLC  
7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814  
Attention: Loan Servicing

Re: San Marcos Heights

Ladies and Gentlemen:

The undersigned is the holder (the "**Funding Lender**") of the Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) dated February [ ], 2021 (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of February 1, 2021 (the "**Funding Loan Agreement**"), among BANK OF AMERICA, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "**Governmental Lender**") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "**Fiscal Agent**"). Pursuant to Section 11.05 of the Funding Loan Agreement, you are hereby notified that, effective immediately upon receipt of this notice by the Fiscal Agent, the Funding Lender Representative appointed under Section 11.05 of the Funding Loan Agreement shall be \_\_\_\_\_. [The person or entity previously appointed as Funding Lender Representative shall upon the effectiveness of this notice no longer have any further rights or obligations as Funding Lender Representative.]

The following individual or individuals shall have the authority to execute any consent, waiver, approval, direction or other instrument on behalf of the Funding Lender Representative and the signature(s) set forth next to his/her (their) name(s) is (are) his/her (their) true and correct signature(s).

NAME

SIGNATURE

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

Additional individuals may be given such authority by written notice to you from the Funding Lender Representative or from the Funding Lender.

This notice is dated as of the \_\_\_\_\_ day of \_\_, 20\_\_.

**BANK OF AMERICA, N.A., as Funding Lender**

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

Name:

Title:

**EXHIBIT C**

**FORM OF TRANSFEREE REPRESENTATIONS LETTER**

[To be prepared on letterhead of transferee]

[Date]

Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, FL 32084  
Attention: Executive Director

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department

Re: San Marcos Heights

Ladies and Gentlemen:

The undersigned (the "**Funding Lender**") hereby acknowledges receipt of the Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) dated February [ ], 2021 (the "**Governmental Note**") delivered pursuant to the Funding Loan Agreement dated as of February 1, 2021 (the "**Funding Loan Agreement**"), among BANK OF AMERICA, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "**Governmental Lender**") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A. (the "**Fiscal Agent**"). Capitalized terms used herein and not otherwise defined have the meanings given to such terms in the Funding Loan Agreement.

In connection with the [origination/purchase] of the Funding Loan by the Funding Lender, the Funding Lender hereby makes the following representations upon which you may rely:

1. The Funding Lender has authority to [originate/purchase] the Funding Loan and to execute this letter, and any other instruments and documents required to be executed by the Funding Lender in connection with the [origination/purchase] of the Funding Loan.

2. The Funding Lender is an "accredited investor" under Regulation D of the Securities Act of 1933 (the "**Act**") or a "qualified institutional buyer" under Rule 144(a) of said Act (such "accredited investor" or "qualified institutional buyer", a "**Qualified Transferee**"), and therefore, has sufficient knowledge and experience in financial and business matters, including purchase and ownership of municipal and other tax-exempt obligations, to be able to evaluate the risks and merits of the investment represented by the Funding Loan.

3. The Funding Lender acknowledges that it is [originating/purchasing] the Funding Loan for investment for its own account to hold and book as a loan in its portfolio and not with a



present view toward resale or the distribution thereof (except as set forth below), in that it does not now intend to resell or otherwise dispose of all or any part of its interests in the Funding Loan (except as set forth below); provided, however, that the Funding Lender may, notwithstanding the foregoing and the terms of Paragraph 4 below, (i) transfer the Funding Loan to any affiliate or other party related to the Funding Lender that is a Qualified Transferee or (ii) sell or transfer the Funding Loan to a special purpose entity, a trust or a custodial or similar pooling arrangement from which the Funding Loan or securitized interests therein are not expected to be sold except to (x) owners or beneficial owners thereof that are Qualified Transferees or (y) in circumstances where secondary market credit enhancement is provided for such securitized interests resulting in a rating thereof of at least "A" or better [INSERT FOR INITIAL FUNDING LENDER TRANSFEREE REPRESENTATION LETTER:; provided, further, however, the Funding Lender has originated and funded the Funding Loan with the expectation that the Funding Loan will be sold to [FREDDIE SELLER/SERVICER], on the Conversion Date and thereafter delivered to the Federal Home Loan Mortgage Corporation ("Freddie Mac") pursuant to the forward commitment dated [February \_\_, 2021] (the "Freddie Mac Commitment")] [INSERT FOR FREDDIE MAC SELLER/SERVICER TRANSFEREE REPRESENTATION LETTER:; provided, further, however, the Funding Lender is purchasing the Funding Loan with the expectation that the Funding Loan will be sold to the Federal Home Loan Mortgage Corporation ("Freddie Mac") pursuant to the forward commitment dated \_\_\_\_\_ (the "Freddie Mac Commitment")].

4. In addition to the right to sell or transfer the Funding Loan as set forth in Paragraph 3 above, the Funding Lender further acknowledges its right to sell or transfer the Funding Loan, subject, as required under the Funding Loan Agreement, to the delivery to the Fiscal Agent of a transferee representations letter from the transferee to substantially the same effect as this Transferee Representations Letter or in such other form authorized by the Funding Loan Agreement with no revisions except as may be approved in writing by the Governmental Lender.

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

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

7. The Funding Lender has either been supplied with or been given access to information, including financial statements and other financial information, which it considers necessary to make an informed decision in connection with the [origination/purchase] of the Funding Loan. The Funding Lender has not relied upon the Governmental Lender for any information in connection with its purchase of the Funding Loan.

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

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

[SIGNATURE BLOCK]

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

**EXHIBIT D**

**COSTS OF ISSUANCE REQUISITION  
(COST OF ISSUANCE FUND)**

Dated: \_\_\_\_\_, 2021

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Fiscal Agent

Re: San Marcos Heights

Fiscal Agent:

You are requested to disburse funds from the Cost of Issuance Fund pursuant to Section 4.13 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "**Requisition**"). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the "**Funding Loan Agreement**"), dated as of February 1, 2021, by and among BANK OF AMERICA, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Fiscal Agent, securing the Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) dated February [ ], 2021 (the "**Governmental Note**").

REQUISITION NO.: 1

PAYMENT DUE TO: See Attached Schedule

AMOUNT TO BE DISBURSED: \$ \_\_\_\_\_

The undersigned, on behalf of San Marcos Heights, LLC a limited liability company duly organized and existing under the laws of the State of Florida (the "**Borrower**"), certifies that:

(a) the expenditures for which money is requisitioned by this Requisition represent proper charges against the Cost of Issuance Fund, have not been included in any previous requisition and are set forth in the Schedule attached to this Requisition, with invoices attached for any sums for which reimbursement is requested; and

(b) the money requisitioned is not greater than those necessary to meet obligations due and payable or to reimburse the applicable party for funds actually advanced for Costs of Issuance.

Attached to this Requisition is a Schedule, together with copies of invoices or bills of sale covering all items for which payment is being requested.

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the date first above written.

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its manager

By: \_\_\_\_\_  
Darren Smith, Manager

[Signature page to Cost of Issuance Requisition]

**SCHEDULE**

D-3

4829-2866-7090.5

**EXHIBIT E**

**PROJECT LOAN FUND REQUISITION  
(Project Loan Fund)**

**Dated:** \_\_\_\_\_, \_\_\_\_\_

The Bank of New York Mellon Trust Company, as Fiscal Agent

**Re:** San Marcos Heights

You are requested to disburse funds from the Project Loan Fund pursuant to Section 4.02 of the Funding Loan Agreement in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (the "Requisition"). The terms used in this requisition shall have the meaning given to those terms in the Funding Loan Agreement (the "Funding Loan Agreement"), dated as of February 1, 2021, by and among BANK OF AMERICA, N.A., in its capacity as Initial Funding Lender (the "Initial Funding Lender"), the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA (the "Governmental Lender") and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as Fiscal Agent (the "Fiscal Agent"), securing the Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) dated February [ ], 2021 (the "Governmental Note").

REQUISITION NO.: \_\_\_\_\_

PAYMENT DUE TO:

AMOUNT(S) TO BE DISBURSED: \$ \_\_\_\_\_ from the Project Account

\$ \_\_\_\_\_ from the Borrower Equity Account

The undersigned Borrower hereby represents and warrants that the following information and certifications provided in connection with this Requisition are true and correct as of the date hereof and authorizes Servicer to submit this Requisition to the Fiscal Agent on behalf of Borrower:

1. Purposes for which disbursement is requested are specified in the attached Schedule.

2. Party or parties to whom the disbursements shall be made are specified in the attached Schedule (may be the undersigned in the case of reimbursement for advances and payments made or cost incurred for work done by the undersigned); provided, that no reimbursement shall be made for advances and payments made prior to \_\_\_\_).

3. The undersigned certifies that:

(a) the conditions precedent to disbursement set forth in the Construction Continuing Covenant Agreement have been satisfied;

(b) the disbursement requested pursuant to this Requisition will be used solely to pay a cost or costs allowable under the Funding Loan Agreement and the Construction Continuing Covenant Agreement;

(c) none of the items for which disbursement is requested pursuant to this Requisition has formed the basis for any disbursement previously made from the Project Loan Fund and all such items have been properly recorded in Borrower's books and are set forth on the Schedule attached hereto, along with paid invoices attached for any sum for which reimbursement is requested and invoices or bills of sales for all other items;

(d) all labor and materials for which disbursements have been requested have been incorporated into the Project in accordance with reasonable and standard building practices, the Construction Continuing Covenant Agreement and all applicable laws, ordinances, rules and regulations of any governmental authority having jurisdiction over the Project;

(e) the materials, supplies and equipment furnished or installed for the Improvements are not subject to any lien or security interest or that the funds to be disbursed pursuant to this Requisition are to be used to satisfy any such lien or security interest;

(f) all of the funds being requisitioned are being used in compliance with all tax covenants set forth in the Funding Loan Agreement, the Construction Phase Project Loan Agreement or the Permanent Phase Project Loan Agreement, as applicable, the Tax Regulatory Agreement and the Tax Certificate, including that none of the proceeds of the Funding Loan (including investment earnings thereon) will be used to provide an airplane, a skybox or any other private luxury box, any facility primarily used for gambling, health club facility or any store the principal business of which is the sale of alcoholic beverages for consumption off premises;

(g) with respect to amounts from the Project Account of the Project Loan Fund, not less than 95% of the sum of:

(A) the amounts requisitioned by this Requisition; plus

(B) all amounts previously requisitioned and disbursed from the Project Account of the Project Loan Fund;

have been or will be applied by Borrower to pay the Costs of the Project;

(h) Borrower is not in default under the Construction Phase Project Loan Agreement or the Permanent Phase Project Loan Agreement, as applicable, the Construction Continuing Covenant Agreement or any other Project Loan Document to which it is a party and nothing has occurred to the knowledge of Borrower that would prevent the performance of its obligations under such documents;

(i) no amounts being requisitioned hereby will be used to pay, or reimburse, any Costs of Issuance incurred in connection with the delivery of the Governmental Note or pay debt service with respect to the Loans; and

(j) Funds deposited with Borrower for further disbursement to third parties shall be paid to such third parties by check dated the date of such deposit and Borrower reasonably expects such funds will be disbursed from its account within five Business Days of such deposit.

[Following items may not be required for Initial Disbursement]

4. Estimated costs of completing the uncompleted construction as of the date of this Requisition: \_\_\_\_\_.

5. Percent of construction completed as of the date this request: \_\_\_\_\_%

IN WITNESS WHEREOF, the undersigned has executed this Requisition as of the day and date first above written.

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its manager

By: \_\_\_\_\_  
[ ]  
[ ]



**APPROVED:**

**BANK OF AMERICA, N.A.**

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

Name:

Title:

**APPROVED:**

**FIRST HOUSING DEVELOPMENT  
CORPORATION OF FLORIDA**

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

Name:

Title:

**SCHEDULE**

**EXHIBIT F**

**CONSTRUCTION PHASE INTEREST RATE**

The term "**Construction Phase Interest Rate**" shall mean, when applicable, the "Tax Exempt CBFR Rate", the "Tax Exempt Eurodollar Rate", the "Taxable CBFR Rate" and the "Taxable Eurodollar Rate", each as more specifically set forth and defined in the Project Note.

**EXHIBIT B**  
**CONSTRUCTION PHASE PROJECT LOAN AGREEMENT**

**CONSTRUCTION PHASE PROJECT LOAN AGREEMENT**

among

**HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA,  
as Governmental Lender**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Fiscal Agent**

and

**SAN MARCOS HEIGHTS, LLC  
as Borrower**

Relating to

**San Marcos Heights  
127 Adair Road  
St. Augustine, Florida 32084**

**Maximum Project Loan Principal Amount: \$16,000,000**

**Dated as of February 1, 2021**

**All of the right, title and interest of the Housing Finance Authority of St. Johns County, Florida (except for its Unassigned Rights) in and to this Construction Phase Project Loan Agreement are being assigned to The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of February 1, 2021 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.**

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## CONSTRUCTION PHASE PROJECT LOAN AGREEMENT

**THIS CONSTRUCTION PHASE PROJECT LOAN AGREEMENT** (this "**Construction Phase Project Loan Agreement**") is made and entered into as of February 1, 2021 by and among the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA** (the "**Governmental Lender**"), a public body corporate and politic organized and existing under the laws of the State of Florida (the "**State**"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, duly organized and existing under the laws of the United States of America (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the "**Fiscal Agent**"), and **SAN MARCOS HEIGHTS, LLC**, a limited liability company duly organized and existing under the laws of the State (together with its successors and assigns permitted hereunder, the "**Borrower**").

### RECITALS

**A.** Pursuant to Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "**Board**") on February 26, 1980, as amended, and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (collectively, the "**Act**") and this Construction Phase Project Loan Agreement, the Governmental Lender is agreeing to make a mortgage loan to the Borrower in the maximum aggregate principal amount of \$[16,000,000] (the "**Construction Phase Project Loan**") to provide for the construction period financing of the acquisition and construction of a multifamily rental housing development located at 127 Adair Road, St. Augustine, Florida, in St. Johns County, Florida, known as San Marcos Heights (the "**Project**"). Pursuant to the Act and the Project Loan Agreement (the "**Permanent Phase Project Loan Agreement**"), the Governmental Lender is agreeing to make a mortgage loan to the Borrower (the "**Permanent Phase Project Loan**") to provide for the permanent period financing of the Project. The Construction Phase Project Loan and the Permanent Phase Project Loan each constitute a Project Loan, as such term is used herein. This Construction Phase Project Loan Agreement shall be effective during the Construction Phase Project Loan and the Permanent Phase Project Loan Agreement will be effective during the Permanent Phase Project Loan.

**B.** The Governmental Lender is making the Construction Phase Project Loan to the Borrower with the proceeds received from the loan in the maximum aggregate principal amount of \$[16,000,000] (the "**Funding Loan**") and together initially with the Construction Phase Project Loan, and following Conversion, the Permanent Phase Project Loan, the "**Loans**") made to the Governmental Lender pursuant to the Funding Loan Agreement (the "**Funding Loan Agreement**"), by and among Bank of America, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the Governmental Lender and the Fiscal Agent. The Funding Loan is evidenced by the Governmental Lender's Multifamily Mortgage Revenue Note, Series 2020 (San Marcos Heights) dated February [ ], 2021 (together with all riders and addenda thereto, the "**Governmental Note**") delivered by the Governmental Lender to the Initial Funding Lender.

**C.** The Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, has agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan will be used by



the Governmental Lender to fund the Construction Phase Project Loan to the Borrower in corresponding installments pursuant to this Construction Phase Project Loan Agreement. The Initial Funding Lender will administer the Funding Loan and Construction Phase Project Loan during the Construction Phase in accordance with the Financing Documents.

**D.** The Borrower has agreed to use the proceeds of the Project Loans to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

**E.** The Borrower's repayment obligations in respect of the Construction Phase Project Loan will be evidenced by a Promissory Note dated February [ ], 2021 (together with all riders and modifications thereto, the "**Construction Phase Project Note**") delivered by the Borrower to the Governmental Lender, which Construction Phase Project Note will be endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**F.** To secure the Borrower's obligations under the Construction Phase Project Note, the Borrower will execute and deliver to the Governmental Lender a Mortgage, Assignment of Rents, Security Agreement and Fixture Filing dated February [ ], 2021 (the "**Security Instrument**") with respect to the Project, which Security Instrument will be assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

**G.** The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("**Freddie Mac**") has entered into a commitment with Walker & Dunlop, LLP, a Delaware limited liability company (the "**Freddie Mac Seller/Servicer**") dated [February \_\_, 2021] (the "**Freddie Mac Commitment**") whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date. On the Conversion Date, the Permanent Phase Project Loan Agreement will become effective by its terms and the Permanent Phase Project Note substantially in the form attached to the Construction Phase Financing Agreement will be executed and delivered by the Borrower, and the Permanent Phase Project Loan Agreement and the Permanent Phase Project Note will secure the Funding Loan in substitution of the Construction Phase Project Loan Agreement and Construction Phase Project Note, respectively, following which the Construction Phase Project Loan Agreement will terminate.

**H.** If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Construction Phase Project Loan will convert from the Construction Phase Project Loan to the Permanent Phase Project Loan on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Construction Phase Project Loan will not convert from the Construction Phase Project Loan to the Permanent Phase Project Loan, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Construction Phase Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the "Freddie Mac Continuing Covenant Agreement"), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the "Freddie Mac Purchase Date").

K. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. Walker & Dunlop, LLP will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Funding Date.

NOW, THEREFORE, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Construction Phase Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

"*Compliance Monitoring Agent*" means First Housing Development Corporation of Florida, a Florida corporation, as the Compliance Monitoring Agent under the Compliance Monitoring Agreement.

"*Compliance Monitoring Agreement*" means the Compliance Monitoring Agreement, dated as of February 1, 2021, among the Compliance Monitoring Agent, the Governmental Lender, the Fiscal Agent and the Borrower.

"*Compliance Monitoring Fee*" means the fee provided in Section 4 of the Compliance Monitoring Agreement.

"*Construction Phase Project Loan Agreement*" means this Construction Phase Project Loan Agreement, together with any amendments hereto.

"*Equity Investor*" means, initially, Bank of America, N.A., a national banking association, and any assignee of its interest in the Borrower permitted or consented to under the Project Loan

Documents and the Amended and Restated Operating Agreement of the Borrower dated as of the date hereof, as amended from time to time in accordance therewith.

*“Event of Default”* means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

*“Fee Component”* means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

*“Permanent Phase Project Loan Agreement”* means the Project Loan Agreement, dated as of February 1, 2021, but effective after the Conversion Date, among the Governmental Lender, the Fiscal Agent and the Borrower, together with any amendments thereto.

*“Project Loan”* means, during the term of the Construction Loan Project Loan Agreement and the Construction Phase Project Note, the Construction Phase Project Loan and during the term of the Permanent Phase Project Loan Agreement and Permanent Phase Project Note, the Permanent Phase Project Loan.

*“Project Loan Amortization Schedule”* means the Project Loan Amortization Schedule to be attached as Schedule 1 to the Permanent Phase Project Note on the Conversion Date.

*“Project Loan Payment”* means, respectively, each payment of the Construction Phase Project Loan on each Project Loan Payment Date pursuant to the Construction Phase Project Note and this Construction Phase Project Loan Agreement and each payment of the Permanent Phase Project Loan on each Project Loan Payment Date pursuant to the Permanent Phase Project Note and the Permanent Phase Project Loan Agreement, as applicable.

*“Project Loan Payment Date”* means (A)(i) during the Construction Phase, the first day of each calendar month, commencing April 1, 2020 and (ii) during the Permanent Phase the first day of each calendar month, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

*“Servicing Fee”* means, during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Permanent Phase Project Loan and the Funding Loan payable monthly in an amount equal to [fourteen] basis points (0.[14]%) per annum of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year and the actual number of days elapsed.

*“Taxes”* means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Construction Phase Project Loan Agreement are the Articles, sections and other subdivisions of this Construction Phase Project Loan Agreement as originally executed.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Construction Phase Project Loan Agreement; the term "heretofore" means before the date of execution of this Construction Phase Project Loan Agreement; and the term "hereafter" means after the date of execution of this Construction Phase Project Loan Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01 Representations, Warranties and Covenants of the Governmental Lender.** The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a public body corporate and politic duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Construction Phase Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of

the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) questions the tax-exempt status of the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Construction Phase Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Construction Phase Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Construction Phase Project Loan Agreement, the Tax Certificate and the Tax Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 Representations, Warranties and Covenants of the Borrower.** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Construction Phase Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer, the Governmental Lender Servicer, and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer, the Governmental Lender Servicer, and the Fiscal Agent contained in this Construction Phase Project Loan Agreement:

(a) The Borrower is a limited liability company duly organized and validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Construction Phase Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Construction Phase Project Loan Agreement and the other Financing Documents. All corporate members, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership members, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.

(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any

judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

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

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Construction Phase Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Construction Phase Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(p) The Project is located wholly within the boundaries of St. Johns County, Florida.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Construction Phase Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations



required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative, the Governmental Lender Servicer, or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender, the Governmental Lender Servicer, and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent, enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting

the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Construction Phase Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Construction Phase Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Construction Phase Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be "arbitrage bonds" within the meaning of Section 148 of the Code; and

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer.

(f) The full amount of each disbursement of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Construction Phase Project Loan Agreement or the Tax Regulatory Agreement;

(j) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if construction expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if construction expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### ARTICLE III

#### THE PROJECT LOAN

**Section 3.01 *Conditions to Funding the Project Loan.*** On the Delivery Date and thereafter, the Governmental Lender shall cause the proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Sections 2.02 and 2.11 of the Funding Loan Agreement and Section 3.03 hereof. The Fiscal Agent shall use such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan, provided that no initial disbursements of proceeds shall be made until the following conditions have been met:

(a) The Borrower shall have executed and delivered to the Governmental Lender the Construction Phase Project Note and the Governmental Lender shall have endorsed the Construction Phase Project Note to the Fiscal Agent;

(b) The Security Instrument and the Assignment, with only such changes therein as shall be approved in writing by Funding Lender Representative, shall have been executed and delivered by the Borrower and the Governmental Lender, respectively, and delivered to the title company for recording in the appropriate office for officially recording real estate documents in the jurisdiction in which the Project is located (the "Recorder's Office");

(c) The Tax Regulatory Agreement shall have been executed and delivered by the parties thereto and shall have been delivered to the title company for recording in the Recorder's Office, and the Fiscal Agent shall have received evidence satisfactory to it of such delivery;

(d) All other Financing Documents not listed above shall have been executed and delivered by all parties thereto and delivered to the Fiscal Agent; and

(e) The Borrower shall have delivered to the Fiscal Agent, the Governmental Lender, the Funding Lender Representative and the Servicer an opinion of its counsel or other counsel satisfactory to the Fiscal Agent, the Governmental Lender, Bond Counsel, the Funding Lender Representative, Freddie Mac and the Servicer.

#### **Section 3.02 *Terms of the Project Loan; Servicing.***

(a) Prior to the Conversion Date, the Project Loan shall (i) be evidenced by the Construction Phase Project Note; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of \$[16,000,000]; (iv) bear interest as provided in the Construction Phase Project Note; (v) provide for principal and interest payments in accordance with the Construction Phase Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Construction Phase Project Note. The outstanding principal balance of the Construction Phase Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender and deposited by the Fiscal Agent into the Project Loan Fund under the Funding Loan Agreement minus any amounts prepaid with respect to principal in accordance with the terms hereof and the Construction Phase Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is Bank of America, N.A., which shall service the Loans as required by the Initial Funding Lender. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Construction Phase Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans, prior to Conversion, the Borrower shall make all payments in connection with the Construction Phase Project Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses; together with any other amounts due to the Fiscal Agent, and (iv) remit to the Governmental Lender the Governmental Lender Fee, together with any other amounts due to the Governmental Lender. The foregoing notwithstanding, prior to Conversion, to the extent that the Funding Lender is paid interest due with respect to the Funding Loan from moneys netted out of advances being made to the Fiscal Agent for Costs of the Project, it will not be necessary for the Servicer to remit interest due with respect to the Funding Loan to the extent of such payment.

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan. The Governmental Lender, the Fiscal Agent and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (i) the Guide is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none

of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the *Guide*.

**Section 3.03 Deposits.** On the Delivery Date and each date of an advance of the proceeds of the Funding Loan, such proceeds shall be deposited into the Project Account of the Project Loan Fund; provided that on the Delivery Date, \$[ ] shall be transferred to the Cost of Issuance Fund. On the Delivery Date, the Borrower will deposit with the Fiscal Agent the sum of \$[ ] for credit to the Borrower Equity Account of the Project Loan Fund, \$[ ] for credit to the Cost of Issuance Fund and \$[43,750.00] for credit to the Governmental Lender Fee Account of the Administration Fund. Subject to the conditions listed in Section 3.01 hereof, amounts on deposit in the Project Loan Fund are to be disbursed to the Borrower or otherwise as provided in Section 2.11(d) of the Funding Loan Agreement.

To the extent that amounts in the Cost of Issuance Fund from the above-mentioned sources are insufficient to pay all costs of closing the Loans, the Borrower shall cause the payment of such additional costs of closing the Loans to be made on its behalf as such amounts become due.

**Section 3.04 Pledge and Assignment to Fiscal Agent.** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Construction Phase Project Loan Agreement (excluding the Unassigned Rights), the Construction Phase Project Loan, the Construction Phase Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

**Section 3.05 Investment of Funds.** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

**Section 3.06 Damage; Destruction and Eminent Domain.** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 Enforcement of Financing Documents.** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

## ARTICLE IV

### LOAN PAYMENTS

#### ***Section 4.01 Payments Under the Construction Phase Project Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Construction Phase Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Construction Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date; provided, however, to the extent that interest is being paid under advances as contemplated by the last sentence of 3.02(c) hereof, such payment will be advanced on each Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Construction Phase Project Note, provided that in all events payments made by the Borrower under and pursuant to the Construction Phase Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Construction Phase Project Note or any provision of the Construction Phase Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Construction Phase Project Note or such provision of the Construction Phase Project Note shall be deemed to be the obligation of the Borrower pursuant to this Construction Phase Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Construction Phase Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Construction Phase Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Construction Phase Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws

of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Construction Phase Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Construction Phase Project Note shall be made in immediately available funds to the Servicer (which, during the Construction Phase, shall be the Initial Funding Lender), on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Construction Phase Project Loan Agreement or under the Construction Phase Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 Additional Payments Under the Construction Phase Project Note and this Construction Phase Project Loan Agreement.**

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Construction Phase Project Note include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Initial Funding Lender, its origination fees, together with all third-party and out-of-pocket expenses of the Initial Funding Lender (including but not limited to the fees and expenses of counsel to the Initial Funding Lender) in connection with the Loans.



(ii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to Freddie Mac, all third-party and out-of-pocket expenses of Freddie Mac (including but not limited to the fees and expenses of counsel to Freddie Mac) in connection with the Loans.

(iii) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Governmental Lender, or directly to a third party as directed by the Governmental Lender, an initial financing fee in an amount equal to \$65,890.59, together with all third-party and out-of-pocket expenses of the Governmental Lender (including but not limited to the fees and expenses of Bond Counsel and counsel to the Governmental Lender) in connection with the Loans and the issuance of the Governmental Note.

(iv) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Freddie Mac Seller/Servicer, its commitment fees and application fees, together with all third-party and out-of-pocket expenses of the Freddie Mac Seller/Servicer (including but not limited to the fees and expenses of counsel to the Freddie Mac Seller/Servicer, if any) in connection with the Loans.

(v) On the Delivery Date, from money on deposit in the Cost of Issuance Fund or, to the extent such money is insufficient for such purpose, from other money of the Borrower, to the Fiscal Agent, an acceptance fee in an amount equal to \$4,000.00, together with all third-party and out-of-pocket expenses of the Fiscal Agent (including but not limited to the fees and expenses of counsel to the Fiscal Agent) in connection with the Loans and the issuance of the Governmental Note.

(vi) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(vii) To the Governmental Lender Servicer, the Governmental Lender Servicer Fee when due and any extraordinary expenses not covered by the Governmental Lender Servicer Fee the Governmental Lender Servicer may incur in connection with the Financing Documents or the Project from time to time.

(viii) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(ix) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Construction Phase Project Loan Agreement when due from time to time.

(x) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(xi) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(xii) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Construction Disbursement Agreement (during the construction phase), the Construction Continuing Covenant Agreement and the other Project Loan Documents.

(xiii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

**Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Construction Phase Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Construction Phase Project Note, as provided in the Construction Phase Project Note. Additionally, the Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Construction Phase Project Note in connection with the following:

(i) in part, in the event the Borrower elects to make a Pre-Conversion Loan Equalization Payment; and

(ii) in whole, on or after the Forward Commitment Maturity Date, at the written direction of the Initial Funding Lender, if the Notice of Conversion is not issued by the Freddie Mac Seller/Servicer prior to the Forward Commitment Maturity Date.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a "Defeasance

Notice") to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the "Defeasance Date"). The Defeasance Date may not be more than 60 calendar days, nor less than 20 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement. In addition to, and not in limitation of any other provisions of this Construction Phase Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower's Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

**Section 4.06 *Limits on Personal Liability.***

(a) Except as otherwise set forth in the Construction Phase Project Note, the Construction Loan Documents and subsection 4.06(b) below, the obligations of the Borrower under this Construction Phase Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any member of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Construction Phase Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Construction Phase Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Construction Phase Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower's managing member: (i) the Borrower's obligations to the Governmental Lender, the Governmental Lender Servicer, and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Construction Phase Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with

respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Construction Phase Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Construction Phase Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Reserved.***

**Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent, the Funding Lender and the Governmental Lender a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower 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 Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Construction Phase Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Construction Phase Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer or the Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 Tax Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of this Construction Phase Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 Damage, Destruction and Condemnation.** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion 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, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Construction Phase Project Loan Agreement and in the Construction Phase Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 Obligation of the Borrower To Construct the Project.** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction, development and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, development and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender Servicer, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Governmental Lender Servicer, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.

**Section 5.15 Filing of Financing Statements.** The Borrower shall file or record or cause to be filed or recorded on the Delivery Date or shortly thereafter all UCC financing statements

which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI

### INDEMNIFICATION

#### Section 6.01 *Indemnification.*

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Governmental Lender Servicer, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the "**Indemnified Parties**"), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, "**Losses**"), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

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

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender, the Governmental Lender Servicer, or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent or the Funding Lender Representative related to remedies under this Construction Phase Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender, the Governmental Lender Servicer, or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate



counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Construction Phase Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Construction Phase Project Loan Agreement.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Construction Phase Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Construction Phase Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 *Events of Default.*** The following shall be "Events of Default" under this Construction Phase Project Loan Agreement, and the term "Event of Default" shall mean, whenever it is used in this Construction Phase Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Construction Phase Project Loan Agreement, the Construction Phase Project Note, the Construction Loan Documents or the Security Instrument at the times and in the amounts required by this Construction Phase

Project Loan Agreement, the Construction Loan Documents, the Construction Phase Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Construction Phase Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative's sole discretion, adversely affect the Funding Lender or result in impairment of this Construction Phase Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative's judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Construction Phase Project Loan Agreement, result in harm to the Funding Lender, impairment of this Construction Phase Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Construction Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Construction Phase Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Construction Phase Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Construction Phase Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Notwithstanding any provision herein to the contrary, the Government Lender, the Fiscal Agent and the Funding Lender agree that any cure of any default made or tendered by the Equity Investor shall be deemed to be a cure by the Borrower and shall be accepted or rejected on the same basis as if made or tendered by the Borrower.

**Section 7.03 *No Remedy Exclusive.*** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Construction Phase Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Construction Phase Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or 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 Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Construction Phase Project Loan Agreement.

**Section 7.04 *Agreement to Pay Attorneys' Fees and Expenses.*** In the event the Borrower shall default under any of the provisions of this Construction Phase Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer, the Governmental Lender Servicer, or the Funding Lender Representative shall employ attorneys or incur other

expenses for the collection of loan payments or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Construction Phase Project Loan Agreement or in the Construction Phase Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Construction Phase Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Construction Phase Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Construction Phase Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) prosecute any action with respect to a lien on the Project; or
- (ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or
- (iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or
- (iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

- (i) specifically enforce the tax covenants of the Borrower specified in Section 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;
- (ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise

inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "**Related Indemnified Party**") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Construction Phase Project Loan Agreement, the Construction Phase Project Note, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

## ARTICLE VIII

### MISCELLANEOUS

#### **Section 8.01 Notices.**

(a) Whenever in this Construction Phase Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person

entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Governmental Lender Servicer, the Equity Investor or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Construction Phase Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Governmental Lender Servicer, the Equity Investor or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and the Equity Investor and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer and the Equity Investor.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Construction Phase Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

(c) The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("**Instructions**") given pursuant to this Construction Phase Project Loan Agreement and related financing documents and delivered using Electronic Means; provided, however, that the Issuer and/or the Borrower, as applicable, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("**Authorized Officers**") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Issuer and/or the Borrower, as applicable, whenever a person is to be added or deleted from the listing. If the Issuer and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The Issuer and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Issuer and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Issuer, the

Borrower and all Authorized Officers are solely responsible to safeguard the use and confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder.

**Section 8.02 Concerning Successors and Assigns.** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Construction Phase Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Construction Phase Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 Governing Law; Venue.** This Construction Phase Project Loan Agreement and the Exhibits attached hereto, if any, shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America. Venue shall be in Miami Dade County, Florida so long as this Construction Phase Project Loan Agreement is in effect.

**Section 8.04 Modifications in Writing.** Modification or the waiver of any provisions of this Construction Phase Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 Further Assurances and Corrective Instruments.** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute,

acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Construction Phase Project Loan Agreement.

**Section 8.06 Captions.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Construction Phase Project Loan Agreement.

**Section 8.07 Severability.** The invalidity or unenforceability of any provision of this Construction Phase Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 Counterparts.** This Construction Phase Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 Amounts Remaining in Loan Payment Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 Effective Date and Term.** This Construction Phase Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the earlier of (i) the Funding Loan Agreement shall terminate or (ii) the effective date of the Permanent Phase Project Loan Agreement.

**Section 8.11 Cross References.** Any reference in this Construction Phase Project Loan Agreement to an "Exhibit," an "Article," a "Section," a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Construction Phase Project Loan Agreement, an article of this Construction Phase Project Loan Agreement, a section of this Construction Phase Project Loan Agreement, a subsection of the section of this Construction Phase Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Construction Phase Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Construction Phase Project Loan Agreement are incorporated by reference into this Construction Phase Project Loan Agreement.

**Section 8.12 Funding Lender Representative and Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Construction Phase Project Loan Agreement.

**Section 8.13 Reserved.**

**Section 8.14 Non-Liability of Governmental Lender.** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the



Governmental Lender pursuant to this Construction Phase Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Construction Phase Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Construction Phase Project Loan Agreement.

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

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Construction Phase Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Construction Phase Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

In connection with the issuance of the Governmental Note, certain moneys will be deposited with the Fiscal Agent before the closing date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Fiscal Agent subject to the terms and conditions of the Funding Loan Agreement in addition to terms provided in such letter(s) of instruction. For such purpose the standards of care, provisions regarding responsibilities, and indemnification and other sections relating to the Fiscal Agent contained in the Funding Loan Agreement (the "Effective Provisions") shall be effective as of the first date of receipt by the Fiscal Agent of such moneys. The Effective Provisions shall be deemed incorporated into such letter(s) of instructions.

**Section 8.17 Reliance.** The representations, covenants, agreements and warranties set forth in this Construction Phase Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Governmental Lender Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Construction Phase Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Construction Phase Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Construction Phase Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Construction Phase Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Construction Phase Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Construction Phase Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Construction Phase Project Loan Agreement and the Governmental Lender has caused its corporate seal to be affixed hereto and to be attested, all as of the date first set forth above.

**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA, as  
Governmental Lender**

(SEAL)

By: \_\_\_\_\_  
Name: Michael O'Donnell  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Linda DeGrande  
Title: Secretary

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO THE SAN MARCOS HEIGHTS  
CONSTRUCTION PHASE PROJECT LOAN AGREEMENT]

F&L Draft 01/20/2021

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent**

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

**[FISCAL AGENT'S SIGNATURE PAGE TO THE SAN MARCOS HEIGHTS  
CONSTRUCTION PHASE PROJECT LOAN AGREEMENT]**

4810-6023-5986.5

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
Darren Smith, Manager

[BORROWER'S SIGNATURE PAGE TO THE SAN MARCOS HEIGHTS CONSTRUCTION  
PHASE PROJECT LOAN AGREEMENT]

**EXHIBIT C**  
**PERMANANENT PHASE PROJECT LOAN AGREEMENT**

**PROJECT LOAN AGREEMENT**

among

**HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA,  
as Governmental Lender**

**THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
as Fiscal Agent**

and

**SAN MARCOS HEIGHTS, LLC,  
as Borrower**

Relating to

**San Marcos Heights  
127 Adair Road  
St. Augustine, Florida 32084**

**Maximum Project Loan Principal Amount: \$[16,000,000]**

**Dated as of February 1, 2021**

**All of the right, title and interest of the Housing Finance Authority of St. Johns County, Florida (except for its Unassigned Rights) in and to this Project Loan Agreement are being assigned to The Bank of New York Mellon Trust Company, N.A., as Fiscal Agent, as security for the Funding Loan made pursuant to that certain Funding Loan Agreement dated as of February 1, 2021 by and among the Governmental Lender, the Initial Funding Lender named therein and the Fiscal Agent.**

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## PROJECT LOAN AGREEMENT

**THIS PROJECT LOAN AGREEMENT** (this "**Permanent Phase Project Loan Agreement**") is made and entered into as of February 1, 2021, to be effective as of the Conversion Date by and among the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA** (the "**Governmental Lender**"), a public body corporate and politic organized and existing under the laws of the State of Florida (the "**State**"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, duly organized and existing under the laws of the United States of America (together with any successor Fiscal Agents appointed under the Funding Loan Agreement, the "**Fiscal Agent**"), and **SAN MARCOS HEIGHTS, LLC**, a limited liability company duly organized and existing under the laws of the State (together with its successors and assigns permitted hereunder, the "**Borrower**"). The date of this Permanent Phase Project Loan Agreement as set forth above is for reference purposes only, and this Permanent Phase Project Loan Agreement will not be effective and binding until the Conversion Date.

### RECITALS

A. Pursuant to Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "**Board**") on February 26, 1980, as amended, and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (collectively, the "**Act**") and the Construction Phase Project Loan Agreement, the Governmental Lender agreed to make a mortgage loan to the Borrower in the maximum aggregate principal amount of \$[16,000,000] (the "**Construction Phase Project Loan**") to provide for the construction period financing of the acquisition and construction of a multifamily rental housing development located at 127 Adair Road, St. Augustine, Florida, in unincorporated St. Johns County, Florida, to be known as San Marcos Heights (the "**Project**"). Pursuant to the Act and this Permanent Phase Project Loan Agreement (the "**Permanent Phase Project Loan Agreement**"), the Governmental Lender is agreeing to make a mortgage loan to the Borrower (the "**Permanent Phase Project Loan**") to provide for the permanent period financing of the Project. The Construction Phase Project Loan and this Permanent Phase Project Loan each constitute a Project Loan, as such term is used herein. The Construction Phase Project Loan Agreement shall be effective during the Construction Phase Project Loan and this Permanent Phase Project Loan Agreement will be effective during the Permanent Phase Project Loan.

B. The Governmental Lender made the Construction Phase Project Loan to the Borrower with the proceeds received from the loan in the maximum aggregate principal amount of \$[16,000,000] (the "**Funding Loan**") and together initially with the Construction Phase Project Loan, and following Conversion, the Permanent Phase Project Loan, the "**Loans**") made to the Governmental Lender pursuant to the Funding Loan Agreement (the "**Funding Loan Agreement**"), by and among Bank of America, N.A., in its capacity as Initial Funding Lender (the "**Initial Funding Lender**"), the Governmental Lender and the Fiscal Agent. The Funding Loan is evidenced by the Governmental Lender's Multifamily Mortgage Revenue Note, Series 2020 (San Marcos Heights) dated February [ ], 2021 (together with all riders and addenda thereto, the "**Governmental Note**") delivered by the Governmental Lender to the Initial Funding Lender.

C. The Initial Funding Lender, pursuant to the terms and subject to the conditions of the Funding Loan Agreement, the Construction Phase Financing Agreement and the Construction Continuing Covenant Agreement, agreed to originate and fund the Funding Loan to the Governmental Lender on a draw-down basis, which proceeds of the Funding Loan were used by the Governmental Lender to fund the Construction Phase Project Loan to the Borrower in corresponding installments pursuant to the Construction Phase Project Loan Agreement. The Initial Funding Lender administered the Funding Loan and Construction Phase Project Loan during the Construction Phase in accordance with the Financing Documents.

D. The Borrower agreed to use the proceeds of the Project Loans to finance the acquisition, construction and equipping of the Project and to pay certain closing costs with respect to the Loans.

E. The Borrower's repayment obligations in respect of the Construction Phase Project Loan was evidenced by a Promissory Note dated February [ ], 2021 (together with all riders and modifications thereto, the "Construction Phase Project Note") delivered to the Governmental Lender, which Construction Phase Project Note was endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

F. To secure the Borrower's obligations under the Construction Phase Project Note, the Borrower executed and delivered to the Governmental Lender a Mortgage, Security Agreement and Assignment of Rents, Leases and Profits dated the date hereof (the "Security Instrument") with respect to the Project, which Security Instrument was assigned by the Governmental Lender to the Fiscal Agent as security for the Funding Loan.

G. The Federal Home Loan Mortgage Corporation, a shareholder-owned government-sponsored enterprise ("Freddie Mac") has entered into a commitment with Walker & Dunlop, LLP, a Delaware limited liability company (the "Freddie Mac Seller/Servicer") dated [February \_\_, 2021] (the "Freddie Mac Commitment") whereby Freddie Mac has committed, subject to the satisfaction of the Conditions to Conversion set forth in the Construction Phase Financing Agreement on or before the Forward Commitment Maturity Date, to facilitate the financing of the Project in the Permanent Phase by purchasing the Funding Loan from the Freddie Mac Seller/Servicer following the Conversion Date. On the Conversion Date, this Permanent Phase Project Loan Agreement shall become effective by its terms and the Borrower shall execute and deliver the Permanent Phase Project Note substantially in the form attached to the Construction Phase Financing Agreement, and the Permanent Phase Project Loan Agreement and the Permanent Phase Project Note will secure the Funding Loan in substitution of the Construction Phase Project Loan Agreement and Construction Phase Project Note, respectively, following which the Construction Phase Project Loan Agreement will terminate and the Permanent Phase Project Note will be executed and delivered in substitution of the Construction Phase Project Note.

H. If the Conditions to Conversion are satisfied on or before the Forward Commitment Maturity Date as provided for in the Freddie Mac Commitment and the Construction Phase Financing Agreement, the Construction Phase Project Loan will convert from the Construction Phase Project Loan to the Permanent Phase Project Loan on the Conversion Date and, on such Conversion Date, the Initial Funding Lender shall deliver, and the Freddie Mac Seller/Servicer shall purchase, the Funding Loan, as evidenced by the Governmental Note. If the Conditions to

Conversion are not satisfied on or before the Forward Commitment Maturity Date, the Construction Phase Project Loan will not convert from the Construction Phase Project Loan to the Permanent Phase Project Loan, and neither the Freddie Mac Seller/Servicer nor Freddie Mac will have any obligation with respect to the purchase of the Funding Loan and the Initial Funding Lender will remain the owner of the Funding Loan as the holder of the Governmental Note.

I. As a Condition to Conversion, the Construction Phase Project Note and the Security Instrument are required to be amended and restated and the Borrower is required to enter into a Continuing Covenant Agreement with the Freddie Mac Seller/Servicer (the "**Freddie Mac Continuing Covenant Agreement**"), in each case pursuant to the forms attached to the Construction Phase Financing Agreement.

J. If the Conditions to Conversion are satisfied and the Funding Loan is purchased by the Freddie Mac Seller/Servicer on the Conversion Date as set forth above, the Freddie Mac Seller/Servicer shall deliver the Funding Loan to Freddie Mac for purchase pursuant to the terms of the Freddie Mac Commitment and the Guide (such date of purchase by Freddie Mac being referred to as the "**Freddie Mac Purchase Date**").

K. Upon the occurrence of the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer will assign to Freddie Mac all of its rights and interest in the Funding Loan, the Governmental Note, the Funding Loan Agreement, the Freddie Mac Continuing Covenant Agreement and the other Financing Documents. Walker & Dunlop, LLP will act as Servicer for the Loans on behalf of Freddie Mac, as Funding Lender, on and after the Freddie Mac Funding Date.

**NOW, THEREFORE**, for and in consideration of the mutual covenants and representations hereinafter contained, the parties hereto agree as follows:

## ARTICLE I

### DEFINITIONS

**Section 1.01 Definitions.** All words and phrases (except for Event of Default) defined in the Funding Loan Agreement and the Continuing Covenant Agreement shall have the same meanings for the purposes of this Permanent Phase Project Loan Agreement. In addition to the words and phrases defined in the Funding Loan Agreement and elsewhere herein, the following words and phrases shall have the following meanings:

**"Compliance Monitoring Agent"** means First Housing Development Corporation of Florida, a Florida corporation, as the Compliance Monitoring Agent under the Compliance Monitoring Agreement.

**"Compliance Monitoring Agreement"** means the Compliance Monitoring Agreement, dated as of February 1, 2021, among the Compliance Monitoring Agent, the Governmental Lender, the Fiscal Agent and the Borrower.

**"Compliance Monitoring Fee"** means the fee provided in Section 4 of the Compliance Monitoring Agreement.

*"Construction Phase Project Loan Agreement"* means the Construction Phase Project Loan Agreement, dated as of February 1, 2021 among the Governmental Lender, the Fiscal Agent and the Borrower, together with any amendments thereto.

*"Equity Investor"* means, initially, Bank of America, N.A., a national banking association, and any assigned by its interest in the Borrower permitted or consented to under the Project Loan Documents and the Amended and Restated Operating Agreement of the Borrower dated as of the date hereof, as amended from time to time in accordance therewith.

*"Event of Default"* means any of those events specified in and defined by the applicable provisions of Article VII hereof to constitute an event of default.

*"Fee Component"* means the regular, ongoing fees due from time to time to the Governmental Lender, the Fiscal Agent and the Rebate Analyst, if any, expressed as a flat, fixed amount or in terms of a percentage of the unpaid principal amount of the Funding Loan on an annual basis.

*"Permanent Phase Project Loan Agreement"* means this Permanent Phase Project Loan Agreement, together with any amendments hereto.

*"Project Loan"* means, during the term of the Construction Loan Project Loan Agreement and the Construction Phase Project Note, the Construction Phase Project Loan and during the term of the Permanent Phase Project Loan Agreement and Permanent Phase Project Note, the Permanent Phase Project Loan.

*"Project Loan Amortization Schedule"* means the Project Loan Amortization Schedule to be attached as Schedule 1 to the Permanent Phase Project Note on the Conversion Date.

*"Project Loan Payment"* means, respectively, each payment of the Construction Phase Project Loan on each Project Loan Payment Date pursuant to the Construction Phase Project Note and the Construction Phase Project Loan Agreement and each payment of the Permanent Phase Project Loan on each Project Loan Payment Date pursuant to the Permanent Phase Project Note and this Permanent Phase Project Loan Agreement, as applicable.

*"Project Loan Payment Date"* means (A) the first day of each calendar month, commencing April 1, 2020, or (B) any other date on which the Project Loan is prepaid or paid, whether at scheduled maturity or upon prepayment or acceleration of the maturity thereof; provided, however, that if a Project Loan Payment Date is not a Business Day, payment shall be made on the first Business Day following such Project Loan Payment Date.

*"Servicing Fee"* means, during the Permanent Phase, the ordinary fee payable to the Servicer in connection with the servicing of the Permanent Phase Project Loan and the Funding Loan payable monthly in an amount equal to [fourteen] basis points (0.[14]%) per annum of the outstanding principal balance of the Project Loan, computed on the basis of a 360-day year and the actual number of days elapsed.

*"Taxes"* means all taxes, water rents, sewer rents, assessments and other governmental or municipal or public or private dues, fees, charges and levies and any liens (including federal tax

liens) which are or may be levied, imposed or assessed upon the Project or any part thereof, or upon any leases pertaining thereto, or upon the rents, issues, income or profits thereof, whether any or all of the aforementioned be levied directly or indirectly or as excise taxes or as income taxes.

**Section 1.02 Interpretation.** Words of the masculine gender shall be deemed and construed to include correlative words of the feminine and neuter genders. Words importing the singular number shall include the plural number and vice versa unless the context shall otherwise indicate. Words importing persons include firms, partnerships, limited liability companies, joint ventures, associations and corporations. References to Articles, Sections and other subdivisions of this Permanent Phase Project Loan Agreement are the Articles, sections and other subdivisions of this Permanent Phase Project Loan Agreement as originally executed.

The terms "herein," "hereunder," "hereby," "hereto," "hereof" and any similar terms refer to this Permanent Phase Project Loan Agreement; the term "heretofore" means before the date of execution of this Permanent Phase Project Loan Agreement; and the term "hereafter" means after the date of execution of this Permanent Phase Project Loan Agreement.

## ARTICLE II

### REPRESENTATIONS, WARRANTIES AND COVENANTS

**Section 2.01 Representations, Warranties and Covenants of the Governmental Lender.** The Governmental Lender makes the following representations, warranties and covenants for the benefit of the Borrower, the Fiscal Agent, the Funding Lender and the Servicer:

(a) The Governmental Lender is a public body corporate and politic duly organized, validly existing and in good standing under the laws of the State.

(b) The Governmental Lender has all necessary power and authority to incur the indebtedness of the Funding Loan evidenced by the Governmental Note and to make the Project Loan from the proceeds thereof, and to execute, and deliver this Permanent Phase Project Loan Agreement, the Funding Loan Agreement, and the other Financing Documents to which it is a party, and to perform its duties and discharge its obligations hereunder and thereunder.

(c) The Governmental Lender has taken all action on its part to incur the Funding Loan evidenced by the Governmental Note and make the Project Loan from the proceeds thereof and for the sale, execution and delivery thereof.

(d) Each of the Financing Documents to which the Governmental Lender is a party has been duly and validly authorized, executed and delivered by the Governmental Lender and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Governmental Lender, enforceable against the Governmental Lender in accordance with its respective terms, except as enforceability may be limited by bankruptcy, insolvency, moratorium or other laws affecting creditors' rights generally and the application of equitable principles.

(e) The Governmental Lender has complied with the provisions of the laws of the State, including, but not limited to, the Act, which are prerequisites to the consummation of the transactions on the part of the Governmental Lender described or contemplated in the Financing Documents. The execution and delivery of the Governmental Note and the Financing Documents to which the Governmental Lender is a party, the consummation of the transactions on the part of the Governmental Lender contemplated thereby and the fulfillment of or compliance with the terms and conditions thereof do not conflict with or result in the breach of any of the terms, conditions or provisions of any agreement or instrument or judgment, order or decree to which the Governmental Lender is now a party or by which it is bound, nor do they constitute a default under any of the foregoing or result in the creation or imposition of any prohibited lien, charge or encumbrance of any nature upon any property or assets of the Governmental Lender under the terms of any instrument or agreement.

(f) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained, is required for the due execution and delivery by the Governmental Lender of, and performance by the Governmental Lender of its obligations under, the Financing Documents.

(g) There is no action, suit, proceeding, inquiry or investigation pending or, to the knowledge of the Governmental Lender, threatened against the Governmental Lender by or before any court, governmental agency or public board or body, nor, to the Governmental Lender's knowledge, is there any basis therefor, which (i) affects or questions the existence or the territorial jurisdiction of the Governmental Lender or the title to office of any member of the governing body of the Governmental Lender; (ii) affects or seeks to prohibit, restrain or enjoin the execution and delivery of any Financing Documents or the issuance, sale, execution or delivery of the Governmental Note; (iii) affects or questions the validity or enforceability of the Governmental Note or any Financing Document; (iv) questions the tax-exempt status of the Governmental Note; or (v) questions the power or authority of the Governmental Lender to perform its obligations under the Governmental Note or any Financing Document, or to carry out the transactions contemplated by the Governmental Note and the Financing Documents.

(h) No officer or other official of the Governmental Lender has any personal financial interest in the Project or the Borrower or in the transactions contemplated by this Permanent Phase Project Loan Agreement.

(i) Upon the discovery by the Governmental Lender of any noncompliance by the Borrower with this Permanent Phase Project Loan Agreement, the Tax Certificate or the Tax Regulatory Agreement, the Governmental Lender will promptly notify the Fiscal Agent, the Servicer and the Funding Lender Representative of such noncompliance and will, subject to the provisions of Article VII hereof, promptly institute action, or cause the Fiscal Agent to institute action, to correct such noncompliance, will diligently pursue such action and will attempt to correct such noncompliance within sixty (60) days after such discovery, subject to the provisions of the Funding Loan Agreement, this Permanent Phase Project Loan Agreement, the Tax Certificate and the Tax Regulatory Agreement.

It is expressly acknowledged that the Governmental Lender makes no representation as to the financial position or business condition of the Borrower and does not represent or warrant as

to any of the statements, materials (financial or otherwise), representations or certifications furnished or to be made and furnished by the Borrower in connection with the issuance, sale, execution and delivery of the Governmental Note, or as to the correctness, completeness or accuracy of such statements.

**Section 2.02 Representations, Warranties and Covenants of the Borrower.** The Borrower makes the following representations, warranties and covenants, all of which, together with the other representations and agreements of the Borrower contained in this Permanent Phase Project Loan Agreement, are relied upon by the Governmental Lender, the Funding Lender, the Servicer and the Fiscal Agent and serve as a basis for the undertakings of the Governmental Lender, the Servicer and the Fiscal Agent contained in this Permanent Phase Project Loan Agreement:

(a) The Borrower is a limited liability company duly organized and validly existing and in good standing under the laws of the state in which it has been organized and is duly qualified to conduct its business under the laws of the State and in every other state in which the nature of its business requires such qualification, has full legal right, power and authority to enter into this Permanent Phase Project Loan Agreement and the other Financing Documents, and to carry out and consummate all transactions contemplated hereby and by the other Financing Documents, and by proper action has duly authorized the execution, delivery and performance of this Permanent Phase Project Loan Agreement and the other Financing Documents. All corporate members, if any, of the Borrower are duly organized and in good standing under the laws of their respective states of organization and are duly qualified to transact business in the State as either domestic or foreign corporations, as applicable. All partnership members, if any, are duly formed and in good standing under the laws of their respective states of formation and, to the extent required by the laws of the State, are duly qualified to transact business in the State as either domestic or foreign partnerships or limited liability companies, as applicable.

(b) The Borrower has the legal right, power and authority to (i) own its properties and assets, including, but not limited to, the Project, (ii) to carry on its business as now being conducted and the Borrower contemplates it to be conducted with respect to the Project and (iii) execute and deliver, carry out its obligations under, and close the transactions provided for in, the Financing Documents to which it is a party.

(c) Each of the Financing Documents to which the Borrower is a party has been duly authorized, executed and delivered by the Borrower and, assuming due authorization, execution and delivery by the other parties thereto, constitutes the legal, valid and binding obligation of the Borrower, enforceable against the Borrower in accordance with its respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general principles of equity.

(d) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of, or filing of or with any governmental authority, other than those already obtained or those necessary to be obtained during the course of construction of the Project, is required for the due execution and delivery or approval, as the case may be, by the Borrower of, and the performance by the Borrower of its obligations under, the Financing Documents.



(e) None of the execution and delivery of the Financing Documents to which the Borrower is a party, the consummation of the transactions provided for in the Financing Documents, or the Borrower's fulfillment of or compliance with the terms and conditions of the Financing Documents (i) violates or will violate any law, rule or regulation of any governmental agency or body having jurisdiction over the Borrower, or any of its activities or properties, or any judgment, order, writ, injunction or decree to which the Borrower is subject, or any of the organizational or other governing documents of the Borrower, (ii) conflicts or will conflict with any agreement, instrument or license to which the Borrower is now a party or by which it or any of its properties or assets is bound or results or will result in a breach of, or constitutes or will constitute a default (with due notice or the passage of time or both) under, any such agreement, instrument or license, (iii) contravenes or will contravene any such law, rule or regulation or any such judgment, order, writ, injunction or decree, or (iv) result in the creation or imposition of any lien, charge or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower, except for any lien, charge or encumbrance permitted under the terms of the Financing Documents.

(f) There is no action, suit, proceeding, inquiry or investigation pending or, to the Borrower's knowledge, threatened against or affecting the Borrower or any of its properties (including, without limitation, the Project), which, if adversely determined, would (i) impair the right of the Borrower to carry on its business substantially as now conducted and as contemplated by the Financing Documents, (ii) adversely affect the financial condition of the Borrower, (iii) prohibit, restrain or enjoin the making of the Funding Loan or the Project Loan or the execution and delivery of any of the Financing Documents, (iv) adversely affect the validity or enforceability of any of the Financing Documents, or (v) adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note.

(g) The Project and the operation of the Project (in the manner contemplated by the Financing Documents) conform and, following completion of the construction of the Project, will continue to conform in all material respects with the requirements of the Act as well as all applicable zoning, planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project.

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

(i) The Borrower is not in default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained in any agreement or instrument to which it is a party which default would materially adversely affect the transactions contemplated by the Financing Documents or the operations of the Borrower or the enforceability of the Financing Documents to which the Borrower is a party or the ability of the Borrower to perform all obligations thereunder.

(j) The Borrower agrees to pay all costs of maintenance and repair, all Taxes and assessments, insurance premiums (including public liability insurance and insurance against damage to or destruction of the Project) concerning or in any way related to the Project, or any

part thereof, and any expenses or renewals thereof, and any other governmental charges and impositions whatsoever, foreseen or unforeseen, and all utility and other charges and assessments concerning or in any way related to the Project.

(k) If the Borrower is a partnership, all of the partnership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. If the Borrower is a limited liability company, all of the ownership interests in the Borrower are validly issued and are fully registered, if required, with the applicable governmental authorities and/or agencies, and there are no outstanding options or rights to purchase or acquire those interests. Nothing in this Permanent Phase Project Loan Agreement shall prevent the Borrower from issuing additional partnership interests or ownership interests if such units are issued in accordance with all applicable securities laws.

(l) The representations and warranties of the Borrower contained in the Tax Certificate and Tax Regulatory Agreement are true and accurate in all material respects.

(m) The information, statements or reports furnished in writing to the Governmental Lender, the Servicer and the Funding Lender Representative by the Borrower in connection with this Permanent Phase Project Loan Agreement or the consummation of the transactions contemplated hereby do not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and the representations and warranties of the Borrower and the statements, information and descriptions contained in the Borrower's closing certificates, as of the Delivery Date, are true and correct in all material respects, do not contain any untrue statement of a material fact, and do not omit to state a material fact necessary to make the representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and any estimates or assumptions contained in any certificate of the Borrower delivered as of the Delivery Date are reasonable.

(n) To the knowledge of the Borrower, no commissioner, member, officer or employee of the Governmental Lender has been or is in any manner interested, directly or indirectly, in that person's own name or in the name of any other person, in the Financing Documents, the Borrower or the Project, in any contract for property or materials to be furnished or used in connection with the Project, or in any aspect of the transactions contemplated by the Financing Documents.

(o) The Borrower intends to hold the Project for its own account and has no current plans to sell, and has not entered into any agreement, to sell all or any portion of the Project.

(p) The Project is located wholly within the boundaries of the City of Miami in St. Johns County, Florida.

(q) The Borrower shall make no changes to the Project or to the operation thereof which would affect the qualification of the Project under the Act or impair the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. The Borrower shall operate the Project as required by the Tax Regulatory Agreement.

(r) The Funding Loan Agreement has been submitted to the Borrower for examination, and the Borrower, by execution of this Permanent Phase Project Loan Agreement, acknowledges and agrees that it has participated in the drafting of the Funding Loan Agreement and that it is bound by, shall adhere to the provisions of, covenants and agrees to perform all obligations required of the Borrower pursuant to, and shall have the rights set forth by the applicable terms and conditions of, the Funding Loan Agreement.

(s) The Borrower will have a fee simple interest in the land and improvements on the Project, subject only to liens permitted under the Security Instrument.

(t) The Borrower acknowledges that (i) it understands the nature and structure of the transactions relating to the financing of the Project, (ii) it is familiar with the provisions of all of the documents and instruments relating to the financing, (iii) it understands the risks inherent in such transactions, including without limitation the risk of loss of the Project, and (iv) it has not relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by the Financing Documents or otherwise relied on the Governmental Lender, the Fiscal Agent, Freddie Mac, the Funding Lender, the Funding Lender Representative or the Servicer in any manner.

**Section 2.03 *Representations and Warranties of the Fiscal Agent.*** The Fiscal Agent makes the following representations and warranties for the benefit of the Governmental Lender, the Borrower, the Funding Lender and the Servicer:

(a) The Fiscal Agent is a national banking association, duly organized and existing under the laws of the United States. The Fiscal Agent is duly authorized to act as a fiduciary and to execute the trust created by the Funding Loan Agreement, and meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(b) The Fiscal Agent has complied with the provisions of law which are prerequisite to the consummation of, and has all necessary power (including trust powers) and authority (i) to execute and deliver this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party, (ii) to perform its obligations under this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) to consummate the transactions contemplated by this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party.

(c) The Fiscal Agent has duly authorized (i) the execution and delivery of this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party, (ii) the performance by the Fiscal Agent of its obligations under this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party, and (iii) the actions of the Fiscal Agent contemplated by this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party.

(d) Each of the Financing Documents to which the Fiscal Agent is a party has been duly executed and delivered by the Fiscal Agent and, assuming due authorization, execution and delivery by the other parties thereto, constitutes a valid and binding obligation of the Fiscal Agent,

enforceable against the Fiscal Agent in accordance with its terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and by general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law).

(e) The Fiscal Agent meets the qualifications to act as Fiscal Agent under the Funding Loan Agreement.

(f) The Fiscal Agent has complied with the provisions of law which are prerequisites to the consummation of the transactions on the part of the Fiscal Agent described or contemplated in the Financing Documents.

(g) No approval, permit, consent, authorization or order of any court, governmental agency or public board or body not already obtained is required to be obtained by the Fiscal Agent as a prerequisite to (i) the execution and delivery of this Permanent Phase Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party, (ii) the authentication or delivery of the Governmental Note, (iii) the performance by the Fiscal Agent of its obligations under this Permanent Phase Project Loan Agreement and the other Financing Documents to which it is a party, or (iv) the consummation of the transactions contemplated by this Permanent Phase Project Loan Agreement and the other Financing Documents to which the Fiscal Agent is a party. The Fiscal Agent makes no representation or warranty relating to compliance with any federal or state securities laws.

**Section 2.04 *Arbitrage and Rebate Fund Calculations.*** The Borrower shall (a) take or cause to be taken all actions necessary or appropriate in order to fully and timely comply with Section 4.12 of the Funding Loan Agreement, and (b) if required to do so under Section 4.12 of the Funding Loan Agreement, select at the Borrower's expense, a Rebate Analyst reasonably acceptable to the Governmental Lender for the purpose of making any and all calculations required under Section 4.12 of the Funding Loan Agreement. Such calculations, if required, shall be made in the manner and at such times as specified in Section 4.12 of the Funding Loan Agreement. The Borrower shall cause the Rebate Analyst to provide such calculations to the Fiscal Agent and the Governmental Lender at such times and with such directions as are necessary to comply fully with the arbitrage and rebate requirements set forth in the Funding Loan Agreement and to comply fully with Section 148 of the Code, including the timely payment of any arbitrage rebate owed.

**Section 2.05 *Tax Covenants of the Borrower.*** The Borrower covenants and agrees that:

(a) It will at all times comply with the terms of the Tax Certificate and the Tax Regulatory Agreement;

(b) It will not take, or permit to be taken on its behalf, any action which would cause the interest payable on the Governmental Note to be included in gross income of the Funding Lender, for federal income tax purposes, and will take such action as may be necessary in the opinion of Bond Counsel to continue such exclusion from gross income, including, without limitation, the preparation and filing of all statements required to be filed by it in order to maintain the exclusion (including, but not limited to, the filing of all reports and certifications required by the Tax Regulatory Agreement);

(c) No changes will be made to the Project, no actions will be taken by the Borrower and the Borrower will not omit to take any actions, which will in any way adversely affect the tax-exempt status of the Governmental Note;

(d) It will comply with the requirements of Section 148 of the Code and the Regulations issued thereunder throughout the term of the Funding Loan and the Project Loan and will not make any use of the proceeds of the Funding Loan or the Project Loan, or of any other funds which may be deemed to be proceeds of the Governmental Note under the Code and the related regulations of the United States Treasury, which would cause the Governmental Note to be "arbitrage bonds" within the meaning of Section 148 of the Code; and

(e) If the Borrower becomes aware of any situation, event or condition which would, to the best of its knowledge, result in the interest on the Governmental Note becoming includable in gross income of the Funding Lender for purposes of federal income tax purposes, it will promptly give written notice of such circumstance, event or condition to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer.

(f) The full amount of each disbursement of proceeds of the Project Loan will be applied to pay or to reimburse the Borrower for the payment of Costs of the Project and, after taking into account any proposed disbursement, (i) at least 95% of the net proceeds of the Governmental Note (as defined in Section 150 of the Code) will be used to provide a qualified residential rental project (as defined in Section 142(d) of the Code) and (ii) less than 25% of the net proceeds of the Governmental Note will have been disbursed to pay or to reimburse the Borrower for the cost of acquiring land; none of the proceeds of the Governmental Note (as defined for purposes of Section 147(g) of the Code) will be disbursed to provide working capital;

(g) The Borrower will cause all of the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Act, the Code and the Tax Regulatory Agreement;

(h) All leases will comply with all applicable laws and the Tax Regulatory Agreement;

(i) In connection with any lease or grant by the Borrower of the use of the Project, the Borrower will require that the lessee or user of any portion of the Project not use that portion of the Project in any manner which would violate the covenants set forth in this Permanent Phase Project Loan Agreement or the Tax Regulatory Agreement;

(j) No proceeds of the Funding Loan shall be used for the acquisition of any tangible property or an interest therein, other than land or an interest in land, unless the first use of such property is pursuant to such acquisition; provided, however, that this limitation shall not apply with respect to any building (and the equipment therefor) if rehabilitation expenditures (as defined in Section 147(d) of the Code) with respect to such building equal or exceed 15 percent of the portion of the cost of acquiring such building (and equipment) financed with the proceeds; and provided, further, that this limitation shall not apply with respect to any structure other than a building if rehabilitation expenditures with respect to such structure equal or exceed 100 percent of the portion of the cost of acquiring such structure financed with the proceeds;

(k) From the proceeds of the Funding Loan and investment earnings thereon, an amount not in excess of two percent (2%) of the proceeds of the Funding Loan, will be used for Costs of Issuance of the Governmental Note, all within the meaning of Section 147(g)(1) of the Code; and

(l) No proceeds of the Funding Loan shall be used directly or indirectly to provide any airplane, skybox or other private luxury box, health club facility, facility used for gambling or store the principal business of which is the sale of alcoholic beverages for consumption off premises.

In the event of a conflict between the terms and requirements of this Section 2.05 and the Tax Certificate, the terms and requirements of the Tax Certificate shall control.

### ARTICLE III

#### THE PROJECT LOAN

**Section 3.01 *Funding the Project Loan.*** On the Delivery Date the Governmental Lender caused the initial proceeds of the Funding Loan to be deposited with the Fiscal Agent in accordance with Section 2.11 of the Funding Loan Agreement and Section 3.03 of the Construction Phase Project Loan Agreement. The Fiscal Agent used such proceeds as provided in Article II of the Funding Loan Agreement to make the Project Loan.

**Section 3.02 *Terms of the Project Loan; Servicing.***

(a) On and subsequent to the Conversion Date, the Permanent Phase Project Loan shall (i) be evidenced by the Permanent Phase Project Note; (ii) be secured by the Security Instrument; (iii) be in the maximum aggregate principal amount of the Actual Project Loan Amount as calculated pursuant to the Construction Phase Financing Agreement; (iv) bear interest as provided in the Permanent Phase Project Note; (v) provide for principal and interest payments in accordance with the Permanent Phase Project Note; and (vi) be subject to optional and mandatory prepayment at the times, in the manner and on the terms, and have such other terms and provisions, as provided herein and in the Permanent Phase Project Note. On and subsequent to the Conversion Date, the outstanding principal balance of the Permanent Phase Project Loan at any time shall be an amount equal to the proceeds of the Funding Loan advanced by the Funding Lender and deposited into the Project Loan Fund under the Funding Loan Agreement, minus any amount prepaid on the Construction Phase Project Note on or prior to the Conversion Date and minus any amounts prepaid with respect to principal in accordance with the terms hereof and the Permanent Phase Project Note.

(b) The Funding Lender Representative may appoint a Servicer to service the Loans for all or a portion of the term of the Loans. The initial Servicer of the Loans is SunTrust Bank, which shall service the Loans as required by the Initial Funding Lender. On the Freddie Mac Purchase Date, the Freddie Mac Seller/Servicer shall become the Servicer and shall service the Loans as required by the Freddie Mac Commitment and the Guide. The Funding Lender Representative may remove a Servicer or appoint a replacement Servicer, in its discretion, by written notice provided to the Governmental Lender, the Fiscal Agent and the Borrower. Any

successor Servicer shall signify its acceptance of the duties and obligations imposed upon it by the Funding Loan Agreement and this Permanent Phase Project Loan Agreement by executing such instrument(s) as shall be acceptable to the Funding Lender Representative, a copy of which shall be provided to the parties hereto.

(c) During any period that the Servicer services the Loans following Conversion, the Borrower shall make all payments in connection with the Permanent Phase Project Loan to the Servicer, and the Servicer will (i) retain the allocable portion of the monthly Servicing Fee (if any) for its own account, (ii) remit to the Funding Lender all payments of principal of, Prepayment Premium, if any, and interest due with respect to the Funding Loan, together, with any other amounts due to the Funding Lender, (iii) remit to the Fiscal Agent the Ordinary Fiscal Agent's Fees and Expenses, together with any other amounts due to the Fiscal Agent, and (iv) remit to the Governmental Lender the Governmental Lender Fee, together with any other amounts due to the Governmental Lender. During a period in which there is no Servicer, all notices to be sent to the Servicer shall be sent to the Funding Lender Representative (to the extent not already provided) and all amounts to be paid to the Servicer by the Borrower shall be paid directly to the Fiscal Agent (unless otherwise directed by the Funding Lender Representative).

(d) The Governmental Lender, the Fiscal Agent and the Borrower hereby acknowledge and agree that (i) the Funding Lender Representative has appointed the Servicer to service and administer the Project Loan, (ii) the selection or removal of any Servicer is in the sole and absolute discretion of the Funding Lender Representative; and (iii) none of the Governmental Lender, the Fiscal Agent or the Borrower shall terminate or attempt to terminate any Servicer as the servicer for the Project Loan or appoint or attempt to appoint a substitute servicer for the Project Loan. The Governmental Lender, the Fiscal Agent and the Borrower further hereby acknowledge and agree with respect to the Servicer during the Permanent Phase that: (i) the *Guide* is subject to amendment without the consent of the Fiscal Agent, the Governmental Lender or the Borrower; and (ii) none of the Fiscal Agent, the Governmental Lender or the Borrower shall have any rights under, or be a third party beneficiary of, the *Guide*.

**Section 3.03 *Reserved.***

**Section 3.04 *Pledge and Assignment to Fiscal Agent.*** The parties hereto acknowledge, and the Borrower consents to, the pledge and assignment by the Governmental Lender to the Fiscal Agent pursuant to the Funding Loan Agreement of all of the Governmental Lender's right, title and interest in this Permanent Phase Project Loan Agreement (excluding the Unassigned Rights), the Permanent Phase Project Loan, the Permanent Phase Project Note, the Security Instrument, the other Project Loan Documents and the Revenues as security for the payment of the principal of, premium, if any, and interest on the Governmental Note and the payment of any other amounts due under the Financing Documents.

**Section 3.05 *Investment of Funds.*** Except as otherwise provided in the Funding Loan Agreement, any money held as a part of any fund or account established under the Funding Loan Agreement shall be invested or reinvested by the Fiscal Agent in Qualified Investments in accordance with Section 4.08 of the Funding Loan Agreement.

**Section 3.06 *Damage; Destruction and Eminent Domain.*** If, prior to payment in full of the Project Loan, the Project or any portion thereof is destroyed or damaged in whole or in part by fire or other casualty, or title to, or the temporary use of, the Project or any portion thereof shall have been taken by the exercise of the power of eminent domain, and the Governmental Lender, the Borrower, the Fiscal Agent or the Servicer receives Net Proceeds from insurance or any condemnation award in connection therewith, such Net Proceeds shall be utilized as provided in the Project Loan Documents and the Funding Loan Agreement.

**Section 3.07 *Enforcement of Financing Documents.*** The Fiscal Agent or the Funding Lender Representative may enforce and take all reasonable steps, actions and the proceedings necessary for the enforcement of all terms, covenants and conditions of the Funding Loan Agreement and the other Financing Documents as and to the extent set forth herein and therein.

#### ARTICLE IV

#### LOAN PAYMENTS

**Section 4.01 *Payments Under the Permanent Phase Project Note; Independent Obligation of Borrower.***

(a) **Payment Obligations.** The Borrower agrees to repay the Project Loan on each Project Loan Payment Date as provided in the Permanent Phase Project Note, and in all instances at the times and in the amounts necessary to enable the Fiscal Agent, on behalf of the Governmental Lender, or the Servicer, to pay all amounts payable with respect to the Funding Loan, when due, whether at maturity or upon prepayment (with premium, if applicable), acceleration or otherwise. To ensure such timely payment during the Permanent Phase, the Servicer shall collect from the Borrower, and the Borrower shall provide to the Servicer the foregoing payments not less than two (2) Business Days prior to each respective Project Loan Payment Date.

The obligation of the Borrower to make the payments set forth in this Article IV shall be an independent obligation of the Borrower, separate from its obligation to make payments under the Permanent Phase Project Note, provided that in all events payments made by the Borrower under and pursuant to the Permanent Phase Project Note shall be credited against the Borrower's obligations hereunder on a dollar for dollar basis. If for any reason the Permanent Phase Project Note or any provision of the Permanent Phase Project Note shall be held invalid or unenforceable against the Borrower by any court of competent jurisdiction, the Permanent Phase Project Note or such provision of the Permanent Phase Project Note shall be deemed to be the obligation of the Borrower pursuant to this Permanent Phase Project Loan Agreement to the full extent permitted by law and such holding shall not invalidate or render unenforceable any of the provisions of this Article IV and shall not serve to discharge any of the Borrower's payment obligations hereunder or eliminate the credit against such obligations to the extent of payments made under the Permanent Phase Project Note.

(b) **Obligations Unconditional; No Set-Off.** The obligation of the Borrower to repay the Project Loan, to perform all of its obligations under the Project Loan Documents, to provide indemnification pursuant to Section 6.01 hereof, to pay costs, expenses and charges pursuant to Section 4.02 hereof and to make any and all other payments required by this Permanent Phase



Project Loan Agreement, the Funding Loan Agreement or any other documents contemplated by this Permanent Phase Project Loan Agreement or by the Project Loan Documents shall, subject to the limitations set forth in Section 4.06 hereof, be absolute and unconditional, and shall be paid or performed without notice or demand, and without abatement, deduction, set-off, counterclaim, recoupment or defense or any right of termination or cancellation arising from any circumstance whatsoever, whether now existing or hereafter arising, and irrespective of whether the Borrower's title to the Project or to any part thereof is defective or nonexistent, and notwithstanding any damage due to loss, theft or destruction of the Project or any part thereof, any failure of consideration or frustration of commercial purpose, the taking by eminent domain of title to or of the right of temporary use of all or any part of the Project, legal curtailment of the Borrower's use thereof, the eviction or constructive eviction of the Borrower, any change in the tax or other laws of the United States of America, the State or any political subdivision thereof, any change in the Governmental Lender's legal organization or status, or any default of the Governmental Lender or the Fiscal Agent hereunder or under any other Financing Document, and regardless of the invalidity of any action of the Governmental Lender or the invalidity of any portion of this Permanent Phase Project Loan Agreement.

(c) **Payments from Borrower to Fiscal Agent or Servicer.** Each payment by the Borrower hereunder or under the Permanent Phase Project Note shall be made in immediately available funds to the Servicer on each Project Loan Payment Date or such other date when such payment is due; provided, however, such Project Loan Payment shall be made directly to the Fiscal Agent if there is no Servicer or if the Borrower is so directed in writing by the Funding Lender Representative. Each such payment shall be made to the Fiscal Agent or the Servicer, as applicable, by deposit to such account as the Fiscal Agent or the Servicer may designate by written notice to the Borrower. Whenever any Project Loan Payment or any other payment under this Permanent Phase Project Loan Agreement or under the Permanent Phase Project Note shall be stated to be due on a day that is not a Business Day, such payment shall be made on the first Business Day immediately thereafter.

**Section 4.02 Additional Payments Under the Permanent Phase Project Note and this Permanent Phase Project Loan Agreement.**

(a) In addition to the payments set forth in Section 4.01 hereof, payments to be made by the Borrower under the Permanent Phase Project Note include certain money to be paid in respect of, among others, the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents, as set forth in subsection (b) of this Section 4.02. To the extent that any portion of the Fee Component, the Servicing Fee, and amounts required to be deposited pursuant to the Continuing Covenant Agreement and the other Project Loan Documents remain due and owing at any time, such amounts remaining due and owing shall be payable from money on deposit in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement or from other money of the Borrower, to the extent that money in the Administration Fund is insufficient for such purposes. All other fees and expenses shall be payable from money of the Borrower as provided in subsection (b) of this Section 4.02.

(b) In addition to the funding of the initial deposits required of the Borrower described in Section 3.03, the Borrower shall pay (or cause to be paid by the Servicer or the Fiscal Agent (to

the extent paid from money on deposit in the Administration Fund or the Cost of Issuance Fund, as applicable)), in consideration of the funding of the Project Loan, the following fees, expenses and other money payable in connection with the Loans:

(i) To the Fiscal Agent, the Ordinary Fiscal Agent's Fees and Expenses and the Extraordinary Fiscal Agent's Fees and Expenses when due from time to time.

(ii) To the Governmental Lender, the Governmental Lender Fee when due and any extraordinary expenses not covered by the Governmental Lender Fee the Governmental Lender may incur in connection with the Financing Documents or the Project from time to time.

(iii) To the Rebate Analyst, the reasonable fees and expenses of such Rebate Analyst in connection with the computations relating to arbitrage rebate required under the Funding Loan Agreement and this Permanent Phase Project Loan Agreement when due from time to time.

(iv) To the Funding Lender Representative, any amount due and owing the Funding Lender Representative from time to time but unpaid under the Continuing Covenant Agreement.

(v) To the Servicer, the amount of any portion of the Servicing Fee remaining unpaid and any fees, costs and expenses of the Servicer as provided in the Continuing Covenant Agreement.

(vi) To the Servicer, the amounts required to be deposited in respect of reserves and impounds required under the Continuing Covenant Agreement and the other Project Loan Documents.

(vii) If the Fiscal Agent is collecting and remitting loan payments under the Funding Loan Agreement, to the Fiscal Agent, within two (2) Business Days of receipt from the Fiscal Agent of a notice of deficiency in the Administration Fund as provided in Section 4.06 of the Funding Loan Agreement, the amount of any such deficiency in the Administration Fund.

(viii) To the Compliance Monitoring Agent, the Compliance Monitoring Fee.

**Section 4.03 *Payments to Rebate Fund.*** The Borrower shall pay when due to the Fiscal Agent at the Principal Office of the Fiscal Agent any amount required to be deposited in the Rebate Fund in accordance with Section 4.12 of the Funding Loan Agreement.

**Section 4.04 *Prepayment.***

(a) **Optional Prepayment of the Project Loan.** The Borrower shall have the option to prepay the Project Loan in whole, together with all accrued and unpaid interest thereon, as provided in the Permanent Phase Project Note.

(b) **Mandatory Prepayment of the Project Loan.** The Borrower shall be required to prepay all or a portion of the outstanding principal balance of the Project Loan, together with accrued interest thereon, and together with any Prepayment Premium due under the Permanent Phase Project Note, as provided in the Permanent Phase Project Note.

(c) **Defeasance of the Funding Loan.** In addition, after the Conversion Date and prior to the Window Period, the Borrower may cause a defeasance of the Funding Loan resulting in a release of the Pledged Security by satisfying the conditions set forth hereunder and in Article IX of the Funding Loan Agreement. In connection therewith, the Borrower will give written notice (a "Defeasance Notice") to the Funding Lender Representative, the Servicer, the Governmental Lender and the Fiscal Agent of the date the Borrower desires to defease the Funding Loan (the "Defeasance Date"). The Defeasance Date may not be more than 60 calendar days, nor less than 30 calendar days, after the delivery of the Defeasance Notice. In connection with the delivery of the Defeasance Notice, the Borrower shall cause to be paid (i) to the Funding Lender Representative the Defeasance Fee set forth in the Continuing Covenant Agreement, and (ii) to the Compliance Monitoring Agent, the fees of the Compliance Monitoring Agent due pursuant to the Compliance Monitoring Agreement. In addition to, and not in limitation of any other provisions of this Permanent Phase Project Loan Agreement, the Borrower shall pay all fees, costs and expenses in connection with any defeasance whether or not such defeasance occurs. Following such defeasance in accordance with the terms and conditions hereof and the Funding Loan Agreement, the Project Loan shall be deemed paid in full, and the Borrower shall be entitled to the release of the Security Instrument, the Pledged Security and other security provided by it for the Project Loan, subject to the terms and conditions hereof and the other Financing Documents.

**Section 4.05 *Borrower's Obligations Upon Prepayment.*** In the event of any prepayment, the Borrower will timely pay, or cause to be paid through the Servicer, an amount equal to the principal amount of the Funding Loan or portion thereof called for prepayment, together with interest accrued to the prepayment date and premium, if any. In addition, the Borrower will timely pay all fees, costs and expenses associated with any prepayment of the Funding Loan.

**Section 4.06 *Limits on Personal Liability.***

(a) Except as otherwise set forth in the Permanent Phase Project Note and subsection 4.06(b) below, the obligations of the Borrower under this Permanent Phase Project Loan Agreement and the other Financing Documents are non-recourse liabilities of the Borrower which shall be enforced only against the Project and other property of the Borrower encumbered by the Financing Documents and not personally against the Borrower or any member of the Borrower or any successor or assign of the Borrower. However, nothing in this Section 4.06 shall limit the right of the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to proceed against the Borrower to recover any fees owing to any of them or any actual out-of-pocket expenses (including but not limited to actual out-of-pocket attorneys' fees incurred by any of them) incurred by any of them in connection with the enforcement of any rights under this Permanent Phase Project Loan Agreement or the other Financing Documents. Nothing in this Section 4.06 shall limit any right that the Servicer or the Funding Lender Representative may have to enforce the Permanent Phase Project Note, the Security Instrument, or any other Financing Document in accordance with their terms.

(b) Notwithstanding anything contained in any other provision of this Permanent Phase Project Loan Agreement to the contrary (but subject to the provisions of Section 7.06 hereof), the following obligations of the Borrower shall be and remain the joint and several full recourse obligations of the Borrower and the Borrower's managing member: (i) the Borrower's obligations to the Governmental Lender and the Fiscal Agent under subsections (b)(ii), (b)(iv), (b)(v), and (b)(vi) of Section 4.02 hereof; (ii) the Borrower's obligations under Sections 2.05 and 6.01 of this Permanent Phase Project Loan Agreement; (iii) the Borrower's obligation to pay any and all rebate amounts that may be or become owing with respect to the Funding Loan and fees and expenses of the Rebate Analyst as provided in Sections 2.04 and 4.03 of this Permanent Phase Project Loan Agreement and the Tax Certificate; and (iv) the Borrower's obligation to pay legal fees and expenses under Section 7.04 hereof.

## ARTICLE V

### SPECIAL COVENANTS OF BORROWER

**Section 5.01 *Performance of Obligations.*** The Borrower shall keep and faithfully perform all of its covenants and undertakings contained herein and in the Financing Documents, including, without limitation, its obligations to make all payments set forth herein and therein in the amounts, at the times and in the manner set forth herein and therein.

**Section 5.02 *Compliance With Applicable Laws.*** All work performed in connection with the Project shall be performed in strict compliance with all applicable federal, state, county and municipal laws, ordinances, rules and regulations now in force or that may be enacted hereafter.

**Section 5.03 *Funding Loan Agreement Provisions.*** The execution of this Permanent Phase Project Loan Agreement shall constitute conclusive evidence of approval of the Funding Loan Agreement by the Borrower. Whenever the Funding Loan Agreement by its terms imposes a duty or obligation upon the Borrower, such duty or obligation shall be binding upon the Borrower to the same extent as if the Borrower were an express party to the Funding Loan Agreement, and the Borrower shall carry out and perform all of its obligations under the Funding Loan Agreement as fully as if the Borrower were a party to the Funding Loan Agreement.

**Section 5.04 *Program Investment.*** Pursuant to the requirements of Treasury Regulation Section 1.148-1(b), the Borrower (or any related person contemplated by such regulations) shall not purchase the Governmental Note in an amount related to the amount of the Project Loan financed by the Governmental Note.

#### **Section 5.05 *Borrower to Maintain Its Existence; Certification of No Default.***

(a) The Borrower agrees to maintain its existence and maintain its current legal status with authority to own and operate the Project.

(b) In addition to performing all other similar requirements under the Financing Documents to which the Borrower is a party, the Borrower shall, within 30 days after the end of each calendar year, render to the Fiscal Agent, the Funding Lender and the Governmental Lender a certificate executed by an Authorized Officer of the Borrower to the effect that the Borrower is

not, as of the date of such certificate, in default of any of its covenants, agreements, representations or warranties under any of the Financing Documents to which the Borrower is a party and that, to the best of the Borrower's knowledge, after reasonable investigation, there has occurred no default or Event of Default (as such terms are defined in each respective Financing Document) under any of the Financing Documents.

**Section 5.06 *Borrower to Remain Qualified in State and Appoint Agent.*** The Borrower 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 Borrower.

**Section 5.07 *Sale or Other Transfer of Project.*** The Borrower may convey and transfer the Project only upon strict compliance with the provisions of the Financing Documents, and upon receipt of the prior written consent of the Governmental Lender and the Funding Lender Representative.

**Section 5.08 *Right to Perform Borrower's Obligations.*** In the event the Borrower fails to perform any of its obligations under this Permanent Phase Project Loan Agreement, the Governmental Lender, the Fiscal Agent, the Servicer and/or the Funding Lender Representative, after giving requisite notice, if any, and subject to Section 5.05 of the Funding Loan Agreement, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced shall become an additional obligation of the Borrower hereunder, payable on demand and if not paid on demand with interest thereon at the default rate of interest payable under the Project Loan Documents.

**Section 5.09 *Notice of Certain Events.*** The Borrower shall promptly advise the Governmental Lender, the Fiscal Agent, the Funding Lender Representative and the Servicer in writing of the occurrence of any Event of Default hereunder or any event which, with the passage of time or service of notice or both, would constitute an Event of Default, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken with respect thereto.

**Section 5.10 *Survival of Covenants.*** The provisions of Sections 2.04, 2.05, 4.02, 4.03, 6.01 and 7.04 hereof shall survive the expiration or earlier termination of this Permanent Phase Project Loan Agreement and, with regard to the Fiscal Agent, the resignation or removal of the Fiscal Agent.

**Section 5.11 *Access to Project; Records.*** Subject to reasonable notice and the rights of tenants at the Project, the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, and the respective duly authorized agents of each, shall have the right (but not any duty or obligation) at all reasonable times and during normal business hours: (a) to enter the Project and any other location containing the records relating to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; (b) to inspect and audit any and all of the Borrower's records or accounts pertaining to the Borrower, the Project, the Loans and the Borrower's compliance with the terms and conditions of the Financing Documents; and (c) to require the Borrower, at the Borrower's sole expense, (i) to furnish such documents to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, as the Governmental Lender, the Fiscal Agent, the Servicer or the

Funding Lender Representative, as the case may be, from time to time, deems reasonably necessary in order to determine that the provisions of the Financing Documents have been complied with and (ii) to make copies of any records that the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative or the respective duly authorized agents of each, may reasonably require. The Borrower shall make available to the Governmental Lender, the Fiscal Agent, the Servicer and the Funding Lender Representative, such information concerning the Project, the Security Instrument and the Financing Documents as any of them may reasonably request.

**Section 5.12 Tax Regulatory Agreement.** The covenants of the Borrower in the Tax Regulatory Agreement shall be deemed to constitute covenants of the Borrower running with the land and an equitable servitude for the benefit of the Governmental Lender and the Funding Lender and shall be binding upon any owners of the Project until such time as such restrictions expire as provided in the Tax Regulatory Agreement. The Borrower covenants to file of record the Tax Regulatory Agreement and such other documents, and to take such other steps as are necessary in order to assure that the restrictions contained in the Tax Regulatory Agreement will, subject to the terms of the Tax Regulatory Agreement, be binding upon all owners of the Project. The Borrower covenants to include such restrictions or a reference to such restrictions in any documents transferring any interest in the Project to another to the end that such transferee has notice of, and is bound by, the Tax Regulatory Agreement. Subject to the provisions of Section 7.06 of this Permanent Phase Project Loan Agreement, the Governmental Lender and the Fiscal Agent shall have the right to seek specific performance of or injunctive relief to enforce the requirements of any covenants of the Borrower contained in the Tax Regulatory Agreement.

**Section 5.13 Damage, Destruction and Condemnation.** If prior to full payment of the Funding Loan (or provision for payment of the Funding Loan in accordance with the provisions of the Funding Loan Agreement) the Project or any portion of it is destroyed (in whole or in part) or is damaged by fire or other casualty, or title to, or the temporary use of, the Project or any portion 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, or shall be transferred pursuant to an agreement or settlement in lieu of eminent domain proceedings, the Borrower shall nevertheless be obligated to continue to pay the amounts specified in this Permanent Phase Project Loan Agreement and in the Permanent Phase Project Note to the extent the Project Loan is not prepaid in full in accordance with the terms of the Project Loan Documents.

**Section 5.14 Obligation of the Borrower To Construct the Project.** The Borrower shall proceed with reasonable dispatch (and in no event later than required under the Financing Documents) to complete the construction and equipping of the Project as required by the Financing Documents. If amounts on deposit in the Project Loan Fund designated for the Project and available to be disbursed to the Borrower are not sufficient to pay the costs of the acquisition, construction, and equipping, the Borrower shall pay such additional costs from its own funds. The Borrower shall not be entitled to any reimbursement from the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender Representative or the Funding Lender in respect of any such additional costs or to any diminution or abatement in the repayment of the Project Loan. None of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer makes any representation or warranty, either express or implied, that money, if any, which will be paid into the Project Loan Fund or otherwise made available to

the Borrower will be sufficient to complete the Project, and none of the Fiscal Agent, the Governmental Lender, the Funding Lender, the Funding Lender Representative or the Servicer shall be liable to the Borrower or any other person if for any reason the Project is not completed.

**Section 5.15 Filing of Financing Statements.** The Borrower filed or recorded or caused to be filed or recorded all UCC financing statements which are required to be filed or recorded in order fully to protect and preserve the security interests relating to the priority of the Project Loan, the Funding Loan, the Pledged Security and the Security Instrument, and the rights and powers of the Governmental Lender, the Fiscal Agent and the Funding Lender in connection with such security interests. The Borrower shall cooperate with the Fiscal Agent in connection with the filing of any continuation statements for the purpose of continuing without lapse the effectiveness of such financing statements.

## ARTICLE VI

### INDEMNIFICATION

#### **Section 6.01 Indemnification.**

(a) **Indemnified Losses.** To the fullest extent permitted by law, the Borrower agrees to indemnify, hold harmless and defend the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and each of their respective officers, governing commissioners, members, directors, officials, employees, attorneys and agents (collectively, the "**Indemnified Parties**"), against any and all losses, damages (including, but not limited to, consequential and punitive damages), claims, actions, liabilities, costs and expenses of any conceivable nature, kind or character (including, without limitation, reasonable attorneys' fees, litigation and court costs, amounts paid in settlement and amounts paid to discharge judgments) to which the Indemnified Parties, or any of them, may become subject under federal or state securities laws or any other statutory law or at common law or otherwise (collectively, "**Losses**"), to the extent arising, directly or indirectly, out of or based upon or in any way relating to:

(i) any breach by the Borrower of its obligations under the Financing Documents or the execution, amendment, restructuring or enforcement thereof, or in connection with transactions contemplated thereby, including the issuance, sale, transfer or resale of the Governmental Note;

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

(iii) any accident, injury to, or death of persons or loss of or damage to property occurring in, on or about the Project or any part thereof;

(iv) any lien (other than liens permitted under the Continuing Covenant Agreement) or charge upon payments by the Borrower to the Governmental Lender, the Fiscal Agent or the Servicer hereunder, or any Taxes (including, without limitation, all ad

valorem taxes and sales taxes), assessments, impositions and other charges imposed on the Governmental Lender or the Fiscal Agent in respect of any portion of the Project (other than income and similar taxes on fees received or earned in connection therewith);

(v) any violation of any environmental law, rule or regulation with respect to, or the release of any hazardous materials from, the Project or any part thereof;

(vi) [Reserved];

(vii) the enforcement of, or any action taken by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative related to remedies under this Permanent Phase Project Loan Agreement, the Funding Loan Agreement or any other Financing Document;

(viii) any untrue statement of a material fact or alleged untrue statement of a material fact by the Borrower contained in any offering statement or document for the Governmental Note or any of the Financing Documents to which the Borrower is a party, or any omission or alleged omission by the Borrower of a material fact from any offering statement or document for the Governmental Note necessary to be stated therein in order to make the statements made therein by the Borrower, in the light of the circumstances under which they were made, not misleading;

(ix) any declaration of taxability of interest on the Governmental Note or allegations (or regulatory inquiry) that interest on the Governmental Note is includable in gross income for federal income tax purposes;

(x) any audit or inquiry by the Internal Revenue Service with respect to the Project and/or the tax-exempt status of the Governmental Note; or

(xi) the Fiscal Agent's acceptance or administration of the trust of the Funding Loan Agreement, or the exercise or performance of any of its powers or duties thereunder or under any of the documents relating to the Governmental Note to which it is a party;

except (A) in the case of the foregoing indemnification of the Fiscal Agent, or any of its respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the negligence, unlawful acts or willful misconduct of such Indemnified Party; or (B) in the case of the foregoing indemnification of the Servicer, the Funding Lender or the Governmental Lender or any of their respective officers, commissioners, members, directors, officials, employees, attorneys and agents, to the extent such Losses are caused by the gross negligence or willful misconduct of such Indemnified Party.

(b) **Procedures.** In the event that any action or proceeding is brought against any Indemnified Party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from such Indemnified Party, shall assume the investigation and defense thereof, including the employment of counsel selected or approved by the Indemnified Party, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that such Indemnified Party shall have the right to review and approve or disapprove any such compromise or settlement. Each Indemnified Party



shall have the right to employ separate counsel in any such action or proceeding and to participate in the investigation and defense thereof. The Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that such Indemnified Party may employ separate counsel at the expense of the Borrower only if, in such Indemnified Party's good faith judgment, a conflict of interest exists by reason of common representation or if all parties commonly represented do not agree as to the action (or inaction) of counsel.

(c) **Borrower to Remain Obligated.** Notwithstanding any transfer of the Project to another owner in accordance with the provisions of this Permanent Phase Project Loan Agreement, the Security Instrument and the Tax Regulatory Agreement, the Borrower shall remain obligated to indemnify each Indemnified Party pursuant to this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer unless (i) such subsequent owner assumed in writing at the time of such transfer all obligations of the Borrower under this Section 6.01 (including obligations under this Section 6.01 for Losses with respect to any claims based on actions or events occurring prior to the date of such transfer) and (ii) any such transfer is in compliance with the requirements of the Financing Documents.

(d) **Survival.** The provisions of this Section 6.01 shall survive the termination of this Permanent Phase Project Loan Agreement.

**Section 6.02 *Limitation With Respect to the Funding Lender.*** Notwithstanding anything in this Permanent Phase Project Loan Agreement to the contrary, in the event that the Funding Lender (or its nominee) shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure, or comparable conversion of the Project Loan, the Funding Lender (or its nominee) shall not be liable for any breach or default of any prior owner of the Project under this Permanent Phase Project Loan Agreement and shall only be responsible for defaults and obligations incurred or occurring during the period that the Funding Lender (or its nominee) is the owner of the Project. Accordingly, during any period that the Funding Lender (or its nominee) owns the Project and that this Article VI is applicable to the Funding Lender (or its nominee), the Funding Lender's (or its nominee's) obligations under this Article VI shall be limited to acts and omissions of the Funding Lender (or its nominee) occurring during the period of the Funding Lender's (or its nominee's) ownership of the Project.

## ARTICLE VII

### EVENTS OF DEFAULT AND REMEDIES

**Section 7.01 *Events of Default.*** The following shall be "Events of Default" under this Permanent Phase Project Loan Agreement, and the term "Event of Default" shall mean, whenever it is used in this Permanent Phase Project Loan Agreement, one or all of the following events:

(a) Any representation or warranty made by the Borrower in the Financing Documents or any certificate, statement, data or information furnished by the Borrower in connection therewith or included by the Borrower in its application to the Governmental Lender for assistance proves at any time to have been incorrect when made in any material respect;

(b) Failure by the Borrower to pay any amounts due under this Permanent Phase Project Loan Agreement, the Permanent Phase Project Note or the Security Instrument at the times and in the amounts required by this Permanent Phase Project Loan Agreement, the Permanent Phase Project Note and the Security Instrument, as applicable;

(c) The Borrower shall fail to observe or perform any other term, covenant, condition or agreement (after taking into account any applicable cure period) set forth in this Permanent Phase Project Loan Agreement, which failure continues for a period of 30 days after notice of such failure by the Governmental Lender, the Fiscal Agent or the Funding Lender Representative to the Borrower (unless such default cannot with due diligence be cured within 30 days but can be cured within a reasonable period and will not, in the Funding Lender Representative's sole discretion, adversely affect the Funding Lender or result in impairment of this Permanent Phase Project Loan Agreement or any other Financing Document, in which case no Event of Default shall be deemed to exist so long as Borrower shall have commenced to cure the default or Event of Default within 30 days after receipt of notice, and thereafter diligently and continuously prosecutes such cure to completion); provided, however, no such notice or grace periods shall apply in the case of any such failure which could, in the Funding Lender Representative's judgment, absent immediate exercise by the Funding Lender Representative of a right or remedy under this Agreement, result in harm to the Funding Lender; impairment of this Permanent Phase Project Loan Agreement or any other Financing Document;

(d) The occurrence of a default under the Continuing Covenant Agreement or the Security Instrument (after taking into account any applicable cure period thereunder) shall at the discretion of the Funding Lender Representative constitute an Event of Default under this Permanent Phase Project Loan Agreement but only if the Fiscal Agent is provided written notice by the Funding Lender Representative that an Event of Default has occurred under such Financing Document and the Fiscal Agent is instructed by the Funding Lender Representative that such default constitutes an Event of Default hereunder. The occurrence of an Event of Default hereunder shall in the discretion of the Funding Lender Representative constitute a default under the other Financing Documents.

Nothing contained in this Section 7.01 is intended to amend or modify any of the provisions of the Financing Documents or to bind the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative to any notice and cure periods other than as expressly set forth in the Financing Documents.

**Section 7.02 Remedies on Default.** Subject to Section 7.06 hereof, whenever any Event of Default hereunder shall have occurred and be continuing, the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender), may take any one or more of the following remedial steps:

(a) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take such action, without notice or demand, as the Funding Lender deems advisable to protect and enforce its rights against the Borrower and in and to the Project, including declaring the Project Loan to be immediately due and payable (including, without limitation, declaring the principal of, Prepayment Premium, if any, and interest on and all other amounts due on the Project Note to be immediately due and payable).

(b) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may, without being required to give any notice (other than to the Governmental Lender or the Fiscal Agent, as applicable), except as provided herein, pursue all remedies of a creditor under the laws of the State, as supplemented and amended, or any other applicable laws.

(c) The Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) may take whatever action at law or in equity may appear necessary or desirable to collect the payments under this Permanent Phase Project Loan Agreement then due and thereafter to become due, or to enforce performance and observance of any obligation, agreement or covenant of the Borrower under this Permanent Phase Project Loan Agreement.

In addition, subject to Section 7.06 hereof, the Governmental Lender and the Fiscal Agent may pursue remedies with respect to the Unassigned Rights.

Any amounts collected pursuant to Article IV hereof and any other amounts which would be applicable to payment of principal of and interest and any premium on the Funding Loan collected pursuant to action taken under this Section 7.02 shall be applied in accordance with the provisions of the Funding Loan Agreement.

Notwithstanding the foregoing, if an Event of Default shall arise hereunder, the Equity Investor shall have the right, but not the obligation, to cure such default, but subject to the same conditions and only to the same extent, if any, that the Borrower may cure hereunder, and the Governmental Lender shall accept such cure as if made on behalf of the Borrower.

**Section 7.03 No Remedy Exclusive.** Upon the occurrence of an Event of Default, all or any one or more of the rights, powers, privileges and other remedies available against the Borrower hereunder or under the Financing Documents or otherwise at law or in equity may be exercised by the Funding Lender (or the Fiscal Agent at the direction of the Funding Lender); at any time and from time to time, whether or not the Funding Lender has accelerated the Project Loan, and whether or not the Funding Lender shall have commenced any foreclosure proceeding or other action for the enforcement of its rights and remedies under any of the Financing Documents. No remedy conferred upon or reserved to the Funding Lender or the Fiscal Agent by this Permanent Phase Project Loan Agreement is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy given under this Permanent Phase Project Loan Agreement or now or hereafter existing at law or in equity or by statute. No delay or omission to exercise any right or power accruing upon any Event of Default shall impair any such right or power or 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 Funding Lender (or the Fiscal Agent at the direction of the Funding Lender) to exercise any remedy reserved to it in this Article, it shall not be necessary to give any notice, other than such notice as may be expressly required by this Permanent Phase Project Loan Agreement.

**Section 7.04 Agreement to Pay Attorneys' Fees and Expenses.** In the event the Borrower shall default under any of the provisions of this Permanent Phase Project Loan Agreement and the Governmental Lender, the Fiscal Agent, the Servicer or the Funding Lender Representative shall employ attorneys or incur other expenses for the collection of loan payments

or the enforcement of performance or observance of any obligation or agreement on the part of the Borrower contained in this Permanent Phase Project Loan Agreement or in the Permanent Phase Project Note, the Borrower shall on demand therefor reimburse the reasonable fees of such attorneys and such other expenses so incurred.

**Section 7.05 *No Additional Waiver Implied by One Waiver.*** In the event any agreement contained in this Permanent Phase Project Loan Agreement shall be breached by any party and thereafter waived by the other parties, such waiver shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder.

**Section 7.06 *Control of Proceedings.***

(a) If an Event of Default has occurred and is continuing, notwithstanding anything to the contrary herein, the Funding Lender Representative shall have the sole and exclusive right at any time to direct the time, method and place of conducting all proceedings to be taken in connection with the enforcement of the terms and conditions of this Permanent Phase Project Loan Agreement, or for the appointment of a receiver or any other proceedings hereunder, in accordance with the provisions of law and of this Permanent Phase Project Loan Agreement. In addition, the Funding Lender Representative shall have the sole and exclusive right at any time to directly enforce all rights and remedies hereunder and under the other Financing Documents with or without the involvement of the Fiscal Agent or the Governmental Lender. In no event shall the exercise of any of the foregoing rights result in an acceleration of the Project Loan without the express direction of the Funding Lender Representative.

(b) The Governmental Lender and the Fiscal Agent covenant that they will not, without the prior written consent of the Funding Lender Representative, take any of the following actions:

- (i) prosecute any action with respect to a lien on the Project; or
- (ii) initiate or take any action which may have the effect, directly or indirectly, of impairing the ability of the Borrower to timely pay the principal of, interest on, or other amounts due under, the Project Loan; or
- (iii) interfere with or attempt to influence the exercise by the Funding Lender Representative of any of its rights under the Financing Documents upon the occurrence of any event of default by the Borrower under the Financing Documents; or
- (iv) take any action to accelerate or otherwise enforce payment or seek other remedies with respect to the Project Loan or the Funding Loan.

(c) Notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender or the Fiscal Agent may:

- (i) specifically enforce the tax covenants of the Borrower specified in Section 2.04 and 2.05 hereof or seek injunctive relief against acts which may be in violation thereof;
- (ii) specifically enforce the Tax Regulatory Agreement or seek injunctive relief against acts which may be in violation of the Tax Regulatory Agreement or are otherwise

inconsistent with the operation of the Project in accordance with applicable requirements of the Internal Revenue Code and state law (but in neither the case of subsection (c)(i) above or this subsection (c)(ii) may the Governmental Lender or the Fiscal Agent seek any form of monetary damages from the Borrower in connection with such enforcement).

In addition, notwithstanding Sections 7.06(a) and 7.06(b) hereof, the Governmental Lender and the Fiscal Agent may seek specific performance of the other Unassigned Rights (provided no monetary damages are sought), and nothing herein shall be construed to limit the rights of the Governmental Lender, the Fiscal Agent or any Indemnified Party related to the Governmental Lender or the Fiscal Agent under Section 6.01 (each a "Related Indemnified Party") to enforce their respective rights against the Borrower under Sections 4.02, 4.03, 6.01 and 7.04 hereof, provided that no obligation of the Borrower to the Governmental Lender, the Fiscal Agent or any Related Indemnified Party under such sections shall be secured by or in any manner constitute a lien on, or security interest in, the Project, whether in favor of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party, and all such obligations are and shall be subordinate in priority, in right to payment and in all other respects to all other obligations, liens, rights (including without limitation the right to payment) and interests arising or created under the Financing Documents (except for the Fiscal Agent's right to receive payment of reasonable fees and expenses pursuant to Section 6.05(a) of the Funding Loan Agreement after an event of default with respect to the Funding Loan, which reasonable fees and expenses of the Fiscal Agent shall be payable as provided thereunder). Accordingly, none of the Governmental Lender, the Fiscal Agent or any Related Indemnified Party shall have the right to enforce any monetary obligation arising under such sections other than directly against the Borrower, without recourse to the Project. In addition, any such enforcement must not cause the Borrower to file a petition seeking reorganization, arrangement, adjustment or composition of or in respect of the Borrower under any applicable liquidation, insolvency, bankruptcy, rehabilitation, composition, reorganization, conservation or other similar law in effect now or in the future.

**Section 7.07 Assumption of Obligations.** In the event that the Fiscal Agent or the Funding Lender or their respective assignee or designee shall become the legal or beneficial owner of the Project by foreclosure or deed in lieu of foreclosure, such party shall succeed to the rights and the obligations of the Borrower under this Permanent Phase Project Loan Agreement, the Permanent Phase Project Note, the Tax Regulatory Agreement, and any other Financing Documents to which the Borrower is a party or with respect to which it is a third-party beneficiary. Such assumption shall be effective from and after the effective date of such acquisition and shall be made with the benefit of the limitations of liability set forth therein and without any liability for the prior acts of the Borrower.

## ARTICLE VIII

### MISCELLANEOUS

#### Section 8.01 Notices.

(a) Whenever in this Permanent Phase Project Loan Agreement the giving of notice by mail or otherwise is required, the giving of such notice may be waived in writing by the person

entitled to receive such notice and in any such case the giving or receipt of such notice shall not be a condition precedent to the validity of any action taken in reliance upon such waiver.

Any notice, request, complaint, demand, communication or other paper required or permitted to be delivered to the Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Equity Investor or the Servicer shall be sufficiently given and shall be deemed given (unless another form of notice shall be specifically set forth herein) on the Business Day following the date on which such notice or other communication shall have been delivered to a national overnight delivery service (receipt of which to be evidenced by a signed receipt from such overnight delivery service) addressed to the appropriate party at the addresses set forth in Section 11.04 of the Funding Loan Agreement or as required or permitted by this Permanent Phase Project Loan Agreement by Electronic Notice. The Governmental Lender, the Fiscal Agent, the Funding Lender Representative, the Borrower, the Equity Investor or the Servicer may, by notice given as provided in this paragraph, designate any further or different address to which subsequent notices or other communication shall be sent.

A duplicate copy of each notice or other communication given hereunder by any party to the Servicer shall also be given to the Funding Lender Representative and the Equity Investor and a duplicate copy of each notice or other communication given hereunder by any party to the Funding Lender Representative shall be given to the Servicer and the Equity Investor.

The Fiscal Agent agrees to accept and act upon Electronic Notice of written instructions and/or directions pursuant to this Permanent Phase Project Loan Agreement.

(b) The Fiscal Agent shall provide to the Funding Lender Representative and the Servicer (i) prompt notice of the occurrence of any Event of Default hereunder and (ii) any written information or other communication received by the Fiscal Agent hereunder within ten (10) Business Days of receiving a written request from the Funding Lender Representative for any such information or other communication.

(c) The Fiscal Agent shall have the right to accept and act upon instructions, including funds transfer instructions ("**Instructions**") given pursuant to this Permanent Phase Project Loan Agreement and related financing documents and delivered using Electronic Means; provided, however, that the Issuer and/or the Borrower, as applicable, shall provide to the Fiscal Agent an incumbency certificate listing officers with the authority to provide such Instructions ("**Authorized Officers**") and containing specimen signatures of such Authorized Officers, which incumbency certificate shall be amended by the Issuer and/or the Borrower, as applicable, whenever a person is to be added or deleted from the listing. If the Issuer and/or the Borrower, as applicable, elects to give the Fiscal Agent Instructions using Electronic Means and the Fiscal Agent in its discretion elects to act upon such Instructions, the Fiscal Agent's understanding of such Instructions shall be deemed controlling. The Issuer and the Borrower understand and agree that the Fiscal Agent cannot determine the identity of the actual sender of such Instructions and that the Fiscal Agent shall conclusively presume that directions that purport to have been sent by an Authorized Officer listed on the incumbency certificate provided to the Fiscal Agent have been sent by such Authorized Officer. The Issuer and the Borrower shall be responsible for ensuring that only Authorized Officers transmit such Instructions to the Fiscal Agent and that the Issuer, the Borrower and all Authorized Officers are solely responsible to safeguard the use and

confidentiality of applicable user and authorization codes, passwords and/or authentication keys upon receipt by the Issuer and/or the Borrower, as applicable. The Fiscal Agent shall not be liable for any losses, costs or expenses arising directly or indirectly from the Fiscal Agent's reliance upon and compliance with such Instructions notwithstanding such directions conflict or are inconsistent with a subsequent written instruction. The Issuer and the Borrower agree: (i) to assume all risks arising out of the use of Electronic Means to submit Instructions to the Fiscal Agent, including without limitation the risk of the Fiscal Agent acting on unauthorized Instructions, and the risk of interception and misuse by third parties; (ii) that it is fully informed of the protections and risks associated with the various methods of transmitting Instructions to the Fiscal Agent and that there may be more secure methods of transmitting Instructions than the method(s) selected by the Issuer and/or the Borrower, as applicable; (iii) that the security procedures (if any) to be followed in connection with its transmission of Instructions provide to it a commercially reasonable degree of protection in light of its particular needs and circumstances; and (iv) to notify the Fiscal Agent immediately upon learning of any compromise or unauthorized use of the security procedures. "Electronic Means" shall mean the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Fiscal Agent, or another method or system specified by the Fiscal Agent as available for use in connection with its services hereunder.

**Section 8.02 *Concerning Successors and Assigns.*** All covenants, agreements, representations and warranties made herein and in the certificates delivered pursuant hereto shall survive the financing herein contemplated and shall continue in full force and effect so long as the obligations hereunder are outstanding. Whenever in this Permanent Phase Project Loan Agreement any of the parties hereto is referred to, such reference shall be deemed to include the successors and assigns of such party; and all covenants, promises and agreements by or on behalf of the Borrower which are contained in this Permanent Phase Project Loan Agreement shall bind its successors and assigns and inure to the benefit of the successors and assigns of the Governmental Lender, the Fiscal Agent, the Servicer, the Funding Lender and the Funding Lender Representative, as applicable.

**Section 8.03 *Governing Law.*** This Permanent Phase Project Loan Agreement and the Exhibits attached hereto, if any, shall be construed in accordance with and governed by the internal laws of the State and, where applicable, the laws of the United States of America.

**Section 8.04 *Modifications in Writing.*** Modification or the waiver of any provisions of this Permanent Phase Project Loan Agreement or consent to any departure by the parties therefrom, shall in no event be effective unless the same shall be in writing approved by the parties hereto and shall require the prior written consent of the Funding Lender Representative and then such waiver or consent shall be effective only in the specific instance and for the purpose for which given. No notice to or demand on the Borrower in any case shall entitle it to any other or further notice or demand in the same circumstances.

**Section 8.05 *Further Assurances and Corrective Instruments.*** The Governmental Lender, the Fiscal Agent and the Borrower agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and such further instruments as may reasonably be required (including such supplements or

further instruments requested by the Funding Lender Representative) for correcting any inadequate or incorrect description of the performance of this Permanent Phase Project Loan Agreement.

**Section 8.06 Captions.** The section headings contained herein are for reference purposes only and shall not in any way affect the meaning or interpretation of this Permanent Phase Project Loan Agreement.

**Section 8.07 Severability.** The invalidity or unenforceability of any provision of this Permanent Phase Project Loan Agreement shall not affect the validity of any other provision, and all other provisions shall remain in full force and effect.

**Section 8.08 Counterparts.** This Permanent Phase Project Loan Agreement may be signed in any number of counterparts with the same effect as if the signatures thereto and hereto were upon the same instrument.

**Section 8.09 Amounts Remaining in Loan Payment Fund or Other Funds.** It is agreed by the parties hereto that any amounts remaining in the Loan Payment Fund or other funds and accounts established under the Funding Loan Agreement upon expiration or sooner termination of the term hereof (and the repayment in full of the Project Loan and all other amounts owing under the Project Loan Documents), shall be paid in accordance with the Funding Loan Agreement.

**Section 8.10 Effective Date and Term.** This Permanent Phase Project Loan Agreement shall become effective upon its execution and delivery by the parties hereto, shall be effective and remain in full force from the date hereof, and, subject to the provisions hereof, shall expire on such date as the Funding Loan Agreement shall terminate.

**Section 8.11 Cross References.** Any reference in this Permanent Phase Project Loan Agreement to an "Exhibit," an "Article," a "Section," a "Subsection" or a "Paragraph" shall, unless otherwise explicitly provided, be construed as referring, respectively, to an exhibit attached to this Permanent Phase Project Loan Agreement, an article of this Permanent Phase Project Loan Agreement, a section of this Permanent Phase Project Loan Agreement, a subsection of the section of this Permanent Phase Project Loan Agreement in which the reference appears and a paragraph of the subsection within this Permanent Phase Project Loan Agreement in which the reference appears. All exhibits attached to or referred to in this Permanent Phase Project Loan Agreement are incorporated by reference into this Permanent Phase Project Loan Agreement.

**Section 8.12 Funding Lender Representative and Servicer as Third-Party Beneficiaries.** The parties hereto agree and acknowledge that the Funding Lender Representative and the Servicer are third party beneficiaries of this Permanent Phase Project Loan Agreement.

**Section 8.13 Supplemental Loans.** The Governmental Lender and the Fiscal Agent each acknowledges that the Funding Lender or, if Freddie Mac is not the Funding Lender, Freddie Mac may make additional loans to the Borrower secured by additional mortgages on the Project ("Additional Loans"). The Governmental Lender and the Fiscal Agent each consents to the Additional Loans notwithstanding anything to the contrary in the Project Loan Documents, provided that such loans are subordinate to the repayment of the Project Loan by the Borrower.



**Section 8.14 *Non-Liability of Governmental Lender.*** The Governmental Lender shall not be obligated to pay the principal (or Prepayment Premium) of or interest on the Funding Loan, except from Revenues and other money and assets received by the Fiscal Agent on behalf of the Governmental Lender pursuant to this Permanent Phase Project Loan Agreement. Neither the faith and credit nor the taxing power of the State or any political subdivision thereof, nor the faith and credit of the Governmental Lender or any member is pledged to the payment of the principal (or prepayment premium) or interest on the Funding Loan. The Governmental Lender shall not be liable for any costs, expenses, losses, damages, claims or actions, of any conceivable kind on any conceivable theory, under or by reason of or in connection with this Permanent Phase Project Loan Agreement, the Funding Loan or the Funding Loan Agreement, except only to the extent amounts are received for the payment thereof from the Borrower under this Permanent Phase Project Loan Agreement.

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

**Section 8.15 *No Liability of Officers.*** No recourse under or upon any obligation, covenant, or agreement or in the Governmental Note, or under any judgment obtained against the Governmental Lender, or by the enforcement of any assessment or by any legal or equitable proceeding by virtue of any constitution or statute or otherwise or under any circumstances, shall be had against any incorporator, member, director, commissioner, employee, agent or officer, as such, past, present, or future, of the Governmental Lender, either directly or through the Governmental Lender, or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may be due and unpaid by the Governmental Lender upon the Funding Loan. Any and all personal liability of every nature, whether at common law or in equity, or by statute or by constitution or otherwise, of any such incorporator, member, director, commissioner, employee, agent or officer, as such, to respond by reason of any act or omission on his or her part or otherwise, for the payment for or to the Governmental Lender or any receiver thereof, or for or to the Funding Lender, of any sum that may remain due and unpaid upon the Funding Loan, is hereby expressly waived and released as a condition of and consideration for the execution of this Permanent Phase Project Loan Agreement and the issuance of the Governmental Note.

**Section 8.16 *Capacity of the Fiscal Agent.*** The Fiscal Agent is entering into this Permanent Phase Project Loan Agreement solely in its capacity as Fiscal Agent and shall be entitled to the rights, protections, limitations from liability and immunities afforded it as Fiscal

Agent under the Funding Loan Agreement. The Fiscal Agent shall be responsible only for the duties of the Fiscal Agent expressly set forth herein and in the Funding Loan Agreement.

In connection with the issuance of the Governmental Note, certain moneys will be deposited with the Fiscal Agent before the closing date pursuant to one or more letters of instruction from the provider or providers of such moneys. Such moneys will be held by the Fiscal Agent subject to the terms and conditions of the Funding Loan Agreement in addition to terms provided in such letter(s) of instruction. For such purpose the standards of care, provisions regarding responsibilities, and indemnification and other sections relating to the Fiscal Agent contained in the Funding Loan Agreement (the "Effective Provisions") shall be effective as of the first date of receipt by the Fiscal Agent of such moneys. The Effective Provisions shall be deemed incorporated into such letter(s) of instructions.

**Section 8.17 Reliance.** The representations, covenants, agreements and warranties set forth in this Permanent Phase Project Loan Agreement may be relied upon by the Governmental Lender, the Fiscal Agent, Bond Counsel, the Servicer, the Funding Lender and the Funding Lender Representative. In performing their duties and obligations under this Permanent Phase Project Loan Agreement and under the Funding Loan Agreement, the Governmental Lender and the Fiscal Agent may rely upon statements and certificates of the Borrower, upon certificates of tenants believed to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Borrower pertaining to occupancy of the Project. In addition, the Governmental Lender and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection in respect of any action taken or suffered by the Governmental Lender or the Fiscal Agent under this Permanent Phase Project Loan Agreement and under the Funding Loan Agreement in good faith and in conformity with the opinion of such counsel. It is expressly understood and agreed by the parties to this Permanent Phase Project Loan Agreement (other than the Governmental Lender) that:

(a) the Governmental Lender may rely conclusively on the truth and accuracy of any certificate, opinion, notice or other instrument furnished to the Governmental Lender by the Fiscal Agent, the Funding Lender or the Borrower as to the existence of a fact or state of affairs required under this Permanent Phase Project Loan Agreement to be noticed by the Governmental Lender;

(b) the Governmental Lender shall not be under any obligation to perform any record keeping or to provide any legal service, it being understood that such services shall be performed or caused to be performed by the Fiscal Agent, the Funding Lender Representative, the Servicer or the Borrower, as applicable; and

(c) none of the provisions of this Permanent Phase Project Loan Agreement shall require the Governmental Lender or the Fiscal Agent to expend or risk its own funds (apart from the proceeds of Funding Loan issued under the Funding Loan Agreement) or otherwise endure financial liability in the performance of any of its duties or in the exercise of any of its rights under this Permanent Phase Project Loan Agreement, unless it shall first have been adequately indemnified to its satisfaction against the costs, expenses and liabilities which may be incurred by taking any such action.

[Signature Pages Follow]

IN WITNESS WHEREOF, the parties hereto have executed this Permanent Phase Project Loan Agreement and the Governmental Lender has caused its corporate seal to be affixed hereto and to be attested, all as of the date first set forth above.

**HOUSING FINANCE AUTHORITY OF  
ST. JOHNS COUNTY, FLORIDA, as  
Governmental Lender**

(SEAL)

By: \_\_\_\_\_  
Name: Michael O'Donnell  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Linda DeGrande  
Title: Secretary

[GOVERNMENTAL LENDER'S SIGNATURE PAGE TO SAN MARCOS HEIGHTS  
PERMANENT PHASE PROJECT LOAN AGREEMENT]

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent**

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

**[FISCAL AGENT'S SIGNATURE PAGE TO SAN MARCOS HEIGHTS PERMANENT  
PHASE PROJECT LOAN AGREEMENT]**

**SAN MARCOS HEIGHTS, LLC,  
a Florida limited liability company**

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its manager

By: \_\_\_\_\_  
Darren Smith, Manager

[BORROWER'S SIGNATURE PAGE TO SAN MARCOS HEIGHTS PERMANENT PHASE  
PROJECT LOAN AGREEMENT]

**EXHIBIT D**  
**LAND USE RESTRICTION AGREEMENT**

This document prepared by  
and after recording should be returned to:  
Chauncey W. Lever, Jr.  
Foley & Lardner LLP  
One Independent Drive, Suite 1300  
Jacksonville, Florida, 32202

**LAND USE RESTRICTION AGREEMENT**

Owner's	San Marcos Heights, LLC
Name and Address:	1100 NW 4 <sup>th</sup> Avenue Delray Beach, FL 33444 Attention: Darren Smith
Location of Property:	See <u>Exhibit A</u> attached hereto
Name of Project:	San Marcos Heights
Issuer's	Housing Finance Authority of St. Johns County, Florida
Name and Address:	200 San Sebastian View, Suite 2300 St. Augustine, FL 32084
Fiscal Agent's	The Bank of New York Mellon Trust Company, N.A.
Name and Address:	4655 Salisbury Road, Suite 300 Jacksonville, Florida 32256

**THIS LAND USE RESTRICTION AGREEMENT** (this "Agreement"), made and entered into as of February 1, 2021, by and among the Housing Finance Authority of St. Johns County, Florida (the "Issuer"), a public body corporate and politic created pursuant to the laws of the State of Florida (the "State"), San Marcos Heights, LLC, a limited liability company formed under the laws of the State, and its successors and assigns (the "Owner"), The Bank of New York Mellon Trust Company, N.A., a national banking association, with a representative corporate trust office in Jacksonville, Florida, as fiscal agent (the "Fiscal Agent"), pursuant to the Funding Loan Agreement entered into as of February 1, 2021 (the "Funding Loan Agreement"), between the Issuer, the Fiscal Agent and Bank of America, N.A., as initial funding lender (the "Initial Funding Lender") authorizing and securing the Issuer's Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "Governmental Note"), the proceeds of which are being loaned to the Owner for the purposes described herein;

**WITNESSETH:**

**WHEREAS**, the Owner intends to acquire, construct and equip a multifamily residential rental project located within St. Johns County, Florida (the "County"), to be occupied by Eligible Persons and Lower-Income Tenants, all for the public purpose of assisting persons or families of low, moderate or middle income within the County to afford the costs of decent, safe and sanitary housing; and

**WHEREAS**, the Issuer has authorized the issuance and delivery of the Governmental Note in the aggregate principal amount of not to exceed \$[16,000,000] pursuant to the Funding Loan Agreement in order to provide loans to the Owner, pursuant to a Construction Phase Project Loan Agreement dated as of February 1, 2021 (the "Construction Phase Project Loan Agreement") by and among the Issuer, the Fiscal Agent and the Owner, and, following Conversion, the Project Loan Agreement dated as of February 1, 2021 (the "Permanent Phase Project Loan Agreement") by and among the Issuer, the Fiscal Agent and the Owner to finance the acquisition, construction and equipping of the Project (as hereinafter defined) and certain costs incurred in connection with the issuance of the Governmental Note, all under and in accordance with the Constitution and laws of the State; and

**WHEREAS**, the Funding Loan Agreement, the Construction Phase Project Loan Agreement and the Permanent Phase Project Loan Agreement require, as a condition of making the Project Loans, the execution and delivery of this Agreement; and

**WHEREAS**, in order to satisfy such requirement, the Issuer, the Fiscal Agent and the Owner have determined to enter into this Agreement to set forth certain terms and conditions relating to the operation of the Project, which is located on the Land (as hereinafter defined); and

**WHEREAS**, this Agreement shall be properly filed and recorded by the Owner within the official records of the County and shall constitute a restriction upon the use of the property subject to and in accordance with the terms contained herein.

**NOW THEREFORE**, in consideration of providing the financing by the Issuer to the Owner, acknowledging that compliance with this Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, the Owner covenants and agrees with the other parties hereto as follows:

**Section 1. Definitions and Interpretation.**

(a) The following terms shall have the respective meanings set forth below (undefined terms shall be given the meanings set forth in the Funding Loan Agreement):

**"Affiliated Party"** of any person means a person such that the relationship between such persons would result in a disallowance of losses under Section 267 or 707(b) of the Code, or such persons are members of the same controlled group of corporations as defined in Section 1563(a) of the Code (except that "more than 50 percent" shall be substituted for "at least 80 percent" each place it appears in Section 1563(a)).

**"Applicable Income Limit"** means, sixty percent (60%) of area median gross income (within the meaning of Section 142(d) of the Code) for St. Johns County, Florida, Standard Metropolitan Statistical Area, determined by the Secretary of the United States Department of the Treasury in a manner consistent with determinations of low income families and area median gross income under Section 8 of the Housing Act of 1937, as amended (or if such program is terminated, under such program as in effect immediately before such termination), including adjustment for family size.

**"Available Units"** means residential units in a residential rental project that are actually occupied and residential units in the project that are unoccupied and have been leased at least once



after becoming available for occupancy, provided that in the case of an acquisition of an existing residential rental project, a residential unit that is unoccupied on the later of the date the Project is acquired or the issue date of the First Bonds, is not an Available Unit and does not become an Available Unit until it has been leased for the first time after such date, and a residential unit that is not available for occupancy due to renovations is not an Available Unit and does not become an Available Unit until it has been leased for the first time after the renovations are completed.

**"Bond Counsel"** means any attorney at law or firm of attorneys of nationally recognized standing in matters pertaining to the exclusion from gross income of interest on bonds for federal income tax purposes issued by states and political subdivisions selected by the Issuer.

**"Certificate of Continuing Program Compliance"** means the certificate, in the form attached hereto as Exhibit "B" required to be delivered by the Owner to the Issuer pursuant to Section 4(d) of this Agreement.

**"Code"** means the Internal Revenue Code of 1986, as amended, and except as otherwise provided herein or required by the context hereof, includes interpretations thereof contained or set forth in the applicable regulations of the Department of the Treasury (including applicable final regulations or temporary regulations), the applicable rulings of the Internal Revenue Service (including published Revenue Rulings and private letter rulings) and applicable court decisions.

**"Compliance Agent"** means First Housing Development Corporation of Florida, a Florida corporation, its successors and assigns under the Compliance Monitoring Agreement.

**"Compliance Monitoring Agreement"** means the Compliance Monitoring Agreement dated as of February 1, 2021, among the Governmental Lender, the Owner and the Compliance Agent.

**"Compliance Monitoring Fee"** means the fee provided in Section 4 of the Compliance Monitoring Agreement.

**"Construction Phase Project Note"** means the Project Note dated February [ ], 2021 (together with all riders and modifications thereto) delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan during the construction period and prior to the Conversion Date.

**"County"** means St. Johns County, Florida.

**"Current Annual Family Income"** is determined in accordance with Section 8 of the Housing Act of 1937, as amended (or, if such program is terminated, under such program as in effect immediately before such termination), and includes salary, commissions, and other forms of compensation from employment, earnings from assets and investments, income from government programs such as social security, unemployment compensation and welfare, alimony and child support, and the other forms of income described in the Income Certification but does not include earnings of children under age 18, lump sum insurance or capital gains, scholarships, the value of food stamps or the other forms of income that the Income Certification specifies may be excluded.

**“Eligible Persons”** means one or more natural persons or a family, irrespective of race, creed, religion, color, national origin, familial status, mental or physical handicap or sex, who are either Lower-Income Tenants or whose Current Annual Family Income does not exceed one hundred fifty percent (150%) of the area median gross income (within the meaning of Section 142(d) of the Code) for St. Johns County, Florida Standard Metropolitan Statistical Area, subject to family size adjustment, as indicated in the latest published Decile Distributions of Family Income by Standard Metropolitan Statistical Areas and Non-Metropolitan Counties prepared and published from time to time by HUD, or such other reliable compilation of income statistics as the Issuer may determine to employ, as adjusted by the Issuer according to the most recent Consumer Price Index statistic; provided that persons 65 years of age or older shall be “Eligible Persons” regardless of their income.

**“First Bonds”** means the first issue of bonds to which Section 142(d) of the Code applies issued to finance the acquisition of a residential rental project. The Governmental Note is considered the “First Bonds” with respect to the Project.

**“HUD”** means the United States Department of Housing and Urban Development or any successor agency.

**“Income Certification”** means the Certification of Tenant Eligibility in substantially the form attached hereto as Exhibit “D”.

**“Land”** means the real property located in the County, described in Exhibit “A” attached hereto.

**“Loan Documents”** means the Funding Loan Agreement, the Construction Phase Project Loan Agreement, the Permanent Phase Project Loan Agreement, the Governmental Note, the Project Notes, the Security Instrument, this Land Use Restriction Agreement, and all other instruments, documents and certificates evidencing and securing the Loan.

**“Loans”** means, together the Project Loans and the Funding Loan.

**“Lower-Income Tenants”** means Eligible Persons whose Current Annual Family Income does not exceed the Applicable Income Limit; provided, however, that the occupants of a unit shall not be considered to be Lower-Income Tenants if all of the occupants of such unit are students (as defined in Section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under Section 6013 of the Code. Notwithstanding the foregoing, a residential unit shall not fail to be treated as a residential unit that is occupied by Lower-Income Tenants merely because such residential unit is occupied by an individual who is a student and receiving assistance under Title IV of the Social Security Act, a student who was previously under the case and placement responsibility of a foster care program (under Part B or Part E of Title IV of the Social Security Act), or a student enrolled in a government supported job training program, or entirely by full-time students if such students are single parents and their children and such parents are not dependents of another individual and such children are not dependents of another individual other than a parent of such children or married and file a joint return.

**“Outstanding”** means the Outstanding amount of the Governmental Note as defined in the Funding Loan Agreement.

**"Permanent Phase Project Note"** means the Amended Multifamily Note dated as of the Conversion Date, (together with all riders and modifications thereto) delivered to the Governmental Lender and endorsed by the Governmental Lender to the Fiscal Agent as security for the Funding Loan after the Conversion Date.

**"Project"** means the multifamily residential rental housing development, to be known as San Marcos Heights, located on the Land and financed with proceeds of the Loans.

**"Project Loan"** means, during the term of the Construction Phase Project Loan Agreement, the Construction Phase Project Loan and during the term of the Permanent Phase Project Loan Agreement, the Permanent Phase Project Loan.

**"Project Notes"** means collectively the Construction Phase Project Note and the Permanent Phase Project Note.

**"Qualified Project Period"** means the period beginning on the later of the date the First Bonds are issued and the first day on which at least ten 10% of the units in the Project are first occupied (which date shall be certified in writing by the Owner to the Issuer and the Fiscal Agent immediately following such date) and ending on the latest of the date that is fifteen years after the date on which at least 50% of the units in the Project were first occupied (which date shall be certified in writing by the Owner to the Issuer and the Fiscal Agent immediately following such date); the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding (as interpreted pursuant to the Code); and the date on which any assistance provided with respect to the Project under Section 8 of the U.S. Housing Act of 1937 terminates. Upon 50% occupancy as set forth in proviso (a) of this definition, the Owner shall submit Exhibit "C" attached hereto to the Issuer and the Fiscal Agent to evidence the foregoing.

**"Regulations"** means the Income Tax Regulations issued under the Code, as applicable (including applicable final regulations or temporary regulations).

**"Security Instrument"** shall mean that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, dated February [ ], 2021, from the Owner granting a first priority security interest in the Project in favor of the Issuer and assigned to the Fiscal Agent, to secure the repayment of the Loans and the Owner's obligation to pay the amounts due pursuant to the Construction Phase Project Loan Agreement or the Permanent Phase Project Loan Agreement, as applicable, the Project Notes and the Funding Loan Agreement, as the same may be amended, modified, supplemented or restated from time to time.

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

(b) Unless the context clearly requires otherwise, as used in this Agreement, words of the masculine, feminine or neuter gender shall be construed to include any other gender when appropriate and words of the singular number shall be construed to include the plural number, and vice versa, when appropriate. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

(c) The titles and headings of the sections of this Agreement have been inserted for convenience of reference only, and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof or be considered or given any effect in

construing this Agreement or any provisions hereof or in ascertaining intent, if any question of intent shall arise.

Section 2. Residential Rental Property. The Owner hereby represents, covenants, warrants and agrees that:

(a) (1) The Owner will acquire, construct, equip, own and operate the Project for the purpose of providing a "qualified residential rental project" as such phrase is used in Sections 142(a)(7) and 142(d)(1) of the Code, (2) the Owner shall own the entire Project for federal tax purposes, and (3) the Project shall be owned, managed and operated as multifamily residential rental properties, each comprised of a building or structure or several buildings or structures containing similarly constructed units, together with any functionally related and subordinate facilities and no other facilities, in accordance with Section 142(d) of the Code and Sections 1.103 8(b)(4) and 1.103 8(a)(3) of the Regulations, and in accordance with such requirements as may be imposed thereby and by the Code on the Project from time to time.

(b) Each residential unit in the Project shall be contained in one or more buildings or structures located on the Land and shall be similarly designed, constructed (except as to the number of bedrooms and bathrooms) and furnished, each of which will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation for an individual or a family, including a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, refrigerator and sink, all of which are separate and distinct from the other units.

(c) None of the units in the Project will at any time be (1) utilized on a transient basis, (2) used as a hotel, motel, dormitory, fraternity or sorority house, rooming house, nursing home, hospital, sanitarium, rest home, trailer court or park, or (3) rented for initial lease periods of less than six (6) months. No part of the Project will, at any time during the term of this Agreement be owned or used by a cooperative housing corporation or converted to condominiums.

(d) All of the units will be rented or available for rent on a continuous basis to members of the general public (other than units for a resident manager or maintenance personnel), and the Owner will not give preference to any particular class or group of persons in renting the units in the Project, except to the extent that units are required to be leased or rented to Lower-Income Tenants or Eligible Persons. Lower-Income Tenants will have equal access to and enjoyment of all common facilities of the Project. The Owner will not discriminate against children of any age when renting the units in the Project.

(e) Each component of the Land consists of a parcel of real property or parcels of real property that are contiguous except for the interposition of a road, street, stream or similar property, and the Project comprises buildings, structures and facilities that are geographically contiguous and functionally related. Any common facilities (such as swimming pools, recreational facilities, parking areas and other facilities which are reasonably required for the Project) are functionally related and subordinate to the respective Project and are commensurate with its size and intended use. No more than two units in the Project shall be occupied by resident managers or maintenance or security personnel.

(f) Neither the Owner nor an Affiliated Party of the Owner shall occupy any of the units in the Project; provided, however, that the Owner or an Affiliated Party of the Owner may occupy a unit in a building or structure in the Project that contains five or more units.

(g) None of the proceeds of the Governmental Note (including investment earnings) will be used to provide a skybox or any other private luxury box, an airplane, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises or a facility used primarily for gambling.

The requirements of this Section 2 shall remain in effect during the term of this Agreement (as defined in Section 13 below).

Section 3. Lower-Income Tenants and Eligible Persons. The Owner hereby represents, warrants and covenants as follows:

(a) At all times during the Qualified Project Period, not less than forty percent (40%) of the Available Units, other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to subsection 2(f) above, shall be occupied (or held available for occupancy) on a continuous basis by persons or families who, at the time the Owner obtains an Income Certification in compliance with Section 4(a), are Lower-Income Tenants (the "Set-Aside Requirements").

(b) At all times during the term of this Agreement (as defined in Section 13 below), at least one hundred percent (100%) of the Available Units in the Project shall be rented to or be available for rent by Eligible Persons.

(c) For purposes of paragraph (a) and (b) of this Section 3, a unit occupied by an individual or family who at the commencement of the occupancy of such unit is a Lower-Income Tenant shall be counted as occupied by a Lower-Income Tenant during such individual's or family's tenancy in such unit, even though such individual or family ceases to be a Lower-Income Tenant; however, such unit shall cease to be treated as occupied by a Lower-Income Tenant upon a determination that the tenant's most recently reported income exceeds 140% of the Applicable Income Limit if after such determination, but before the next determination, any residential rental unit of comparable or smaller size in the Project is occupied by a new tenant whose income exceeds the Applicable Income Limit and the Project is again in compliance. In addition, a unit that was occupied by a Lower-Income Tenant shall be counted as occupied by a Lower-Income Tenant until it is reoccupied other than for a temporary period of not more than thirty-one (31) days, at which time the unit shall be considered to be occupied by a Lower-Income Tenant only if the individual or family then occupying the unit satisfies the definition of a Lower-Income Tenant.

Section 4. Reporting Requirements; Payment of Compliance Monitoring Fee. During the term of this Agreement (as defined in Section 13 below):

(a) The Owner shall obtain and maintain on file an Income Certification in the form attached hereto as Exhibit "D" from each occupant, as follows: with respect to any occupant whose initial occupancy commences on or after the date of issuance of the Bonds, no less than five (5) days prior to the time of initial occupancy for such tenant, with respect to any occupant occupying a residential rental unit in the Project at the time of issuance of the Bonds, no less than five (5) days prior to the commencement of a new or extended lease term with such tenant or the transfer

of such tenant to a different unit (whichever occurs first), and upon the vacancy and re-occupancy of any residential rental unit in the Project, and with respect to each Lower-Income Tenant, such Income Certifications shall be obtained as often as necessary to comply with the requirements of Section 142(d) of the Code.

(b) The Owner shall file with the Governmental Lender, on or before the tenth day of each month (or if such tenth day of a month falls on a weekend or holiday, submission must be made the business day following such tenth day), copies of the Income Certifications specified in Section 4(a) hereof obtained by the Owner during the previous month.

(c) The Owner shall maintain complete and accurate records pertaining to the incomes of (as of the date of initial occupancy of each tenant) and rentals charged to Lower-Income Tenants residing in the Project, and shall permit during normal business hours and upon 5 business days' notice to the Owner, any duly authorized representative of the Governmental Lender to inspect the books and records of the Owner pertaining to the incomes of and rentals charged to all tenants residing in the Project.

(d) Commencing on January 1, 2022, the Owner shall prepare and submit to the Governmental Lender, and on or before the tenth day of each month (or, if such tenth day of the month falls on a weekend or holiday, submission must be made the business day immediately following such tenth day) and thereafter, rent rolls and a Certificate of Continuing Program Compliance in the form attached hereto as Exhibit "B", as such form may be revised by the Governmental Lender from time to time upon the advice of Bond Counsel, executed by the Owner or its designee authorized in writing by the Owner, stating the percentage of residential rental units that were occupied by Lower-Income Tenants; that, other than those units occupied by the Owner or an Affiliated Party to the Owner pursuant to Section 2(f) above, at all times during the previous month 100% of the residential rental units were occupied (or deemed occupied) by Eligible Persons, and that no default has occurred under this Agreement or, if such a default has occurred, the nature of such default and the steps, if any, the Owner has taken or proposes to take to correct such default. If the Owner reports to the Fiscal Agent and the Governmental Lender that the vacancy rate at the Project is ten percent (10%) or higher, the Governmental Lender shall be permitted during normal business hours and upon five (5) business days' notice to the Owner, to inspect all or some of the vacant units to determine to the Governmental Lender's reasonable satisfaction that such vacant units are ready and available for rental.

In the event that the Owner fails to timely submit to the Governmental Lender the items which the Owner is required to submit under paragraphs (b) and (d) above on or before the tenth day of each month, the Owner shall pay to the Governmental Lender a late fee equal to \$100.00 multiplied by the number of days elapsing between the due date for such submission and the date on which such submission is delivered to the Governmental Lender. Any such late fee shall be payable on or before the tenth business day following the date the Governmental Lender delivers written notification of the amount of such late fee to the Owner (or, if such tenth day falls on a weekend or a holiday, submission must be made on the business day immediately preceding such tenth day). The failure of the Owner to timely pay a late fee shall be an event of default by the Owner under this Agreement.

(e) The Owner shall render an annual report (e.g., IRS Form 8703) to the Secretary of the Treasury as required by Section 142(d)(7) of the Code.

(f) At all times during the term of this Agreement, the Owner shall be responsible for paying to the Compliance Monitoring Agent the Compliance Monitoring Fee. The Owner shall deliver the initial Compliance Monitoring Fee payment together with the initial Certificate of Continuing Program Compliance delivered pursuant to Section 4(d) above. Thereafter, the Owner shall pay the annual Compliance Monitoring Fee semiannually in advance on each March 1 and September 1 of each year. At any time the Governmental Note is paid in full prior to the expiration of the Qualified Project Period, the Compliance Monitoring Fee (calculated for the period commencing on the date the Governmental Note is paid in full and ending on the last date of the Qualified Project Period) will be due in a lump sum payment on the date the Governmental Note is paid in full.

Section 5. Indemnification. The Owner hereby covenants and agrees that it shall indemnify and hold harmless the Issuer, its past, present and future members, employees, agents and representatives, and the County, its past, present and future officers of its governing body, employees, attorneys, agents and representatives, and the Fiscal Agent and its past, present and future officers, directors, officials, employees and agents (any or all of the foregoing being hereinafter referred to as the "**Indemnified Persons**") from and against any and all losses, costs, damages, expenses and liabilities of whatsoever nature or kind (including but not limited to, reasonable attorneys' fees, litigation and court costs related to trial and appellate proceedings, amounts paid in settlement and amounts paid to discharge judgments) directly or indirectly resulting from, arising out of, or related to issuance, offering, sale or delivery of the Governmental Note, or the design, construction, installation, operation, use, occupancy, maintenance or ownership of the Project other than for their own negligent, illegal or unlawful acts or omissions. In the event that any action or proceeding is brought against any Indemnified Person with respect to which indemnity may be sought hereunder, the Owner, upon timely written notice from the Indemnified Person, shall assume the investigation and defense thereof, including the employment of counsel and the payment of all expenses. The Indemnified Person shall have the right to participate in the investigation and defense thereof and may employ separate counsel either with the approval and consent of the Owner, which consent shall not be unreasonably withheld, or in the event the Indemnified Person reasonably determines that a conflict of interest exists between such Indemnified Person and the Owner in connection therewith, and in either such event the Owner shall pay the reasonable fees and expenses of such separate counsel. It being understood and agreed that recourse hereunder for payment by the Owner of principal of and interest on the Governmental Note shall be limited to the assets of the Owner that are the security from time to time provided with respect to the Loan.

Section 6. Reliance. The Issuer and the Owner hereby recognize and agree that the representations and covenants set forth herein may be relied upon by all persons interested in the legality and validity of the Governmental Note and in the exclusion from gross income for federal income tax purposes of the interest on the Governmental Note. In performing their duties and obligations hereunder, the Issuer and the Fiscal Agent may rely upon statements and certificates of the Owner, the Eligible Persons and the Lower-Income Tenants reasonably believed by the Owner, its agents and employees to be genuine and to have been executed by the proper person or persons, and upon audits of the books and records of the Owner pertaining to occupancy of the Project. In addition, the Issuer and the Fiscal Agent may consult with counsel, and the opinion of such counsel shall be full and complete authorization and protection with respect to any action taken or suffered by the Issuer or the Fiscal Agent hereunder in good faith and in conformity with the opinion of such counsel. In performing its duties and obligations hereunder, the Owner may

rely upon certificates of the Eligible Persons and the Lower-Income Tenants reasonably believed to be genuine and to have been executed by the proper person or persons.

Section 7. Fair Housing Laws. The Owner will comply with all fair applicable housing laws, rules, regulations or orders applicable to the Project and shall not discriminate on the basis of race, creed, color, sex, age or national origin in the lease, use or occupancy of the Project or in connection with the employment or application for employment of persons for the operation and management of the Project. All advertising and promotional material used in connection with the Project shall contain the phrase "Fair Housing Opportunity."

Section 8. Tenant Lists. All tenant lists, applications, and waiting lists relating to the Project shall at all times be kept separate and identifiable from any other business of the Owner which is unrelated to the Project, and shall be maintained, as required by the Issuer from time to time, in a reasonable condition for proper audit and subject to examination during business hours by representatives of the Issuer or the Fiscal Agent. Failure to keep such lists and applications or to make them available to the Issuer or Fiscal Agent will be a default hereunder.

Section 9. Tenant Lease Restrictions. All tenant leases shall be expressly subordinate to the Security Instrument, and shall contain clauses, among others, wherein each individual lessee:

(a) Certifies the accuracy of the statements made in the Income Certification;

(b) Agrees that the family income, family composition and other eligibility requirements shall be deemed substantial and material obligations of such lessee's tenancy; that such lessee will comply promptly with all requests for information with respect thereto from the Owner, the Fiscal Agent or the Issuer, and that such lessee's failure to provide accurate information in the Income Certification or refusal to comply with a request for information with respect thereto shall be deemed a violation of a substantial obligation of such lessee's tenancy; and

(c) Agrees not to sublease to any person or family who does not execute and deliver to the Issuer an Income Certification.

Section 10. Sale, Lease or Transfer of Project.

(a) The Owner shall not sell, assign, convey or transfer its interest in any material portion of its interest in the land, fixtures or improvements constituting a part of the Project or any material portion of the personal property constituting a portion of the Project, during the term of this Agreement without the prior written consent of the Issuer, which consent shall not be unreasonably withheld, and the Fiscal Agent and the Issuer having received an opinion of Bond Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, conveyance, transfer, or assignment will not result in interest on the Governmental Note, or any part thereof, becoming includable in the gross income of the holders thereof for federal income tax purposes (except in the hands of a "substantial user" as defined in the Code). If a material portion of the Project financed or refinanced with proceeds from the Loan is sold during the term hereof and such material portion of such Project consisted of personal property or equipment, the proceeds from the sale thereof may be used by the Owner to purchase property of similar function to be used in connection with the Project, otherwise, the proceeds from such sale shall be applied in



accordance with the Loan Documents. If such material portion of the Project consists of real property and improvements, the purchaser thereof must execute and deliver to the Owner and the Fiscal Agent a document in form and substance reasonably satisfactory to the Issuer pursuant to which such purchaser shall agree to operate such property in compliance with the terms and conditions of this Agreement.

(b) The Owner shall not sell or otherwise transfer the Project in whole without the prior written consent of the Issuer (which shall respond within a reasonable period of time and shall not unreasonably withhold such consent) provided that the Owner shall not be in default hereunder beyond any applicable notice and cure periods, it is reasonably expected that continued operation of the Project will comply with the requirements of this Agreement, the subsequent purchaser or assignee shall execute any document reasonably requested by the Issuer with respect to assuming the obligations of the Owner under this Agreement, the Issuer shall not have any reason to believe that the purchaser or assignee is incapable, financially or otherwise, of complying with or may be unwilling to comply with, the terms of all agreements binding on such purchaser or assignee relating to the Project, the purchaser or assignee shall have satisfied such other conditions as may be reasonable under the circumstances, if the Governmental Note has not been paid in full and discharged, the purchaser or assignee shall have first executed a document in recordable form addressed to the Issuer and the Fiscal Agent to the effect that such purchaser or assignee will comply with the terms and conditions of the Loan Documents, if the Governmental Note has not been paid in full and discharged, the Fiscal Agent and the Issuer shall receive an opinion of counsel reasonably acceptable to the Issuer to the effect that the purchaser's or assignee's obligations under the Loan Documents are enforceable against such purchaser or assignee in accordance with their terms, and the Fiscal Agent and the Issuer shall have received an opinion of Bond Counsel to the effect that, in reliance upon such factual certificates as it deems appropriate and subject to such qualifications as may be generally acceptable in the industry, such sale, transfer, disposition or assignment will not result in interest on the Governmental Note, or any part thereof, becoming includable in the gross income of the holder thereof for federal income tax purposes. It is hereby expressly stipulated and agreed that any sale, transfer or other disposition of the Project in violation of this Section 10 shall be null, void and without effect, shall cause a reversion of title to the Owner and shall be ineffective to relieve the Owner of its obligations under the Loan Documents. In the event that the purchaser or assignee shall assume the obligations of the Owner under the Loan Documents, the Owner shall be released from its obligations thereunder and hereunder, other than its obligations to pay the Compliance Monitoring Fee for the term of this Agreement.

(c) Notwithstanding anything in this Section 10 to the contrary, ownership of the Project may be transferred in connection with a foreclosure thereof under the Security Instrument, or the acceptance of the Project by the mortgagee or a deed in lieu of foreclosure under the Security Instrument, without complying with the requirements of Section 10(a) or Section 10(b), and this Agreement shall terminate as provided in Section 13; provided, however, that this sentence shall cease to apply if, at any time during that part of the Qualified Project Period subsequent to such transfer, the Owner or an Affiliated Party with respect to any such parties obtains an ownership interest in the Project for federal tax purposes.

(d) Notwithstanding anything in this Section 10 to the contrary, the restrictions set forth above on the sale, transfer or other disposition or encumbrance of the Project or any portion thereof shall not be applicable to any of the following: leases of apartment units as contemplated by this Agreement, grants of utility related easements and service or concession related leases or

easements, including, without limitation, coin-operated laundry service leases and/or television cable easements on the Project, providing same are granted in connection with the operation of the Project as contemplated by this Agreement, any sale or conveyance to a condemning governmental authority as a direct result of the condemnation or a governmental taking or a threat thereof, Permitted Encumbrances under the Security Instrument, the placing of a subordinate mortgage lien, assignment of leases and/or rents or security interest on or pertaining to the Project which is made expressly subject and subordinate hereto and to the Security Instrument, transfers of partnership interests in the Owner to the extent permitted under the Loan Documents; or transfers of the membership interests in the Owner to the extent permitted under the Loan Documents, if applicable.

The Project name may not be changed after the issuance of the Governmental Note unless the Owner submits a written request clearly stating the proposed new name. The Issuer shall act promptly upon any such requests that are received at least ten (10) days before the next meeting of the board of the Issuer.

Nothing in this Section 10 shall be deemed to modify or limit any of the provisions of the Loan Documents.

Section 11. Negative Covenants. During the term of this Agreement, the Owner shall not:

(a) Except pursuant to the provisions of this Agreement and the other Loan Documents, or except upon a sale or transfer of the Project in accordance with the terms of this Agreement and the other Loan Documents, encumber any of the mortgaged property, including the grant of commercial leases (other than for vending machines, coin operated laundry facilities and similar amenities functionally related and subordinate to the Project and granted in connection with the day to day operation of an apartment complex), or permit the conveyance, transfer or encumbrance of such property (except for such leases and for apartment leases) for the Qualified Project Period except as otherwise provided herein. Nothing in this paragraph shall prohibit the granting of easements for the purpose of providing utility services (including cable television or private satellite television) to the Project.

(b) Demolish any part of the Project necessary for the operation thereof for its intended purposes or substantially subtract from any real or personal property of the Project; or

(c) Permit the use of the dwelling accommodations of the Project for any purpose except rental residences in compliance with Section 142(d) of the Code.

Section 12. Covenants to Run with the Land. This Agreement and the covenants, reservations and restrictions set forth herein shall be deemed covenants running with the Land and, except as provided in Section 13 hereof, shall pass to and be binding upon the Owner's assigns and successors and all subsequent owners of the Land or the Project or any interest therein; provided, however, that upon the termination of this Agreement in accordance with the terms hereof said covenants, reservations and restrictions shall expire. Except as provided in Section 13 hereof, each and every contract, deed or other instrument hereafter executed covering or conveying an interest in the Land or the Project or any portion thereof or interest therein shall conclusively be held to have been executed, delivered and accepted subject to such covenants, reservations and

restrictions, regardless of whether such covenants, reservations and restrictions are set forth in such contract, deed or other instruments. If a portion or portions of any interest in the Land or the Project are conveyed, all of such covenants, reservations and restrictions shall run to each portion of the Land or the Project.

Section 13. Term. This Agreement shall remain in full force and effect during the Qualified Project Period; provided, however, that this Agreement shall terminate, in the event of involuntary noncompliance with the provisions of this Agreement caused by fire or other casualty, seizure, requisition, foreclosure or transfer by deed in lieu of foreclosure, a change in a federal law or an action of a federal agency that prevents the Issuer from enforcing the provisions hereof, or a condemnation or a similar event (as determined by Bond Counsel), but only if within a reasonable period thereafter or prior thereto the Governmental Note is or has been retired in full or the proceeds received as a result of such event are used to finance a development that complies with the provisions hereof and any other applicable requirements of the Code and the Regulations. In the case of foreclosure or transfer of title by deed in lieu of foreclosure or similar event (as determined by Bond Counsel), such termination will cease to be in effect if, at any time during the remainder of the Qualified Project Period, the Owner or an Affiliated Party to the Owner, or either of them, obtains an ownership interest in the Project for federal tax purposes.

Section 14. Correction of Noncompliance. The failure of the Owner to comply with any of the provisions of this Agreement shall not be deemed a default hereunder unless such failure has not been corrected within a period of 60 days following the date that any of the parties hereto learned of such failure or should have learned of such failure by the exercise of reasonable diligence (which 60-day period may be extended if such failure cannot reasonably be corrected within such 60-day period, diligent action to correct such failure commences within such 60-day period, such action is diligently pursued until such failure is corrected, and the Owner delivers to the Issuer and the Fiscal Agent an opinion of Bond Counsel to the effect that such longer cure period will not adversely affect the exclusion of interest on the Governmental Note from gross income for federal income tax purposes). Not later than 5 business days after the Issuer learns of such failure, the Issuer shall attempt with reasonable diligence to notify the Owner of such failure by written communication; provided, however, failure of the Issuer to notify the Owner of such failure does not excuse compliance or extend the period for cure set forth above.

Section 15. Modification of Tax Covenants. Notwithstanding the provisions of Section 23(b) hereof, to the extent any amendments, modifications or changes to the Regulations or the Code shall, in the written opinion of Bond Counsel addressed to the Issuer and the Fiscal Agent, impose requirements upon the ownership, occupancy or operation of the Project different than those imposed by the Regulations or the Code and stated herein, and the Owner's failure to comply with such different requirements would produce a material and substantial risk that interest on the Governmental Note will become includable in gross income for federal income tax purposes, then this Agreement shall be amended and modified in accordance with such requirements. The parties hereto agree to execute, deliver, and record, if applicable, any and all documents or instruments necessary in the opinion of and in the form approved by Bond Counsel to effectuate the intent of this Section 15.

Section 16. Burden and Benefit. The Issuer, the Fiscal Agent and the Owner hereby declare their understanding and intent that the burden of the covenants set forth herein touch and concern the Land in that the Owner's legal interest in the Land and the Project is rendered less

valuable thereby. The Fiscal Agent, the Issuer and the Owner hereby further declare their understanding and intent that the benefit of such covenants touch and concern the Land by enhancing and increasing the enjoyment and use of the Land and the Project by Lower-Income Tenants, the intended beneficiaries of such covenants, reservations and restrictions, and by furthering the public purposes for which the Governmental Note was issued. The Owner hereby expressly acknowledges that this Agreement is necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note issued by the Issuer to finance the Loan and covenants and agrees that in connection with the acquisition, construction, ownership and operation of the Project, it shall and shall require any subsequent purchaser of the Project to fully comply with all terms and conditions of this Agreement.

Section 17. Uniformity; Common Plan. The covenants, reservations and restrictions hereof shall apply uniformly to the entire Project.

Section 18. Maintenance of Insurance; Application of Insurance and Condemnation Proceeds. The Owner shall maintain insurance with respect to the Project of the type and in the amount of coverage required by the Security Instrument, which requirements may not be amended without the consent of the Issuer and which requirements are incorporated herein and will survive the termination of the Security Instrument. Funds for the payment of premiums for such insurance policies shall be escrowed with the Fiscal Agent, or the Funding Lender, so long as the Governmental Note remains outstanding. Copies of all renewals of any policy of insurance maintained pursuant to this Section 18 shall be provided to the Issuer no later than 10 days prior to the expiration of any policy period. In the event that copies of all renewals are not received timely, the Issuer may direct the Fiscal Agent to procure such policies with funds escrowed with the Fiscal Agent. In the event that funds are escrowed with the Funding Lender, the Issuer shall provide notice to the Funding Lender (or to the Owner in the event the Governmental Note is no longer outstanding) requesting copies of such renewals. In the event that the Issuer does not receive copies of such renewals within 30 days of providing such notice to the Funding Lender or Owner, as applicable, the Issuer may, at the expense of the Owner, procure such insurance with respect to the Project.

If during the Qualified Project Period the Project is damaged or destroyed or if all or a portion thereof is taken through eminent domain proceedings, or under threat thereof, proceeds from insurance on the Project or any condemnation awards pertaining to such eminent domain proceedings shall be applied as provided in the Funding Loan Agreement and the Security Instrument.

Section 19. Remedies; Enforceability. The benefits of this Agreement shall inure to, and may be enforced by, respectively, the Issuer, the Fiscal Agent and its successors, the holders of the Governmental Note and their successors and assigns to the extent permitted by the Funding Loan Agreement, and the Lower-Income Tenants and their successors who shall reside or be eligible to reside in the units set aside for their occupancy pursuant to Section 3 of this Agreement for the period set forth in Section 13 hereof, whether or not the Loan may be paid in full, and whether or not the Governmental Note is outstanding. If a material violation of any of the provisions hereof which is not being corrected as provided in Section 14 hereof occurs or is attempted, such parties may institute and prosecute any proceeding at law or in equity to abate, prevent or enjoin any such violation or attempted violation; and to compel specific performance hereunder, it being recognized that the beneficiaries of the Owner's obligations hereunder cannot

be adequately compensated by monetary damages in the event of the Owner's default. In addition to such other remedies as may be provided for herein, if a violation of any of the provisions hereof which is not being corrected as provided in Section 14 hereof occurs or is attempted, the Issuer may appoint a receiver to operate the Project in compliance with this Agreement. In lieu of the appointment of a receiver on the conditions provided in the preceding sentence, the Issuer shall have the right (but not the obligation) and is specifically authorized by the Owner hereunder (but only in the event the default is caused by an act or omission of the manager of the Project and only after such manager is given 30 days' prior notice and right to cure), to appoint a new manager of the Project to operate the Project in accordance with this Agreement and the other Loan Documents and take all actions necessary, in the reasonable judgment of the Issuer, to cure any default by the Owner hereunder, and such new manager assuming such management hereunder shall be paid by or on behalf of the Owner, from the rents, revenues, profits and income from the Project, a management fee not to exceed the prevailing management fee paid to managers of similar housing projects in the area of St. Johns County, Florida. Subject to Section 13 hereof, the provisions hereof are imposed upon and made applicable to the Land and shall run with the Land and shall be enforceable against the Owner or any other person or entity that has or had an ownership interest in the Project at the time of such violation or attempted violation. No delay in enforcing the provisions hereof as to any breach or violation shall impair, damage or waive the right of any party entitled to enforce the provisions hereof or to obtain relief against or recover for the continuation or repetition of such breach or violation or any similar breach or violation hereof at any later time or times. Notwithstanding anything herein to the contrary, the liability of the Owner under this Agreement is and shall be limited to the assets of the Owner, it being specifically understood and agreed that neither the Owner nor the shareholders, members, limited partners (except a limited partner that is also a general partner), managers, directors, officers, employees or agents thereof, shall have any personal liability with respect to the obligations of the Owner set forth herein, and that any party seeking to enforce personal liability against any shareholder, member, limited partner (except a limited partner which is also a general partner), director, officer, employee or agent thereof, shall look only to said assets of the Owner for the satisfaction of such liability. The remedies of Lower-Income Tenants shall be limited to specific performance.

The Owner hereby agrees that the appointment of a receiver may be necessary to preserve the exclusion from gross income for federal income tax purposes of interest on the Governmental Note following a violation of the provisions of this Agreement which presents a material risk of an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Governmental Note. The Owner hereby expressly consents to, and agrees not to contest, the appointment of a receiver to operate the Project following a violation by the Owner of the provisions of Section 2 or 3 of this Agreement which is not being corrected as provided in Section 14 hereof and hereby waives any and all defenses and objections that might otherwise be raised to any such appointment of receiver. The Owner further agrees that the Issuer shall have the right to require the Owner to remove any manager or managing agent of the Project whose actions or inactions present a material risk of an adverse impact on the excludability from gross income for federal income tax purposes of interest on the Governmental Note and which action or inaction is not being corrected as provided in Section 14 hereof, upon such manager or managing agent being given thirty (30) days' written notice of any violation hereof, and such right shall be expressly acknowledged in any contract between the Owner and any such manager or managing agent.

The Issuer and the Fiscal Agent hereby agree to accept performance, including, but not limited to curing any defaults on behalf of the Owner, on the part of the Equity Investor (as defined in the Funding Loan Agreement) or an Affiliated Party of the Equity Investor as though the same had been performed by the Owner under any of the Loan Documents.

Section 20. Filing. Upon execution and delivery by the parties hereto, the Owner shall cause this Agreement and all amendments and supplements hereto to be recorded and filed in the official public records of St. Johns County, Florida, and in such manner and in such other places as the Issuer or the Fiscal Agent may reasonably request, and shall pay all fees and charges incurred in connection therewith.

Section 21. Governing Law. This Agreement shall be governed by the laws of the State.

Section 22. Assignment. The Owner shall not assign its interest or obligations hereunder, except by writing and in accordance with the provisions of Section 10 hereof.

Section 23. Amendments.

(a) This Agreement shall not be amended, revised, or terminated except by a written instrument, executed by the parties hereto (or their successors in title), and duly recorded in the official public records for St. Johns County, Florida and, except with respect to amendments contemplated by the next sentence, consented to in writing by the Owner. Anything to the contrary notwithstanding, the parties hereby agree to amend this Agreement to the extent required, in the opinion of Bond Counsel, in order for interest on the Governmental Note to remain exempt from federal income taxation under Section 103 of the Code. The Owner agrees, from time to time, to take such other actions and steps necessary to comply, and to cause the Project to comply, with the requirements of Section 142(d) of the Code and to enter into modifications and amendments to this Agreement to the extent required by any interpretation of federal law, by any amendment to the Code or by any Regulation promulgated thereunder (and the parties hereto agree that this Agreement shall be deemed to be automatically amended to impose such requirements pending execution of any such amendment), in each case so that interest on the Governmental Note remains exempt from federal income taxes. If either the Owner or the Issuer fail to perform its obligations under this clause (a), the Fiscal Agent shall be authorized by the Owner and the Issuer (and is hereby appointed as their respective true and lawful attorney-in-fact) to execute, deliver and record, on behalf of the Owner or the Issuer, as applicable, any such amendment; provided that the Fiscal Agent shall take no action pursuant to this sentence without first notifying the Owner and the Issuer in writing of its intention to take such action and without first providing the Owner or the Issuer, as applicable, an opportunity to comply with the requirements of this clause (a).

(b) Subject in all respects to the other provisions of this Agreement, the Issuer, the Fiscal Agent and the Owner may from time to time enter into one or more amendments or supplements to this Agreement for any of the following purposes:

(i) To correct or amplify the description of the Project;

(ii) To evidence the succession of another person or entity to the Issuer, the Fiscal Agent or the Owner and the agreement by any successor to perform the covenants of their predecessor;

(iii) To make such changes to the covenants hereof to the extent required by Section 15 and 23(b) hereof in order to maintain the exclusion from gross income for federal income tax purposes of interest on the Governmental Note;

(iv) To cure any ambiguities, to correct or supplement any provisions of this Agreement which may be inconsistent with any other provision herein, or to make any other provision with respect to matters or questions arising under this Agreement, which will not be inconsistent with the provisions of this Agreement, provided that such action will not adversely affect the interests of the owners of the Governmental Note; or

(v) Upon delivery of an opinion of Bond Counsel to the effect that such amendment or supplement will not adversely affect the exclusion from gross income for federal income tax purposes of interest on the Governmental Note, to amend the covenants of the Owner hereunder to the extent consistent with any applicable amendment to the Code or Regulations.

Section 24. Provisions Relating to the Fiscal Agent. At such time as the Governmental Note has been paid in full, the Fiscal Agent shall be released from all duties and obligations under this Agreement, and all provisions throughout this Agreement related to the duties of, or notice to or from, the Fiscal Agent shall be of no further force and effect. If any approval or consent of the Fiscal Agent is required, such approval or consent shall be obtained from the Issuer; however, multiple notices need not be provided. Notwithstanding the foregoing, any such references shall remain in effect when needed to construe land use restriction obligations under this Agreement or to provide definitions. The Fiscal Agent's rights to indemnification shall survive such release and discharge.

Section 25. Notice. Any notice required to be given hereunder shall be given by certified or registered mail, postage prepaid, return receipt requested, to the Governmental Lender, the Fiscal Agent and the Owner at their respective addresses set forth in the first paragraph hereof, or at such other addresses as may be specified in writing by the parties hereto. Notice shall be deemed given on the third business day after the date of mailing.

A duplicate copy of any notice given to the Owner hereunder shall also be sent to the Equity Investor (as defined in the Construction Phase Project Loan Agreement and Permanent Phase Project Loan Agreement) at the address set forth below or to such other address as the Equity Investor may from time to time designate:

Bank of America, N.A.  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attention: Tax Credit Asset Management (San Marcos Heights)

Section 26. Severability. If any provision hereof shall be invalid, illegal, or unenforceable, the validity, legality and enforceability of the remaining portions hereof shall not in any way be affected or impaired thereby.

Section 27. Multiple Counterparts. This Agreement may be simultaneously executed in multiple counterparts, all of which shall constitute one and the same instrument, and each of which shall be deemed to be an original.

Section 28. Freddie Mac Rider. On and subsequent to the Conversion Date, the provisions of this Agreement are subject to the provisions of the Freddie Mac Rider attached hereto as Exhibit E and made a part hereof.

[Remainder of page intentionally left blank]



**IN WITNESS WHEREOF**, the parties to this Agreement have caused this Agreement to be executed in their respective names, and the Governmental Lender has caused its execution to be attested and its official seal to be hereunto affixed, all as of the date first above written.

**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA**

(SEAL)

By: \_\_\_\_\_  
Name: Michael O'Donnell  
Title: Chair

ATTEST:

By: \_\_\_\_\_  
Name: Linda DeGrande  
Title: Secretary

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

The foregoing LAND USE RESTRICTION AGREEMENT was executed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by [\_\_\_\_\_], as Chair, of the Housing Finance Authority of St. Johns County, Florida, who appeared before me this day by means of  physical presence or  online notarization and who executed the within LAND USE RESTRICTION AGREEMENT and acknowledged to me that they did such on behalf of the Issuer.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(SEAL)

Personally know to me  , or  
Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)

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

The foregoing LAND USE RESTRICTION AGREEMENT was executed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of the Housing Finance Authority of St. Johns County, Florida, who appeared before me this day by means of  physical presence or  online notarization and who executed the within LAND USE RESTRICTION AGREEMENT and acknowledged to me that they did such on behalf of the Issuer.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(SEAL)

Personally know to me  , or  
Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
Darren Smith, Manager

**WITNESSES:**

\_\_\_\_\_  
Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF FLORIDA            )  
  )SS  
COUNTY OF \_\_\_\_\_  )

The foregoing LAND USE RESTRICTION AGREEMENT was executed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, by Darren Smith, as Manager of San Marcos Heights MM, LLC, a Florida limited liability company, in its capacity as Manager of San Marcos Heights, LLC, a Florida limited liability company, who appeared before me this day by means of  physical presence or  online notarization and who executed the within LAND USE RESTRICTION AGREEMENT and acknowledged to me that she did such on behalf of the Owner.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(SEAL)

Personally know to me  , or  
Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent**

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

**WITNESSES:**

Name: \_\_\_\_\_

\_\_\_\_\_  
Name: \_\_\_\_\_

STATE OF FLORIDA            )  
  )SS  
COUNTY OF DUVAL         )

The foregoing LAND USE RESTRICTION AGREEMENT was executed and acknowledged before me this \_\_\_ day of \_\_\_\_\_, 20\_\_\_, by \_\_\_\_\_, as \_\_\_\_\_ of The Bank of New York Mellon Trust Company, N.A., who appeared before me this day by means of  physical presence or  online notarization and who executed the within LAND USE RESTRICTION AGREEMENT and acknowledged to me that she did such on behalf of the Fiscal Agent.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(SEAL)

Personally know to me  , or  
Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)

**EXHIBIT A**  
**LEGAL DESCRIPTION OF LAND**

**EXHIBIT B**

**FORM OF CERTIFICATION OF CONTINUING PROGRAM COMPLIANCE**

Witnesseth that on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_, the undersigned, having borrowed certain funds from the Housing Finance Authority of St. Johns County, Florida for the purpose of acquiring and constructing a multi-family rental housing project, does hereby certify that such multi-family rental housing project is in continuing compliance with the Land Use Restriction Agreement executed by the undersigned and filed in the official public records of St. Johns County, Florida (including the requirement that all units be and remain rental units), that an Income Certification has been submitted for each new tenant in such multi-family rental housing project since the filing of the last such certification and that the same are true and correct to the best of the undersigned's knowledge and belief. As of the date of this Certificate, the following percentages of completed residential units in the Project are occupied by Lower-Income Tenants and Eligible Persons (as each such term is defined in the Land Use Restriction Agreement dated as of February 1, 2021):

Total number of units available for occupancy as of \_\_\_\_\_, 20\_\_\_\_ = \_\_\_\_\_

	<u>Percentage</u>	<u>Number</u>
Lower-Income Tenants	_____ %	_____
Eligible Persons	_____ %	_____
Total Units Occupied	_____ %	_____

[\_\_\_\_\_, PROPERTY  
MANAGER OF SAN MARCO HEIGHTS,  
LLC, a Florida limited liability company

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

**EXHIBIT C**

**FORM OF CERTIFICATE CONCERNING COMMENCEMENT  
AND TERMINATION OF QUALIFIED PROJECT PERIOD**

**THIS CERTIFICATE** is being executed pursuant to the provisions of the Land Use Restriction Agreement, dated as of February 1, 2021, (the "Agreement"), among the Housing Finance Authority of St. Johns County, Florida (the "Issuer"), The Bank of New York Mellon Trust Company, N.A. (the "Fiscal Agent") and San Marcos Heights, LLC (the "Owner"), in connection with the financing by the Issuer of San Marcos Heights (the "Project") in St. Johns County located on real property described on **Exhibit "A"** hereto, through the issuance of the Issuer's \$[16,000,000] Multifamily Mortgage Revenue Note (San Marcos Heights) (the "Governmental Note").

The period for which the restrictions set forth in the Agreement are applicable to the Project is referred to as the "Qualified Project Period" and is defined in the Agreement as follows:

"Qualified Project Period" means the period beginning on the later of (i) the date the First Bonds are issued and (ii) the date on which at least 10% of the units in the Project are first occupied (which date shall be certified in writing by the Owner to the Issuer and the Fiscal Agent immediately following such date) and ending on the latest of (a) the date that is fifteen years after the date on which at least 50% of the units in the Project were first occupied (which date shall be certified in writing by the Owner to the Issuer and the Fiscal Agent immediately following such date); (b) the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding (as interpreted pursuant to the Code); and (c) the date on which any assistance provided with respect to the Project under Section 8 of the U.S. Housing Act of 1937 terminates.

To evidence the Qualified Project Period with respect to the Project, the Owner certified to the following:

1. The Governmental Note was issued on February [ ], 2021.
2. The date of acquisition of the Project was December [ ], 2020.
3. The maturity date of the Governmental Note is \_\_\_\_\_ 1, 20\_\_.
4. The date on which at least 10% of the units in the Project were first occupied was \_\_\_\_\_, 20\_\_.
5. The date on which at least fifty percent (50%) of the units in the Project were first occupied was \_\_\_\_\_, 20\_\_.
6. The date of initial occupancy of any unit in the Project was \_\_\_\_\_, 20\_\_.
7. Assistance is being provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended. Such assistance will end on \_\_\_\_\_, 20\_\_, unless further extended.

Prior to the recording of this Certificate in the land records of the County, the Owner has supplied the Issuer with documentation to establish the facts relating to the Project set forth in this Certificate, which documentation has been found satisfactory to all parties. Nothing in this Certificate is intended to modify the requirement that all units in the Project be rented as residential rental property for the term during which the Governmental Note is outstanding or any provision of the Agreement.

[Remainder of page intentionally left blank]



IN WITNESS WHEREOF, the Owner has caused this Certificate to be executed by its duly authorized representative, and the Issuer has caused this Certificate to be accepted by its duly authorized representative as of this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

SAN MARCOS HEIGHTS, LLC,  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
[ ]  
[ ]

STATE OF FLORIDA                    )  
  )SS  
COUNTY OF \_\_\_\_\_            )

The foregoing CERTIFICATE was executed and acknowledged before me this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_, by \_\_\_\_\_, as \_\_\_\_\_ of San Marcos Heights MM, LLC, a Florida limited liability company, in its capacity as Manager of San Marcos Heights, LLC, a Florida limited liability company, who appeared before me this day by means of  physical presence or  online notarization and who executed the within CERTIFICATE and acknowledged to me that she did such on behalf of the Owner.

GIVEN under my hand and notarial seal this \_\_\_\_ day of \_\_\_\_\_, 20 \_\_\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(SEAL)

Personally know to me  , or  
Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)

Acceptance by Issuer

HOUSING FINANCE AUTHORITY OF  
ST. JOHNS COUNTY, FLORIDA

ATTEST:

\_\_\_\_\_  
[TITLE]

\_\_\_\_\_  
[TITLE]

STATE OF FLORIDA  
COUNTY OF ST. JOHNS

I, \_\_\_\_\_, a Notary Public in and for the said County in the State aforesaid, do hereby certify that \_\_\_\_\_ and \_\_\_\_\_, known to me to be the same persons whose names are subscribed to the foregoing instrument as \_\_\_\_\_ and \_\_\_\_\_, respectively, of the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, appeared before me this day by means of  physical presence or  online notarization and acknowledged that they, being thereunto duly authorized, signed, sealed with the seal of said Authority, and delivered the said instrument as the free and voluntary act of said Authority and as their own free and voluntary act, for the uses and purposes therein set forth.

GIVEN under my hand and notarial seal this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

\_\_\_\_\_  
NOTARY PUBLIC, STATE OF FLORIDA

(SEAL)

Personally know to me  , or  
Produced Identification

\_\_\_\_\_  
(Type of Identification Produced)

EXHIBIT A  
to  
Certificate Concerning Commencement  
and Termination of Qualified Project Period

REAL PROPERTY DESCRIPTION

**EXHIBIT D**  
**CERTIFICATION OF TENANT ELIGIBILITY**

(See attached)

## EXHIBIT E

### FREDDIE MAC RIDER

This Freddie Mac Rider (the "Rider") is attached to and forms a part of the Land Use Restriction Agreement (the "Regulatory Agreement"), dated as of February 1, 2021, by and among the Housing Finance Authority of St. Johns County, Florida (the "Governmental Lender"), The Bank of New York Mellon Trust Company, N.A., as fiscal agent (together with any successor in such capacity, the "Fiscal Agent"), and San Marcos Heights, LLC (together with any successor to its rights, duties and obligations hereunder and as owner of the Project identified herein, the "Owner").

1. **Definitions.** Terms used in this Rider as defined terms shall have the meanings given those terms in the Regulatory Agreement and the Funding Loan Agreement. In addition, the following terms shall have the following meanings:

**"Freddie Mac"** means the Federal Home Loan Mortgage Corporation, a shareholder owned government sponsored enterprise organized and existing under the laws of the United States.

**"Funding Lender"** means the holder of the Governmental Note, initially Bank of America, N.A. and on the Freddie Mac Purchase Date, Freddie Mac, and any successors or assigns thereof.

**"Funding Loan Agreement"** means the Funding Loan Agreement dated as of February 1, 2021 by and among the Governmental Lender, the Initial Funding Lender set forth therein and the Fiscal Agent, as such Funding Loan Agreement may from time to time be amended or supplemented.

**"Governmental Note"** means the Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights), dated February [ ], 2021 delivered by the Governmental Lender pursuant to the Funding Loan Agreement.

**"Project Loans"** means the loans to the Owner pursuant to the Project Loan Documents, which Project Loans are to be assigned to the Fiscal Agent.

**"Project Loan Agreements"** means the Construction Phase Project Loan Agreement and the Permanent Phase Project Loan Agreement, each dated as of February 1, 2021, among the Owner, the Governmental Lender and the Fiscal Agent, as such Project Loan Agreements may from time to time be amended or supplemented.

**"Project Loan Documents"** means the Security Instrument, the Project Notes, the Project Loan Agreements, the Tax Regulatory Agreement, the Assignment, the Continuing Covenant Agreement, any Subordination Agreement(s) and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Project Loans or any portion thereof.

**"Project Notes"** means the Project Notes, including applicable addenda, to be executed by the Owner in favor of the Governmental Lender, evidencing the Owner's financial obligations under the Project Loans, and to be endorsed by the Governmental Lender, without recourse, to the

order of the Fiscal Agent, as the same may be amended, modified, supplemented or restated from time to time.

**“Security Instrument”** means the Mortgage, Security Agreement and Assignment of Rents, Leases and Profits, together with all riders thereto, securing the Project Notes, to be executed by the Owner with respect to the Project, as it may be amended, modified, supplemented or restated from time to time.

**“Servicer”** means Walker & Dunlop, LLC, a Delaware limited liability company, and/or any successor Servicer selected by Freddie Mac.

2. **Applicability.** The provisions of this Rider shall amend and supplement the provisions of, and in the event of a conflict shall supersede the conflicting provisions of, the Regulatory Agreement.

3. **Indemnification.** Inasmuch as the covenants, reservations and restrictions of the Regulatory Agreement run with the land, the indemnification obligations of the Owner contained in the Regulatory Agreement will be deemed applicable to any successor in interest to the Owner, but, it is acknowledged and agreed, notwithstanding any other provision of the Regulatory Agreement to the contrary, that neither the Funding Lender nor any successor in interest to the Funding Lender will assume or take subject to any liability for the indemnification obligations of the Owner for acts or omissions of the Owner prior to any transfer of title to Freddie Mac, whether by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan. The Owner shall remain liable under the indemnification provisions for its acts and omissions prior to any transfer of title to the Funding Lender. The Funding Lender shall indemnify the Governmental Lender following acquisition of the Project by the Funding Lender, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loan, during, and only during, any ensuing period that the Funding Lender owns and operates the Project, provided that the Funding Lender’s liability shall be strictly limited to acts and omissions of the Funding Lender occurring during the period of ownership and operation of the Project by the Funding Lender. The Funding Lender shall have no indemnification obligations with respect to the Governmental Note or the Project Loan Documents. The Owner shall remain liable under the Regulatory Agreement for its actions and omissions prior to any transfer of title to the Funding Lender.

4. **Sale or Transfer.** Restrictions on sale or transfer of the Project or of any interest in the Owner, Governmental Lender and/or Fiscal Agent consents, transferee agreements, transferee criteria and requirements, opinion requirements, assumption fees, transfer fees, penalties and the like shall not apply to any transfer of title to the Project to the Funding Lender or to a third party, other than to the Owner or an affiliate of the Owner, by foreclosure, deed in lieu of foreclosure or comparable conversion of the Project Loans or to any subsequent transfer by the Funding Lender, other than to the Owner or an affiliate of the Owner, following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loans. No transfer of the Project shall operate to release the Owner from its obligations under the Regulatory Agreement. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Project Loan Documents that requires the Owner to obtain the consent of the Funding Lender as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Project or of any direct or indirect interest in the Owner, excluding transfers permitted by the Security

Instrument. No covenant obligating the Owner to obtain an agreement from any transferee to abide by all requirements and restrictions of the Regulatory Agreement shall have any applicability to a transfer to the Funding Lender upon foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loans by the Funding Lender, or to any subsequent transfer by the Funding Lender following foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loans.

5. Enforcement. Notwithstanding anything contained in the Regulatory Agreement to the contrary: (i) the occurrence of an event of default under the Regulatory Agreement shall not, under any circumstances whatsoever, be deemed or constitute a default under the Project Loan Documents, except as may be otherwise specified in the Project Loan Documents; and (ii) the occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument. No person other than the Funding Lender shall have the right to (a) declare the principal balance of the Project Notes to be immediately due and payable or (b) commence foreclosure or other like action with respect to the Security Instrument. The Governmental Lender and the Fiscal Agent acknowledge and agree that the exercise of any rights and remedies under the Regulatory Agreement is subject to the provisions of the Project Loan Documents.

6. Notice of Violations. Promptly upon determining that a violation of the Regulatory Agreement has occurred, the Governmental Lender or the Fiscal Agent shall, by notice in writing to the Owner, the Equity Investor, the Servicer and the Funding Lender, inform the Owner, the Servicer and the Funding Lender that such violation has occurred, the nature of the violation and that the violation has been cured or has not been cured, but is curable within a reasonable period of time, or is incurable; notwithstanding the occurrence of such violation, neither the Governmental Lender nor the Fiscal Agent shall have, and each of them acknowledge that they shall not have, any right to cause or direct acceleration of the Project Loans, to enforce the Project Notes or to foreclose on the Security Instrument.

7. Amendments. The Regulatory Agreement shall not be amended without the prior written consent of the Funding Lender.

8. Fees; Penalties. The Funding Lender shall not be liable for the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by the Owner or any subsequent owner of the Project prior to the date of acquisition of the Project by the Funding Lender, whether such acquisition is by foreclosure, deed-in-lieu of foreclosure or comparable conversion of the Project Loans.

9. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 3, 4 (excluding (f)), 8, 9 and 16, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Project Loan Documents.

10. Third-Party Beneficiary. The parties to the Regulatory Agreement recognize and agree that the terms of the Regulatory Agreement and the enforcement of those terms are essential to the security of the Funding Lender and are entered into for the benefit of various parties, including the Funding Lender. The Funding Lender shall accordingly have contractual rights in

the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Governmental Lender and/or the Fiscal Agent, or to cause the Governmental Lender or the Fiscal Agent to enforce, the terms of the Regulatory Agreement. In addition, the Funding Lender is intended to be and shall be a third-party beneficiary of the Regulatory Agreement.

11. Notices. Copies of all notices under the Regulatory Agreement shall be sent to the Servicer at the address set forth below or to such other address as the Servicer may from time to time designate:

Walker & Dunlop, LLC  
7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814  
Attention: Loan Servicing  
Telephone: (301) 215-5500

Any notice to be given to Freddie Mac shall be sent to Freddie Mac at the address set forth below or to such other address as Freddie Mac may from time to time designate:

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to:

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: joshua\_schonfeld@freddiemac.com  
Telephone: (703) 903 2000



**EXHIBIT E**  
**COMPLIANCE MONITORING AGREEMENT**

**COMPLIANCE MONITORING AGREEMENT  
(SAN MARCOS HEIGHTS)**

This **COMPLIANCE MONITORING AGREEMENT** (this "Agreement") is made as of February 1, 2021, by and among the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA**, a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Authority"), **FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA**, a Florida corporation (the "Compliance Monitoring Agent"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, in its capacity as fiscal agent (the "Fiscal Agent"), and **SAN MARCOS HEIGHTS, LLC**, a Florida limited liability company (the "Borrower").

**WITNESSETH:**

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Funding Loan Agreement (hereinafter defined); and

**WHEREAS**, the Authority has been created and organized pursuant to and in accordance with the provisions of Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "**Board**") on February 26, 1980, as amended, and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (collectively, the "**Act**"), for the purpose, among others, of financing the costs of residential developments that will provide decent, safe and sanitary housing for persons or families of low, moderate or middle income in St. Johns County, Florida (the "**County**"); and

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

**WHEREAS**, pursuant to a resolution of the Governmental Lender adopted on January 28, 2021, the Governmental Lender has authorized, approved and issued its \$16,000,000 Housing Finance Authority of St. Johns County, Florida Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "**Governmental Note**"), pursuant to that certain Funding Loan Agreement dated as of February 1, 2021 among the Funding Lender, the Authority and the Fiscal Agent (the "**Funding Loan Agreement**"); and

**WHEREAS**, pursuant to its lawful authority under the Act, the Authority, the Fiscal Agent and the Borrower have entered into that Construction Phase Project Loan Agreement dated as of February 1, 2021 and that certain Project Loan Agreement dated as of February 1, 2021 (collectively, the Project Loan Agreements), by the terms of which Project Loan Agreements the Authority is agreeing to make a mortgage loan (the "Project Loan") to the Borrower for the purpose of providing funds to acquire, construction and develop a multifamily residential development located at 127 Adair Road, in unincorporated St. Johns County, Florida, to be known as San Marcos Heights (the "Property"); and

**WHEREAS**, the Project Loan will initially be evidenced by a Construction Phase Promissory Note dated February [ ], 2021, and following Conversion, evidenced by a Permanent Phase Project Note (collectively, the "Project Note"), which Project Loan and Project Note will be secured by that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing made by the Borrower and dated as of February 1, 2021 (the "Security Instrument"), granting the Authority a first mortgage lien and security interest in the real and personal property described therein; and

**WHEREAS**, the Authority intends to assign the Project Note and the Security Instrument, and other instruments securing repayment of the Project Note to the Fiscal Agent for the benefit of the holder of the Governmental Note, as its interest may appear; and

**WHEREAS**, to assure compliance with certain requirements of the Internal Revenue Code of 1986, as amended, and certain other requirements of the Authority with respect to the operation of the Property, the Authority, the Fiscal Agent and the Borrower have entered into that certain Land Use Restriction Agreement dated as of February 1, 2021 (the "Regulatory Agreement"); and

**WHEREAS**, the Compliance Monitoring Agent has represented and warranted that it is duly qualified and authorized to engage in the business of administering loans of the type of the Project Loan referred to herein; and

**WHEREAS**, the Compliance Monitoring Agent shall act as agent of the Authority in performing certain functions under the Funding Loan Agreement, the Project Loan Agreements and the Regulatory Agreement, and shall monitor tenant eligibility with respect to the Property subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained, Ten Dollars (\$10) and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

1. **DEFINITIONS.** The following definitions shall apply as the context may require in this Agreement:

A. "Improvements" -- All improvements described in the plans for the Property (the "Plans") and all additions and equipment reasonably necessary to construct, equip, renovate, operate and rent the Property, including all amenities. Without limiting the foregoing, the term Improvements shall include all landscaping, walls, drives, approaches, sidewalks, curbs, paving and all chattels, furniture, furnishings and equipment described in the Plans.

B. "Loan Documents" -- Collectively, this Agreement, the Project Note, the Funding Loan Agreement, the Project Loan Agreements and the Regulatory Agreement, and all other documents executed and delivered by the Borrower and evidencing, securing or relating to the Project Loan, including but not limited to the Tax Certificates.

D. "Mortgagee" -- The Authority, and its successors or assigns, including the Fiscal Agent.

E. "Property" -- The real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof, and the Improvements.

F. "Title Insurance Policy" -- Policy issued pursuant to the mortgagee title insurance issued by Old Republic National Title Insurance Company and all endorsements issued as required by this Agreement as of the date of reference.

2. **TERM.** This Agreement shall continue from the earlier of the date of this Agreement or from the date the Compliance Monitoring Agent shall begin compliance monitoring for the Authority until occurrence of the first of the following events:

A. The end of the Qualified Project Period (as defined in the Regulatory Agreement).

B. Termination of this Agreement as to the Compliance Monitoring Agent pursuant to Section 11 hereof.

3. **SERVICING OF THE PROPERTY.** The Compliance Monitoring Agent shall provide the services required of the Compliance Monitoring Agent under the Loan Documents, including, without limitation, monitoring the Property and compliance by the Borrower with the requirements of the Regulatory Agreement, exercising the same degree of care in performing its obligations under this Agreement as is customary in the industry for financial institutions which service real estate loans for their own portfolios and on behalf of others. The Authority agrees that it will do and perform all things reasonably necessary to assist the Compliance Monitoring Agent in performing its obligations hereunder and under the Loan Documents.

4. **COMPENSATION OF THE COMPLIANCE MONITORING AGENT.** The Borrower shall pay to the Compliance Monitoring Agent for the services rendered by the Compliance Monitoring Agent hereunder in accordance with the following provisions:

A. The annual compensation of the Compliance Monitoring Agent for the compliance monitoring services specified hereunder shall be paid by the Borrower semi-annually, in an amount equal to 0.04% per annum of the principal balance of the Project Note outstanding as of each March 1 and September 1 (prior to any principal reduction on such date) or a minimum of \$3,683.76 per annum; provided, however, in the event the Project Note is retired prior to the end of the Qualified Project Period, the annual compensation of the Compliance Monitoring Agent shall be paid directly by the Borrower to the Compliance Monitoring Agent and shall be fixed for the duration of the Qualified Project Period at an amount equal to 0.04% per annum of the principal balance of the Project Note outstanding at the time the Project Note is retired, or a minimum of \$3,683.76 per annum. Every

January 1st, the minimum fee shall be adjusted, but not decreased, based on the South Region Consumer Price Index for the twelve month period ending each December 31. This automatic increase shall not exceed 3% of the prior year's fees.

B. The Compliance Monitoring Agent's rights to compensation hereunder for compliance monitoring shall cease upon the later to occur of:

- (1) the end of the Qualified Project Period; or
- (2) notification by the Authority to the Compliance Monitoring Agent that its services or this Agreement shall be terminated by the Authority or the Fiscal Agent with the Authority's consent, with or without cause.

C. Any fees not paid by the Borrower may be paid by the Fiscal Agent (from amounts available under the Funding Loan Agreement) and charged against the Project Loan.

**5. INSURANCE TO BE MAINTAINED BY THE COMPLIANCE MONITORING AGENT.** The Compliance Monitoring Agent shall maintain at all times during the existence of this Agreement, at its own expense, blanket fidelity insurance and errors and omissions insurance covering the Compliance Monitoring Agent's officers and employees and other persons acting on behalf of the Compliance Monitoring Agent relating to the Compliance Monitoring Agent's performance of this Agreement. The amount of coverage of such policies shall be acceptable to the Authority. All such policies of insurance shall be issued by an insurance company, with coverage satisfactory to the Authority and the Compliance Monitoring Agent and shall name the Authority and the Fiscal Agent as the insured under said policies.

**6. NOTIFICATION TO THE AUTHORITY, THE BORROWER AND THE FISCAL AGENT.** The Compliance Monitoring Agent shall promptly notify the Authority, the Borrower and the Fiscal Agent of any of the following which may come to the attention of the Compliance Monitoring Agent with respect to the Security Instrument:

A. Any failure of the Borrower to perform any covenant or obligation, applicable to it, under the Loan Documents (of which the Compliance Monitoring Agent has knowledge) if such failure continues for a period of fifteen (15) days, or lesser period, if so provided in any Loan Document.

B. Abandonment of the Property.

C. Any lack of repair or the deterioration or waste suffered or committed in respect to the Property.

D. Any other matter which would adversely or materially affect or result in diminution of value of the security described herein and in the Security Instrument.

E. Any loss or damage by fire or any hazard to the mortgaged property requiring repairs costing in excess of FIFTEEN THOUSAND AND 00/100 (\$15,000.00) DOLLARS to restore the Property to its condition prior to such loss or damage.

7. **DEFAULT OF BORROWER.** The Compliance Monitoring Agent shall not at any time, without the express written consent of the Authority and the Fiscal Agent, consent to a postponement of compliance on the part of the Borrower with any of the terms and provisions of the Loan Agreement, the Regulatory Agreement, the Security Instrument, or any other Loan Document, or in any manner grant an extension or waiver to the Borrower.

8. **REPRESENTATIONS OF THE COMPLIANCE MONITORING AGENT.** The Compliance Monitoring Agent covenants, warrants and represents to the Authority and the Borrower as follows:

A. The Compliance Monitoring Agent is a corporation duly organized and in good standing under the laws of the State of Florida; that it is authorized to execute, deliver and perform this Agreement and all other documents and agreements required hereunder, and in so doing, that it will not violate any law, any provision of its charter or bylaws or any other agreement of instrument binding upon it.

B. The Compliance Monitoring Agent shall comply with all applicable laws and the provisions of the Loan Documents, as applicable.

9. **BORROWER'S REPRESENTATIONS AND WARRANTIES.** The Borrower represents and warrants to the Compliance Monitoring Agent that it may rely on the representations and warranties made by Borrower to the Authority as set forth in the Loan Agreement, the Regulatory Agreement and the Security Instrument.

10. **COVENANTS OF THE BORROWER.** The Borrower covenants and agrees with the Authority, the Fiscal Agent and the Compliance Monitoring Agent as follows:

A. **Right of Entry.** The Borrower shall permit the Authority, the Fiscal Agent and the Compliance Monitoring Agent and their authorized employees, agents or representatives to enter upon the Property after reasonable prior notice during normal business hours to inspect the Improvements and all books and records related to the Property of the Borrower and will cooperate with the Authority, the Compliance Monitoring Agent, the Fiscal Agent and its representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by the Authority, the Fiscal Agent and the Compliance Monitoring Agent, or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Borrower nor any third party shall be entitled to claim, any loss or damage either against the Authority, the Fiscal Agent and the Compliance Monitoring Agent, or their employees, agents or representatives for failure to properly discharge any alleged duties of the Authority, the Fiscal Agent and the Compliance Monitoring Agent, and they shall have no duty to make such inspections.

B. **Additional Documents.** The Borrower agrees to execute any and all such other and further instruments as may reasonably be required by the Authority or the Fiscal Agent from time to time in order to carry out the provisions of this Agreement, the Loan Documents or for the purpose of protecting, maintaining, or enforcing the Authority's and the Fiscal Agent's security for the Project Loan.

11. **TERMINATION.**

A. **By the Authority.** The Authority shall have the right to terminate the Compliance Monitoring Agent's rights and obligations under this Agreement, without cause, upon ten (10) days' written notice to the Compliance Monitoring Agent, and with cause, upon such written notice as the Authority deems reasonable under the circumstances.

B. **Automatic Termination.** Upon the occurrence of any one or more of the following events, this Agreement shall be automatically terminated:

(1) The Compliance Monitoring Agent shall assign or attempt to assign its rights or obligations under this Agreement.

(2) The Compliance Monitoring Agent shall institute proceedings for voluntary bankruptcy or shall file a petition seeking reorganization under the Federal Bankruptcy Laws or for relief under any other law for the relief of debtors or shall consent to the appointment of a receiver of all or substantially all of its property, or make a general assignment for the benefits of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall be adjudicated bankrupt or insolvent by a court of competent jurisdiction, or if an order shall be made by a court of competent jurisdiction appointing a receiver, liquidator or trustee of the Compliance Monitoring Agent or of all or substantially all of its property or approving any petition filed against the Compliance Monitoring Agent for its reorganization, and such adjudication or order shall remain in force or unstayed for a period of thirty (30) days.

(3) The Compliance Monitoring Agent shall fail to perform any of its obligations hereunder and shall fail, within thirty (30) days after written notice from the Fiscal Agent or the Authority, to correct or cure such failure.

(4) The Governmental Note shall be redeemed and the Property is no longer subject to the Regulatory Agreement.

C. **Effect of Termination.** In the event this Agreement is terminated pursuant to this Section 11, then the rights and obligations of the Compliance Monitoring Agent and its right to compensation hereunder shall immediately terminate, the Compliance Monitoring Agent shall forthwith deliver to the Authority or to whomever the Authority directs, all documents relating to the Project Loan and shall do such other acts as may reasonably be required by the Authority to facilitate the termination hereof.

12. **TENANT ELIGIBILITY.** The Compliance Monitoring Agent shall be responsible for the following with respect to the Property:

A. Conduct on-site management reviews of the Property at least annually. Such reviews shall include examination of tenant files, a review of administration procedures, and a physical inspection of the Property. The Compliance Monitoring Agent shall also prepare a written Management Review and Inspection Report and distribute copies to the

on-site manager, the Borrower, the management company, the Fiscal Agent and the Authority. Such report shall include a statement as to the compliance of the Borrower with its obligations under the Regulatory Agreement. Such management reviews shall be conducted through the Qualified Project Period, as extended, or until no Governmental Note is outstanding, whichever is later.

B. Review Program Reports and Tenant Income Certifications and re-certifications for completeness, tenant income eligibility and timeliness of completion. The Compliance Monitoring Agent shall contact management personnel regarding any discrepancies and follow-up with respect thereto until required corrections are made and provide copies of any correspondence with respect thereto to the Authority.

C. Provide the Authority with occupancy information from each Program Report in the format provided by the Authority.

D. In addition, the Compliance Monitoring Agent shall:

(1) Be available to answer telephone inquiries relating to bond program requirements.

(2) Keep the Authority apprised of scheduled activities, any compliance problems as such occur, and changes in apartment management personnel.

(3) Provide the Authority with copies of all correspondence relating to the Property.

### 13. MISCELLANEOUS PROVISIONS.

A. No Waiver. Nothing herein shall be construed to waive or diminish any right or security of the Authority or the Fiscal Agent under the Loan Agreement, the Regulatory Agreement and the Security Instrument. It is the purpose and intent hereof to provide safeguards, protections and rights for the Authority and the Fiscal Agent in addition to those provided in the Loan Agreement and Security Instrument.

B. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns. The Borrower may be released from obligations and agreements hereunder only by a written instrument of the Fiscal Agent and the Authority specifically providing for such release. The Borrower shall be released from any and all liability hereunder, upon payment of the Project Loan in full and expiration of the Qualified Project Period.

D. Assignability. This Agreement shall not be assignable by the Borrower or Compliance Monitoring Agent without the prior written consent of the Authority and the Fiscal Agent.

E. Governing Law. This Agreement shall be construed under the laws of the State of Florida, regardless of where it may have been executed or delivered. Any action to enforce or interpret this Agreement, whether arising in contract or tort, by statute or otherwise,



may be brought in or removed to a state or federal court of competent jurisdiction in or for St. Johns County, Florida, and the parties hereto hereby submit itself to the jurisdiction of said courts.

F. Construction. Whereas this Agreement was negotiated with input from all parties hereto, this Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

G. Costs and Legal Fees. In the event that any party shall be required to enforce this Agreement and whether or not suit be brought, the prevailing parties shall be entitled to recover from the losing parties all reasonable legal fees and costs incurred in connection therewith, whether incurred in collection, at trial, on appeal, in bankruptcy or other similar proceedings affecting creditors' rights or otherwise.

H. Invalid Provisions. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby, nor shall such terms be invalid or unenforceable under other, dissimilar facts and circumstances.

I. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

J. Amendments. This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement. The Authority reserves the right to amend this Agreement to comply with federal and state laws and regulations without the consent of the other parties.

K. Time of Essence. Time is of the essence of this Agreement.

L. Right to Publicize. The Authority and the Compliance Monitoring Agent shall have the right to publicize its involvement in the financing of the Property and may require the Borrower to name the Authority as its mortgage lender in all publicity releases and promotional materials issued in connection with the Property.

M. Dealings with the Compliance Monitoring Agent. The Compliance Monitoring Agent shall be protected and shall incur no liability in acting or proceeding in good faith upon resolution, notice, telegram, consent, waiver, certificate, affidavit, voucher, bond, title insurance commitment or policy or endorsement thereto or other paper or document which it shall in good faith reasonable believe (i) to be genuine and, (ii) to have been passed or prepared and furnished pursuant to the provisions of the Indenture, the Regulatory Agreement, the Security Instrument or the Loan Agreement, and the Compliance Monitoring Agent shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements

unless the instrument on its face reasonably indicated that the Compliance Monitoring Agent should inquire further or unless the Compliance Monitoring Agent has actual knowledge or information which reasonably should cause the Compliance Monitoring Agent to inquire further. The Compliance Monitoring Agent shall not be held liable under this Agreement except for its own negligence or willful misconduct. The Borrower shall indemnify and hold the Compliance Monitoring Agent harmless from any claim, action or liability of any kind or character whatsoever arising from or in any way related to acts or omissions of the Borrower or any of its agents, employees, consultants, counsel, or independent contractors. This paragraph shall in no way be construed to relieve the Compliance Monitoring Agent of the normal and usual duties of a reasonably prudent loan servicer or monitoring agent.

N. Terms. Wherever used herein, the terms utilized shall include masculine, feminine, neuter, singular and/or plural, as the context admits or requires,

O. Conflicts. Notwithstanding anything herein to the contrary, the terms and conditions of the Loan Agreement and the Security Instrument shall govern, control and prevail, in the event of any conflict between the terms and conditions hereof and those contained in the Loan Agreement and the Security Instrument.

14. REMEDIES. Subject to the applicable terms, conditions and restrictions set forth in the Regulatory Agreement, upon the occurrence of any Event of Default which is not cured within the applicable cure period, the Authority (or the Fiscal Agent or the Compliance Monitoring Agent), shall be entitled to seek specific performance hereof against the Borrower, and/or in addition to any other right or remedy available to it in law or equity. It is specifically agreed by the Borrower that a violation of this Agreement or the Regulatory Agreement could cause harm for which no damages could be calculated, therefore entitling the Authority to immediate equitable relief, including without limitation a temporary restraining order or mandatory injunction without notice.

15. NOTICES. Any notice required to be given hereunder shall be given by personal delivery, by registered U.S. mail or by expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt of sent by registered U.S. Mail.

To the Authority:

Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, Florida 32084  
Attention: Executive Director  
Email: [ ]  
Telephone: ( ) [ ] - [ ]  
Facsimile: ( ) [ ] - [ ]

To the Compliance Monitoring Agent:

First Housing Development Corporation of Florida  
107 S. Willow Avenue  
Tampa, FL 32202

Attention: Ed Busansky  
Email: ebusansky@firsthousinfl.com  
Telephone: (813) 283-1043  
Facsimile: (813) 289-5580

To the Borrower:

San Marcos Heights, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520  
Facsimile: ( ) [ - ]

With a copy to

Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, FL 33131  
Attention: Robert Cheng, Esq.

and a copy to:

Bank of America, N.A.  
MA1-225-02-02  
225 Franklin Street  
Boston, MA 02110  
Attention: Tax Credit Asset Management (San Marcos Heights)

With a copy to:

Holland & Knight LLP  
10 St. James Avenue  
Boston, MA 02116  
Attention: Sara C. Heskett, Esq.

If to Initial Funding Lender

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

With a copy to:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: CREB Loan Administration  
Fax Number: (704) 719-8659

If to the Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department  
Email: [ ]  
Telephone: (904) 645-19[ ]  
Facsimile: (904) 645-19[ ]

To Funding Lender  
Representative (as of Freddie  
Mac Purchase Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: guy\_nelson@freddiemac.com  
Telephone: (703) 903-2000

16. **ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Authority, the Compliance Monitoring Agent, the Fiscal Agent and the Borrower as to the subject matter hereof, and all prior agreements, negotiations and understandings with respect thereto are merged into and superseded by this Agreement.

[Remainder of page intentionally blank]

[Counterpart Signature Page – Compliance Monitoring Agreement]

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

[Counterpart Signature Page – Compliance Monitoring Agreement – San Marcos Heights]

**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA**

By: \_\_\_\_\_  
Mitchell O'Donnell, Chair

ATTEST:

By: \_\_\_\_\_  
Linda DeGrande, Secretary

[Counterpart Signature Page – Compliance Monitoring Agreement – San Marcos Heights]

**FIRST HOUSING DEVELOPMENT  
CORPORATION OF FLORIDA, a Florida  
corporation**

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

Print:

Title:

[Counterpart Signature Page – Compliance Monitoring Agreement]

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A.**, a national banking  
association, as Fiscal Agent

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



**EXHIBIT A**  
**LEGAL DESCRIPTION**

**EXHIBIT F**  
**CONSTRUCTION LOAN SERVICING AGREEMENT**

**CONSTRUCTION LOAN SERVICING AGREEMENT  
(SAN MARCOS HEIGHTS)**

This **CONSTRUCTION LOAN SERVICING AGREEMENT** (this "Agreement") is made as of February 1, 2021, by and among the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA**, a public body corporate and politic duly created and existing under the laws of the State of Florida (the "Governmental Lender"), **FIRST HOUSING DEVELOPMENT CORPORATION OF FLORIDA**, a Florida corporation (the "Governmental Lender Servicer"), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, with a representative office located in Jacksonville, Florida, as fiscal agent under the below-described Funding Loan Agreement (in such capacity, the "Fiscal Agent"), and **SAN MARCOS HEIGHTS, LLC**, a Florida limited liability company (the "Borrower").

**WITNESSETH:**

**WHEREAS**, all capitalized terms in this Agreement not otherwise defined shall have the meanings set forth in the Project Loan Agreement (hereinafter defined) and the Funding Loan Agreement (hereinafter defined); and

**WHEREAS**, the Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida (the "Board") on February 26, 1980, as amended, and Resolution 80-25 adopted by the Board on March 11, 1980, as amended (collectively, the "Act"), for the purpose, among others, of financing the costs of rental housing developments that will provide decent, safe and sanitary housing for persons or families of low, moderate or middle income in the State of Florida (the "State"); and

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

**WHEREAS**, pursuant to a resolution of the Governmental Lender adopted on January 28, 2021, the Governmental Lender has authorized, approved and issued its \$16,000,000 Housing Finance Authority of St. Johns County, Florida Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "Governmental Note"); and

**WHEREAS**, the Governmental Note is being issued pursuant to a Funding Loan Agreement dated as of February 1, 2021, by and among the Governmental Lender, the Fiscal

Agent and Bank of America, N.A., as initial funding lender (the "Funding Loan Agreement"); and

**WHEREAS**, pursuant to its lawful authority under the Act, the Governmental Lender and the Borrower have entered into that certain Construction Phase Project Loan Agreement dated as of February 1, 2021, among the Governmental Lender, the Fiscal Agent and the Borrower (the "Project Loan Agreement"), by the terms of which Project Loan Agreement the Governmental Lender has agreed to loan the proceeds of the Governmental Note to the Borrower (the "Loan") for the purpose of providing funds to acquire, construct and develop a multifamily residential development located on property within St. Johns County, Florida, to be known as San Marcos Heights (the "Development"); and

**WHEREAS**, the Loan will initially be evidenced by that certain Construction Phase Project Note dated February [ ], 2021 (as amended, restated or superseded from time to time, the "Project Note"), which Project Note will be secured by that certain Mortgage, Assignment of Rents, Security Agreement and Fixture Filing, together with all riders thereto, made by the Borrower to and in favor of the Governmental (the "Security Instrument"), granting a first priority mortgage lien and security interest in the real and personal property described therein; and

**WHEREAS**, the Governmental Lender intends to assign the Project Note, the Security Instrument and all other instruments securing repayment of the Governmental Note, to Bank of America, N.A. (the "Funding Lender"), as the initial purchaser of the Governmental Note, and any subsequent holder of the Governmental Note; and

**WHEREAS**, the Governmental Lender Servicer has represented and warranted that it is duly qualified and authorized to engage in the business of administering loans of the type of the Loan referred to herein; and

**WHEREAS**, the Governmental Lender Servicer shall act as agent of the Governmental Lender in performing certain functions under the Loan Documents (as defined below) on behalf of the Governmental Lender, subject to the terms and conditions hereinafter set forth.

**NOW, THEREFORE**, in consideration of the mutual covenants herein contained and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties agree as follows:

**1. DEFINITIONS.** Capitalized terms used herein but not otherwise defined shall have the meanings ascribed to such terms in the Project Loan Agreement and the Funding Loan Agreement. Unless otherwise expressly provided herein or unless the context clearly requires otherwise, the following terms shall have the respective meanings set forth below for all purposes of this Agreement:

A. "Agreement" means this Construction Loan Servicing Agreement, as from time to time amended, modified or supplemented.

B. "Architect" means Fisher Koppenhafer, P.A., a Florida corporation.

C. "Budget" means the proposed budget for the Improvements which is attached hereto as Exhibit "B" and by this reference made a part hereof, which contains a construction schedule of the Improvements, as amended in accordance with the terms hereof, including, without limitation, amendments resulting from change orders approved in accordance with the terms hereof.

D. "Construction Contract" means that certain AIA A102-2017 Standard Form of Agreement Between Owner and Contractor dated December 23, 2020 and all addendums, riders, change orders and modifications thereto, regarding the construction of the Improvements.

E. "Continuing Covenant Agreement" means the Continuing Covenant Agreement dated as of February 1, 2021, between the Borrower and the Funding Lender.

F. "Contractor" means Sauer Incorporated, a Pennsylvania corporation, and any successor general contract approved by the Governmental Lender in writing.

G. "Costs of the Improvements" means all direct and indirect costs, including interest costs, required to be expended by the Borrower to comply with requirements of this Agreement, specifically including items set forth in the Budget. The Cost of the Improvements shall include the reasonable cost of labor and materials actually expended or incurred by the Borrower and incorporated in the Improvements on the Land, as well as interest costs and issuance costs and fees associated with the closing of the Loan and the issuance of the Governmental Note (excluding any fees and profit of the Borrower), and include materials stored on the Land.

H. "Development" means the real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof, and the Improvements.

I. "Draw Request" means any requisition, and any supporting documentation attached thereto, delivered by the Borrower pursuant to the requirements of the Funding Loan Agreement.

J. "Equity Investor" means Bank of America, N.A., national banking association, as the initial investor limited partner of the Borrower, and its successors and assigns.

K. "Events of Default" means those events of default as defined in Section 16 of this Agreement.

L. "Force Majeure" means an act of God, strikes, lockouts, act of public enemy, lightning, fire, storm, flood, or any other cause of delay beyond the reasonable control of the party claiming the applicability of the Force Majeure doctrine (financial inability excepted).

M. "Funding Lender" means Bank of America, N.A., its successors and assigns, as the initial holder of the Governmental Note.

N. "Improvements" means all improvements described in the plans for the Development, (the "Plans and Specifications") and all additions and equipment reasonably necessary to construct, equip, renovate, operate and rent the Development, including all amenities. Without limiting the foregoing, the term Improvements shall include all landscaping, walls, drives, approaches, sidewalks, curbs, paving and all chattels, furniture, furnishings and equipment described in the Plans and Specifications.

O. "Land" means the real property described in Exhibit "A", which is attached hereto and by this reference made a part hereof.

P. "Land Use Restriction Agreement" means the Land Use Restriction Agreement, dated as of February 1, 2021 by and among the Governmental Lender, the Fiscal Agent and the Borrower.

Q. "Loan" means the loan contemplated by the Project Loan Agreement in an original amount of \$16,000,000.

R. "Loan Documents" means, collectively, this Agreement, the Governmental Note, the Project Note, the Project Loan Agreement, the Security Instrument, the Land Use Restriction Agreement, the Continuing Covenant Agreement and all other documents and instruments evidencing, securing or guaranteeing payment of the Loan, or any portion thereof.

S. "Manager" means San Marcos Heights MM, LLC, a Florida limited liability company, as Manager of the Borrower.

T. "Mortgagee" means the Governmental Lender, and its successors or assigns, including the Funding Lender, as its interest may appear.

U. "Plans and Specifications" means the final plans and specifications for the Improvements heretofore approved by the Governmental Lender and the Governmental Lender Servicer or their respective agents together with any and all amendments and modifications thereto made with the approval of the Governmental Lender or its agent or otherwise in accordance with the terms hereof. (It is understood that the Plans and Specifications shall be construed in such manner so that any works, structures or parts thereof mentioned or shown in the Plans and Specifications and not mentioned or shown in the specifications, or vice versa, are to be constructed and erected as if they were in fact reflected in the Plans and Specifications.)

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

W. "Title Insurance Policy" means the Title Insurance Policy issued pursuant to Commitment for Title Insurance - File No. 44225.0020 and all endorsements issued as required by this Agreement as of the date of reference.

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. This Agreement and all the terms and provisions hereof shall be construed to effectuate the purposes set forth herein and to sustain the validity hereof.

The terms and phrases used in the recitals of this Agreement have been included for convenience of reference only and the meaning, construction and interpretation of all such terms and phrases for purposes of this Agreement shall be determined by references to this Section 1. The titles and headings of the sections of this Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and shall not in any way modify or restrict any of the terms or provisions hereof and shall never be considered or given any effect in construing this Agreement or any provision hereof or in ascertaining intent, if any question of intent shall arise.

2. **TERM.** This Agreement shall continue from the earlier of the date of this Agreement or from the date the Governmental Lender Servicer shall begin servicing the Loan for the Governmental Lender until occurrence of the earliest of the following events:

- A. Completion of the Improvements.
- B. The Loan shall be paid in full.
- C. Termination of this Agreement as to the Governmental Lender Servicer, with or without cause, pursuant to Section 14 hereof.
- D. Assignment of all right, title and interest of the Governmental Lender to a third party (other than as specifically described in the Funding Loan Agreement) which terminates the interests of the Governmental Lender to this Agreement.

3. **SERVICING.** The Governmental Lender Servicer shall service the Loan through the term of this Agreement in accordance with all the representations, warranties and agreements set forth herein. The Governmental Lender Servicer shall exercise the same degree of care, skill, prudence and diligence in providing such services as is the customary and usual practice of prudent financial institutions, which service construction loans for their own portfolios and on behalf of others.

A. **Construction Loan Servicing.** During the period of construction of the Improvements, the Governmental Lender Servicer and/or its agent shall be responsible for monitoring the progress of the construction work on behalf of the Governmental Lender as follows:

- (1) The Governmental Lender Servicer shall establish servicing files for the Development that shall contain copies of all documents and reports pertaining to the Development received by the Governmental Lender Servicer. The Governmental Lender Servicer shall maintain the files until such time as the Loan has been paid in full, unless otherwise directed in writing by the Governmental Lender.

(2) The Governmental Lender Servicer shall approve a Draw Request only if all requested disbursements are appropriate, accurate and supported by proper documentation, including without limitation the documentation described in Paragraph 5B hereof, reflecting that the Borrower is rehabilitating the Development in accordance with the Plans and Specifications and Construction Contract.

(3) The Governmental Lender Servicer shall review each Draw Request delivered by the Borrower pursuant to Section 4 below. The Governmental Lender Servicer shall determine that the following conditions, as applicable, have been met prior to approving each Draw Request:

(i) An authorized officer of the Borrower has executed each Draw Request. The names and signatures of the officers of the Borrower who are authorized to execute Draw Requests shall be provided to the Governmental Lender and the Governmental Lender Servicer prior to the delivery of the initial Draw Request and immediately following any change(s) in applicable officers of the Borrower.

(ii) Any Draw Request including requested disbursements for hard costs is accompanied by a certificate from the Borrower's architect and/or engineer which certifies that (a) the work to which the Draw Request relates has been accomplished in accordance with the Plans and Specifications and the Construction Contract so as to entitle the Borrower and/or the Contractor to the disbursement requested and (b) the work completed by the Borrower and/or the Contractor justifies the amount of the Draw Request.

(iii) The Borrower has furnished the Governmental Lender Servicer with satisfactory evidence that the undisbursed proceeds of the Loan plus any other funds available to Borrower shall be sufficient to pay the cost of completing the construction of the Development (other than the deferred developer fee and any other deferred fees to parties related to the Borrower) as required by the Loan Documents.

(iv) All change orders are in compliance with the Governmental Lender's rules and the Land Use Restriction Agreement, and any change order requiring the consent of the Governmental Lender Servicer under this Agreement is within the scope of the Plans and Specifications and made in accordance with the Construction Contract.

(v) Based upon a title endorsement provided by the Borrower, good and insurable title to the Development is vested in the Borrower, free and clear of all encumbrances other than Permitted Encumbrances (as defined in the Security Instrument), except as provided in the Title Insurance Policy.



(vi) The Borrower, or its designee, has furnished the Governmental Lender Servicer with an affidavit stating whether the Borrower has been served with any written notice that a lien may be claimed for any amounts by any person or entity furnishing materials or performing labor of any kind in the construction process of the Development through the date of the previous disbursement. The affidavit shall include copies of the notices of any liens. In the event a lien has been filed against the Development, the Governmental Lender Servicer shall require that such lien be satisfied, escrowed or bonded prior to the Governmental Lender Servicer approving a Draw Request.

(vii) The Borrower has procured for the Governmental Lender Servicer proper construction lien waivers including, but not limited to, a contractor's affidavit or bonds from the general contractor and all subcontractors which have provided statutory "Notice to Owner" but have not yet filed lien waivers, through the date of the previous disbursement.

(viii) The construction of the Development is not in violation of the Land Use Restriction Agreement.

(ix) The Borrower has fully complied with all other provisions of the Loan Documents.

(4) In the event that the Governmental Lender Servicer rejects all or a portion of a Draw Request pursuant to Section 4 below, the Governmental Lender Servicer shall provide the Borrower with a written response detailing the deficiencies which caused the Governmental Lender to reject such Draw Request.

(5) The Governmental Lender Servicer shall review and retain any reports or other records delivered to the Governmental Lender Servicer by the Funding Lender's construction monitor pursuant to Funding Loan Agreement.

(6) The Governmental Lender Servicer shall review and retain any reports or other records delivered to the Governmental Lender Servicer by the Equity Investor's construction monitor pursuant to Section 13C(2) hereof.

B. Continuing Duties of the Governmental Lender and the Fiscal Agent. In connection with the construction period, the Governmental Lender, the Borrower and the Fiscal Agent agree that they shall do and perform all things reasonably necessary to assist the Governmental Lender Servicer in servicing the Loan.

**4. ADVANCES DURING CONSTRUCTION.** The Governmental Lender, the Funding Lender and the Fiscal Agent agree to make or cause to be made disbursements (each, an "Advance") to the Borrower of the proceeds of the Governmental Note or other amounts held by the Fiscal Agent under the Funding Loan Agreement in accordance with the Funding Loan Agreement, the Project Loan Agreement and this Agreement, as applicable, including without limitation the procedures set forth below. The Borrower may amend the Budget from time to

time as provided in the Loan Documents; provided, however, that the Borrower shall provide the Governmental Lender Servicer with a copy of any amended Budget within five (5) Business Days of such amendment.

A. Submission of Draw Request to the Fiscal Agent, the Funding Lender and the Governmental Lender Servicer.

(1) At such time as the Borrower desires to obtain an Advance, the Borrower shall complete, execute and deliver a Draw Request (together with such other information or documentation required by the Funding Lender pursuant to the Continuing Covenant Agreement) in the form provided in the Funding Loan Agreement to the Funding Lender and the Governmental Lender Servicer.

(2) Each Draw Request submitted by Borrower to obtain an Advance under the Loan shall be signed by an authorized signatory of the Borrower. The Borrower shall deliver each Draw Request to the Governmental Lender Servicer by any U.S. Mail service which includes delivery confirmation, overnight delivery service, hand-delivery service, e-mail with a read receipt, or any other such delivery method providing an independent record of the date and time of delivery. The Borrower shall submit Draw Requests to the Fiscal Agent without attachments, except as otherwise expressly provided in the Funding Loan Agreement.

(3) The Governmental Lender Servicer shall approve or reject any Draw Request at or before 6:00 p.m., Eastern time, on the date which is no later than ten (10) Business Days after the date on which the Borrower delivered such Draw Request (together with all additional information required pursuant to the Loan Documents in connection with such Advance) to the Governmental Lender Servicer. If the Governmental Lender Servicer neither approves nor rejects the Draw Request at or before 6:00 p.m., Eastern time, on the date ten (10) Business Days after the date on which the Borrower delivered such Draw Request to the Governmental Lender Servicer, the Governmental Lender Servicer's approval of such Draw Request shall be deemed given for the purposes of this Agreement and the Funding Loan Agreement; in such instances, the requirement that the Governmental Lender Servicer must sign the Draw Request shall be inoperative.

(4) Notwithstanding any provision herein to the contrary, unless in the reasonable opinion of the Governmental Lender Servicer a Draw Request would violate the terms of the Loan Documents, the Governmental Lender Servicer shall not have the right to withhold its approval of such Draw if such Draw Request:

(i) (a) complies with the Budget, as amended in accordance with the terms of the Loan Documents, (b) is for work that is in substantial accordance with the Plans and Specifications, and (c) is accompanied by lien waivers with respect to the prior Draw Request or by evidence that any liens which have been filed or for which notices of filing have been sent have been bonded to the satisfaction of the Title Company, or

(ii) if not approved, would jeopardize the coverage afforded by any Payment and Performance Bond issued in connection with the Development.

In addition, the Governmental Lender Servicer shall not unreasonably withhold or delay its approval of any Draw Requests. In the event the Governmental Lender Servicer rejects all or any portion of a Draw Request which does not meet the requirements of subsections (i) or (ii) of this subparagraph, no funds shall be advanced for the disputed items (however, funds allocable to the items on such Draw Request which are not disputed shall be available to be advanced).

B. The Governmental Lender Servicer shall review each Draw Request for compliance with this Agreement, the Land Use Restriction Agreement, the draw schedule, the Budget, the Plans and Specifications and all other Loan Documents and for compliance with the customary and usual construction and disbursement practices for the geographical area in which the Development is located.

(1) Where the Draw Request includes amounts to be paid to the Contractor, such Draw Request shall be accompanied by forms the same as or similar to AIA Form G702 and G703, to be reviewed and approved by the Governmental Lender Servicer and executed by the Contractor and the Architect.

(2) Where the Draw Request relates to items other than payments for work performed under the Construction Contract or a subcontract, there shall be included a statement of the purpose for which the Advance is desired and/or invoices for the same, as the Governmental Lender Servicer shall reasonably require.

C. Non-Acceptance of Work. It is specifically understood and agreed that the making of any Advance, or part of any Advance, shall not be construed as an approval or acceptance by the Governmental Lender or the Fiscal Agent of the work theretofore done.

D. Notice, Frequency and Place of Disbursements. The Borrower shall submit each Draw Request to the Governmental Lender Servicer at least ten (10) business days prior to the date of the requested Advance; disbursements shall be made no more frequently than monthly at the principal office of Fiscal Agent or at such other place as Fiscal Agent may designate.

E. Continuing Event of Default. If an Event of Default has occurred and is continuing and all applicable cure periods have expired, the Fiscal Agent (at the direction of the Governmental Lender but only with the written consent of the Funding Lender) may make any or all Advances for construction expenses directly to the Contractor for deposit in an appropriately designated special bank account and the execution of this Agreement by the Borrower shall, and hereby does, constitute an irrevocable authorization so to advance the proceeds of the Loan, subject, however, to the applicable provisions of this Agreement including, but not limited to the Funding Lender's approval of all Advances. No further authorization from the Borrower shall be necessary to

warrant such direct advances to Contractor and all such advances shall satisfy pro tanto the obligations of the Governmental Lender and the Fiscal Agent hereunder and shall be secured by the Security Instrument with regard to advances made pursuant to a Draw Request, as fully as if made directly to the Borrower.

F. Conditions to Advances. All Advances or parts of Advances, including the initial Advance, will be made subject to the approval of the Governmental Lender Servicer and to the following conditions precedent as to each Advance (each of which the Borrower covenants to fulfill), satisfaction of which shall be evidenced by the Governmental Lender Servicer's approval:

(1) That the Borrower has fully complied with all of the provisions of the Loan Documents and is entitled to such Advance, it being understood that the making of any Advance or portion thereof when the Borrower is not so entitled will not constitute a waiver of such compliance or a waiver of the Borrower's representation that no event has occurred and is continuing which constitutes a "Default" or an "Event of Default" under any Loan Document.

(2) That the Draw Request is accompanied by a certificate on the part of the Architect that (i) the work to which the Draw Request relates has been accomplished in accordance with the Plans and Specifications and the Construction Contract so as to entitle the Borrower and/or the Contractor to the disbursement requested and (ii) the work completed by the Borrower and/or the Contractor justifies the amount of the Draw Request.

(3) That the Borrower has furnished the Governmental Lender Servicer reasonably satisfactory evidence that the undisbursed proceeds of the Loan together with other identifiable funds available to the Borrower will be sufficient to pay the cost of completing the construction of the Development (other than the deferred developer fee and any other deferred fees to parties related to the Borrower) as required by the Loan Documents.

(4) That the Borrower has furnished the Governmental Lender Servicer with a copy of all change orders through the date of the Draw Request; such change orders are in compliance with the Governmental Lender's rules and the Land Use Restriction Agreement; and any change orders requiring the Governmental Lender's consent under this Agreement are within the scope of the Plans and Specifications and in accordance with the Construction Contract.

(5) As evidenced by an updated title insurance endorsement provided by the Borrower to the Governmental Lender Servicer, that the Security Instrument is a good and valid first priority lien for the full amount then and theretofore advanced, and good, marketable and insurable title to the Borrower's fee simple interest in the Land is vested in the Borrower, free and clear of all encumbrances other than Permitted Encumbrances (as defined in the Security Instrument), except as provided in the original Title Insurance Policy.

(6) That the Borrower, or its designee, has furnished the Governmental Lender Servicer with an affidavit executed by an authorized representative of the Borrower as to whether or not the Borrower has been served with written notice that a lien may be claimed for any amounts unpaid for materials furnished or labor performed by any person, firm, entity or corporation furnishing materials or performing labor of any kind in the construction or installation of any of the Improvements. The date and manner of service shall be stated in such affidavit and a true and correct copy of each such notice shall be attached to the affidavit.

(7) That the Borrower has procured for the Governmental Lender Servicer proper construction lien waivers and receipted bills or receipts from the Contractor, any subcontractor or materialmen in a form reasonably satisfactory to the Governmental Lender Servicer, showing payment of all parties who have furnished materials or performed labor of any kind pertaining to the construction or installation of any of the Improvements, except for claims being contested under the terms of the Security Instrument, through the date of the previous disbursement. The Governmental Lender, the Fiscal Agent, and the Governmental Lender Servicer shall not be required nor be responsible to ascertain that any such bills are, in fact, paid. In the event a lien has been filed against the Land or the Improvements, the Governmental Lender Servicer shall require such lien to be satisfied, escrowed or bonded before approving a Draw Request.

(8) That the Improvements are not being constructed in violation of the Land Use Restriction Agreement.

(9) That the Borrower has fully complied with all other provisions of the Loan Documents.

G. Conditions to Final Advance. Prior to approving the final advance, the Governmental Lender Servicer shall have received:

(1) The Architect's Certificate of Substantial Completion in a form reasonably acceptable to the Governmental Lender Servicer (the AIA form G704 is acceptable to the Governmental Lender Servicer);

(2) final lien waivers from all contractors, subcontractors and materialmen;

H. The Fiscal Agent may rely upon the approval of a Draw Request by the Funding Lender and the Governmental Lender Servicer to establish compliance by the Borrower with subparagraphs A, B, E, F and G above.

**5. COMPENSATION OF THE GOVERNMENTAL LENDER SERVICER.**

The Borrower shall provide for payment to the Governmental Lender Servicer for the services rendered by the Governmental Lender Servicer hereunder in accordance with the following provisions:

A. Construction Servicing. The Governmental Lender Servicer Fee is payable directly by the Borrower to the Governmental Lender Servicer; (i) during construction of the Development, (1) an in-house review fee of \$186 per hour, and (2) an on-site inspection fee of \$186 per hour for services rendered but not in excess of \$1,844 per disbursement, and (ii) a fee for extraordinary services with respect to the Development of \$186 per hour.

Any fees not paid by the Borrower may be paid by the Fiscal Agent (from amounts available under the Funding Loan Agreement) and charged against the Loan unless Borrower gives Fiscal Agent notice that such fees are disputed.

B. The Governmental Lender Servicer's right to compensation hereunder (except for accrued, unpaid compensation and unreimbursed, previously incurred costs and expenses) for servicing the Loan shall cease upon the occurrence of any of the following events:

(1) The Completion of the Improvements in accordance with the Plans and Specifications;

(2) the Loan shall be paid in full;

(3) an Event of Default under the Governmental Note, Security Instrument or the Project Loan Agreement, unless the Governmental Lender Servicer is directed to assist in foreclosure of the Security Instrument by the Fiscal Agent; or

(4) notification by the Fiscal Agent to the Governmental Lender Servicer that its services or this Agreement shall be terminated by the Governmental Lender, or the Fiscal Agent with the Governmental Lender's consent, with or without cause.

C. Any fees of the Governmental Lender Servicer not paid by the Borrower other than such fees as may then be in dispute may be deducted from a subsequent Draw Request.

**6. BUILDER'S RISK AND HAZARD INSURANCE.** The Governmental Lender Servicer shall see to it that at all times during the term of this Agreement, all buildings and improvements making up the Development are insured, under standard mortgage clauses, for the benefit of the Fiscal Agent and the Governmental Lender, against loss or damage by fire and from such other insurable risks and hazards, all as more specifically set forth in the Security Instrument and other Loan Documents. Subject to the applicable provisions of the Security Instrument and the other Loan Documents, fire insurance and extended coverage shall be in an amount at least equal to the full replacement value of the Development less applicable deductibles. Subject to the applicable provisions of the Security Instrument and the other Loan Documents, in the event of the failure by the Borrower to maintain such insurance in full force and effect, and upon the written authorization of the Governmental Lender, such insurance shall be maintained by the Governmental Lender Servicer, subject to payment by the Fiscal Agent,

which shall advance necessary funds (from amounts available for such purposes pursuant to the Funding Loan Agreement) to the Governmental Lender Servicer, upon request from the Governmental Lender Servicer. The Governmental Lender Servicer shall retain and safely store, service and continually maintain all policies (and documents related thereto) as are maintained by the Governmental Lender Servicer pursuant to the immediately preceding sentence. Any insurance coverage maintained by the Governmental Lender Servicer shall be without contribution by the Fiscal Agent and shall be issued by insurance companies having a general policyholder's rating and financial rating acceptable to the Governmental Lender.

**7. INSURANCE TO BE MAINTAINED BY THE GOVERNMENTAL LENDER SERVICER.** The Governmental Lender Servicer shall maintain at all times during the existence of this Agreement, at its own expense, blanket fidelity insurance and errors and omissions insurance covering the Governmental Lender Servicer's officers and employees and other persons acting on behalf of the Governmental Lender Servicer relating to the Governmental Lender Servicer's performance of this Agreement. All such policies of insurance shall be issued by an insurance company, with coverage satisfactory to the Governmental Lender and the Governmental Lender Servicer and shall name the Governmental Lender and the Fiscal Agent as the insured under said policies. All premiums for such insurance shall be paid by the Governmental Lender Servicer at its own expense as a cost of doing business.

**8. NOTIFICATION TO THE GOVERNMENTAL LENDER, THE BORROWER AND THE FISCAL AGENT.** The Governmental Lender Servicer shall promptly notify the Governmental Lender, the Borrower, and the Fiscal Agent of any of the following which may come to the attention of the Governmental Lender Servicer with respect to the Security Instrument:

A. Any failure of the Borrower to perform any covenant or obligation, applicable to it, under the Loan Documents (of which the Governmental Lender Servicer has knowledge) if such failure continues for a period of fifteen (15) days, or lesser period, if so provided in any Loan Document.

B. Abandonment of the Development.

C. Any lack of repair or the deterioration or waste suffered or committed in respect to the Development.

D. Any other matter which would adversely or materially affect or result in diminution of value of the security described herein and in the Security Instrument.

E. Any loss or damage by fire or any hazard to the mortgaged property requiring repairs costing in excess of FIFTEEN THOUSAND AND 00/100 (\$15,000) DOLLARS to restore the Land and the Improvements to their condition prior to such loss or damage.

**9. DEFAULT OF BORROWER.** The Governmental Lender Servicer shall not at any time, without the express written consent of the Governmental Lender, the Funding Lender and the Fiscal Agent, consent to a postponement of compliance on the part of the Borrower with

any of the terms and provisions of the Loan Documents, or in any manner grant an extension or waiver to the Borrower, subject to the applicable provisions of the Loan Documents.

**10. TITLE INSURANCE UPDATE FEES.** The Borrower shall be responsible for payment to the Title Insurance Company for periodic title update charges as required by the Governmental Lender or the Fiscal Agent.

**11. REPRESENTATIONS OF THE GOVERNMENTAL LENDER SERVICER.** The Governmental Lender Servicer covenants, warrants and represents to the Governmental Lender and the Borrower as follows:

A. The Governmental Lender Servicer is: (1) a corporation duly organized and existing under the laws of the State of Florida; (2) is in good standing in such jurisdiction; (3) is qualified to do business of the type contemplated in this Agreement within the State; and (4) is authorized to execute, deliver and perform this Agreement and all other documents and agreements required hereunder, and in so doing, it will not violate any law, any provision of its charter or bylaws or any other agreement of instrument binding upon it.

B. The Governmental Lender Servicer shall comply with all applicable laws and the provisions of the Loan Documents.

C. The Governmental Lender Servicer shall cause any funds advanced to the Governmental Lender Servicer by the Fiscal Agent under this Agreement to be deposited with a financial institution the deposits of which are insured by FDIC or by any successor agency or instrumentality of the United States government; and will cause such financial institution to designate said funds as escrow funds for the benefit of the Fiscal Agent; and will cause such financial institution to execute an agreement providing that it will not exercise any powers of right of offset or banker's lien against such escrow funds.

D. The Governmental Lender Servicer hereby waives and releases any lien or encumbrances which it might at any time have or be able to claim against any property or funds held by the Fiscal Agent or the Governmental Lender, except monies on deposit in the Administration Fund (or similar account under the Funding Loan Agreement) and available for such payment under the Funding Loan Agreement.

**12. BORROWER'S REPRESENTATIONS AND WARRANTIES.** As of the Closing Date, and thereafter, the Borrower represents and warrants to the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer as follows:

A. Valid Existence. That it is a duly organized and validly existing limited partnership in good standing under the laws of the State, with full power and authority to consummate the transactions contemplated hereby.

B. Unencumbered Land. That the Borrower holds a fee simple interest in the Land and has full power and lawful right to mortgage the same, and that the Land is free and clear of all encumbrances, except for current taxes and assessments which are not yet due and payable and Permitted Encumbrances as defined in the Security Instrument.



C. No Mechanic's Liens. That no materials of any kind have been placed on the Land by anyone, and no work or labor has been performed, thereon that has not been paid for; there are no unpaid bills for labor, materials, supplies or services furnished upon the Land; and no notice of commencement or claim of lien affecting the Land or the Improvements has been filed in the public records of the County which has not been provided to and approved by the Governmental Lender, and no such notice of commencement or claim of lien will be so filed prior to the recording of the Security Instrument. The Borrower covenants, however, that it will, immediately upon notification of recordation of the Security Instrument, cause to be executed and filed of record among the public records of the County, a notice of commencement, as required by Chapter 713, Florida Statutes, as amended, and a certified copy thereof to be posted on the Land and to remain so posted during the period of construction, all in accordance with the applicable provisions of Chapter 713, Florida Statutes, as amended.

D. Plans and Specifications Approved. Except as provided in the next succeeding sentence, by the date of commencement of construction, the Plans and Specifications shall have been approved by the Governmental Lender Servicer on behalf of the Governmental Lender, and to the extent required by applicable law or any effective restrictive covenant, by all governmental authorities having jurisdiction thereover and the beneficiary of any such covenant, respectively.

E. Utilities. That all utilities services necessary for the construction of the Improvements and the operation thereof for their intended purpose, are or will be available prior to commencement of construction for the use of the Borrower at the Land, including water supply, storm and sanitary sewer facilities, electric, and telephone services.

F. Access. That adequate vehicular, pedestrian and utility access for reasonably direct ingress, egress and service to and from the Land from publicly owned and maintained paved roadways are or will be available when needed at the Land.

G. Licenses and Permits. That all necessary licenses and permits will be obtained as soon as each is reasonably obtainable so as to permit the construction and completion of the Improvements, and operation of the Development.

H. Labor and Materials. That all labor and materials contracted for or utilized in connection with the construction of the Improvements shall be used and employed solely on the Land and in said construction and shall be substantially in accordance with the Plans and Specifications.

I. Monies in Trust. That the monies disbursed under this Agreement shall constitute a trust fund and shall be used solely for the payment of the Costs of the Improvements and for no other purpose, unless another use is specifically provided for in this Agreement or another Loan Document, or is consented to in writing by the Governmental Lender and Fiscal Agent prior to any such usage.

J. No Suits Pending. Except for actions, suits or proceedings which have been expressly and specifically disclosed to the Governmental Lender in writing, there are no actions, suits or proceedings before or by any court or governmental authority ongoing, pending or, to Borrower's knowledge, threatened against the Borrower or the Development which, if determined adversely to the Borrower or the Development, would have a materially adverse effect on the financial condition, properties, businesses or operations of the Borrower or the Development, or which may prevent or interfere with or adversely affect the Borrower entering into the Loan Documents, or the Borrower's ability to perform its obligations under the Loan Documents, or involving the validity of the Loan Documents, and, to the Borrower's knowledge, the Borrower is not in default with respect to any order, writ, injunction, decree or demand of any court or any governmental authority relating to the Development.

K. No Violation of Agreements. That the consummation of the transactions hereby contemplated and performance of this Agreement and the Security Instrument will not result in any breach of, or constitute default under, any mortgage, lease, bank loan or credit agreement, corporate charter, bylaws, operating agreement, operating agreement, joint venture agreement, or other instrument to which the Borrower or its General Partner are a party or by which they may be bound or affected.

L. No Event of Default Under Project Loan Agreement. That no Event of Default presently exists under the Project Note, the Project Loan Agreement, the Security Instrument, this Agreement or any other Loan Document, and no event has occurred and is continuing which with notice or the passage of time or either would constitute a default under the Project Note, the Project Loan Agreement, the Security Instrument or this Agreement or any other Loan Document.

M. No Financial Impediments. That Borrower has no known or contingent liabilities, and no material financial obligations under other agreements to which Borrower is a party or by which the Land is bound other than those obligations incurred with regard to the acquisition of the Land or in the ordinary course of the operation of the Development and those obligations arising out of or specified in the Security Instrument, the other Loan Documents and the Borrower's operating agreement.

N. Continuing Warranties. That each of the representations and warranties set forth in this Paragraph will be true on the date of each Advance and the acceptance of any Advance by the Borrower shall be deemed to be a reaffirmation of each and every one of said representations and warranties.

**13. COVENANTS OF THE BORROWER.** As of the Closing Date, and thereafter, the Borrower covenants and agrees with the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer as follows:

A. Survey. The Borrower shall forthwith, and prior to the initial disbursement of any funds hereunder, furnish to the Governmental Lender Servicer, at the Borrower's expense, a current survey, which survey shall meet all requirements of the Title Insurance Company (including any flood requirements), so as to enable the Title

Insurance Company to eliminate any exception for survey matters from the Title Insurance Policy (unless otherwise agreed to by the Governmental Lender), and which survey shall locate all recorded restrictions and easements by recording references. If requested, upon the completion of the Improvements, the Borrower shall furnish to the Governmental Lender Servicer and the Fiscal Agent a final completion survey showing the Improvements completed and properly located on the Land. Such survey shall be made by a civil engineer or surveyor reasonably acceptable to the Governmental Lender Servicer and the Governmental Lender and shall be paid for by the Borrower and shall be on a form and contain such matters as may reasonably be required by the Governmental Lender Servicer and the Governmental Lender.

B. Insurance. The Borrower shall furnish and pay, or cause to be furnished and paid, the premiums for fire and extended coverage insurance as well as insurance against such other hazards as required under the Loan Documents, including flood insurance if required, with a company or companies meeting the reasonable requirements of the Governmental Lender and the Security Instrument, said policies to be in full replacement value of the Improvements and covering the same, said policies to be in such amount, in such form and with such deductibles as are reasonably acceptable to the Governmental Lender and the Governmental Lender Servicer. Loss under such insurance policies shall be payable in accordance with the relevant provisions of the Loan Documents and said policies shall provide that they shall not be cancelable without at least thirty (30) days' prior written notice by the insurer to the Fiscal Agent and the Governmental Lender. The Borrower shall also furnish at the Borrower's expense, or cause to be furnished, such workers' compensation insurance as may be reasonably required by law. Evidence of the foregoing shall be provided to the Fiscal Agent prior to the initial disbursement of funds. All insurance policies identified herein shall be renewed at least twenty (20) days prior to expiration with notice of renewal provided the Fiscal Agent. The provisions herein are intended to be consistent with and to impose the same insurance obligations as set forth in the Project Loan Agreement and the Security Instrument. In the event of any inconsistency between this Agreement and the Project Loan Agreement, the provisions of the Project Loan Agreement shall prevail.

C. Construction in Workmanlike Manner.

(1) The Borrower shall construct, or cause to be constructed, the Improvements on the Land in a true, thorough and workmanlike manner and in substantial accordance with the Plans and Specifications. The Borrower shall provide, or cause to be provided, at the Borrower's cost, all manner of materials, labor, scaffolding, implements and other items of every description as are required for the complete construction of the Improvements. The Borrower shall not make any material changes in the Plans and Specifications or materially deviate therefrom, except with the prior written consent of the Governmental Lender and the Governmental Lender Servicer which approval will not be unreasonably withheld or delayed and except with respect to change orders that do not require the consent of the Governmental Lender or the Governmental Lender Servicer pursuant to Section 13D. The question of materiality will be solely and reasonably decided by the Governmental Lender or the Governmental

Lender Servicer in light of the Plans and Specifications submitted, existing building standards and the public purpose of the Development.

(2) The Borrower shall cause the construction monitor, if any, engaged by the Equity Investor to deliver to the Governmental Lender Servicer a copy of all reports, including color copies of any corresponding photographs, and other records delivered to the Borrower or the Equity Investor describing the extent to which the construction of the Development is or is not being performed in accordance with the Plans and Specifications, the Construction Contract and other construction documents, including without limitation any report describing (a) the quality of the work and the materials incorporated therein, (b) whether the Borrower's architect is providing proper inspections of the Development in accordance with its contract, (c) comparisons of liens of materialmen, waivers thereof, and affidavits of contractor and subcontractor to Notice-to-Owner forms, and verifying that no payments are being improperly made, and (d) such other observations as are customary by construction monitors and that minimize risk to the Development.

D. Lien Releases. The Borrower shall furnish all receipted bills, certificates, affidavits, receipts, releases of lien, approved bonds and any other documents which may be required or allowed by the lien laws of the State, or which may be reasonably required by the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent or the Title Insurance Company providing the Title Insurance Policy, as evidence of full payment or acceptable bond for all labor and materials incident to the construction of the Improvements, and will promptly secure the release (except for liens which are the subject of a bond as herein described) of the Land from any and all liens that might be imposed thereon. The Borrower specifically reserves the right to contest any such liens, provided such liens are properly transferred to a surety bond or cash deposit in accordance with Florida law.

E. Compliance with Project Loan Agreement. The Borrower shall comply with and perform each and every one of the provisions, terms, conditions, requirements and contingencies embodied in the Project Loan Agreement and the other Loan Documents required to be complied with by the Borrower and shall execute all instruments required to completely comply with and perform the same, and shall abide by, complete and carry out all of the Borrower's representations, proposals and commitments made in the Loan Documents.

F. No Further Encumbrances. The Borrower will not convey, encumber or impose a security interest on its interest in the Land or the Improvements in any way without the consent of the Governmental Lender and the Fiscal Agent, except as permitted in the Loan Documents; nor shall the Borrower assign any rights under this Agreement or any advance or portion of any advance to be made hereunder without the Governmental Lender's and the Fiscal Agent's prior written consent. All proposed easements affecting the Land shall be submitted to the Governmental Lender Servicer for its reasonable approval prior to the execution thereof by the Borrower and shall be accompanied by a drawing or survey adequate to show the proposed location thereof.

G. Right of Entry. The Borrower will permit the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer and their authorized employees, agents or representatives to enter upon the Land after reasonable prior notice during normal business hours, to inspect the Improvements and all materials to be used in the construction thereof, and to examine all detailed plans and shop drawings which are or may be kept at the construction site and all books and records of the Borrower and the Contractor relating to the Land, and will cooperate and cause the Contractor to cooperate with the Governmental Lender, the Fiscal Agent and/or the Governmental Lender Servicer and their representatives to enable them to perform their functions hereunder. It is expressly agreed that any inspection made by the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or their representatives shall be made solely and exclusively for the protection and benefit of each of them and neither the Borrower nor any third party shall be entitled to claim any loss or damage either against the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or its employees, agents or representatives for failure to properly discharge any alleged duties of the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer and they shall have no duty to make such inspections.

H. Correct Non-Complying Work. The Borrower agrees that it will cause to be corrected at no cost to the Governmental Lender, the Fiscal Agent, or the Governmental Lender Servicer, any work performed and replace any material that does not substantially comply with the Plans and Specifications.

I. Additional Documents. The Borrower agrees to execute any and all such other and further instruments as may reasonably be required by the Governmental Lender or Fiscal Agent from time to time in order to carry out the provisions of this Agreement, the Loan Documents or for the purpose of protecting, maintaining, or enforcing the Governmental Lender's and the Fiscal Agent's security for the Loan.

J. Insufficiency of Loan Proceeds. Unless otherwise agreed in writing by the Governmental Lender and the Governmental Lender Servicer, the Borrower covenants, warrants and agrees that it will provide from its own funds such amounts as may be necessary to pay for all Costs of Improvements which are in excess of the disbursements required to be made by the Fiscal Agent hereunder and other available and identified funds (as approved by the Governmental Lender Servicer), and in the event of any default hereunder (subject to any applicable notice and cure periods), the Governmental Lender Servicer shall not be required to approve any disbursement hereunder if the undisbursed proceeds of the Loan together with all other available and identified funds shall be less than the amount necessary to pay for the completion of the Improvements. If the Governmental Lender or the Governmental Lender Servicer at any time determine in their reasonable judgment from any certification, report, cost projection, work stoppage, price or wage change or from any other source or for any reason, that the Cost of Improvements will exceed those costs and projections estimated by the Borrower or the Governmental Lender and certified to the Governmental Lender Servicer from time to time, and that the undisbursed proceeds of the Loan (plus any and all funds of the Borrower deposited with the Fiscal Agent together with all other available and identified funds) shall be less than the amount necessary, in the Governmental Lender's or the

Governmental Lender Servicer's reasonable judgment, to pay for all work done or to be done and all other expenses for completion of the Improvements, or that any amount specified in the Budget may be less than the amount necessary (taking into account all other available and identified funds which are so approved by the Governmental Lender Servicer), in the Governmental Lender's or the Governmental Lender Servicer's reasonable judgment, to pay for all work done or to be done and all expenses incurred or to be incurred in connection with the Improvements, then in such event, the Fiscal Agent shall, if directed by the Governmental Lender, withhold further disbursements to the Borrower until the Borrower shall have provided a sufficient plan to pay for all work done or to be done and expenses incurred or to be incurred in connection with the Improvements, to the reasonable satisfaction of the Governmental Lender, including but not limited to the requirement that collateral sufficient to cover such costs be posted with or for the benefit of the Fiscal Agent.

K. Construction Contract. Except as otherwise provided herein with respect to change orders that do not require consent, the Borrower shall not amend the Construction Contract in any manner without the prior written consent of the Funding Lender and the Governmental Lender Servicer.

#### 14. TERMINATION.

A. By the Governmental Lender or the Fiscal Agent. The Governmental Lender and the Fiscal Agent (with the consent of the Governmental Lender) shall each have the right to terminate the Governmental Lender Servicer's rights and obligations under this Agreement, without cause, upon ten (10) days' written notice to the Governmental Lender Servicer, and with cause, upon such written notice as the Governmental Lender deems reasonable under the circumstances.

B. Automatic Termination. Upon the occurrence of any one or more of the following events, the Governmental Lender Servicer's rights and obligations under this Agreement shall be automatically terminated:

(1) The Governmental Lender Servicer shall assign or attempt to assign its rights or obligations under this Agreement without the prior written consent of the Governmental Lender.

(2) The Governmental Lender Servicer shall institute proceedings for voluntary bankruptcy or shall file a petition seeking reorganization under the Federal Bankruptcy Laws or for relief under any other law for the relief of debtors or shall consent to the appointment of a receiver of all or substantially all of its property, or make a general assignment for the benefits of its creditors, or shall admit in writing its inability to pay its debts as they become due, or shall be adjudicated bankrupt or insolvent by a court of competent jurisdiction, or if an order shall be made by a court of competent jurisdiction appointing a receiver, liquidator or trustee of the Governmental Lender Servicer or of all or substantially all of its property or approving any petition filed against the Governmental Lender

Servicer for its reorganization, and such adjudication or order shall remain in force or unstayed for a period of thirty (30) days.

(3) The Governmental Note shall be redeemed and all amounts owed by the Borrower under the Loan Documents are paid in full.

C. Effect of Termination. In the event this Agreement is terminated pursuant to this Section 14, then the rights and obligations of the Governmental Lender Servicer and its right to compensation hereunder shall immediately terminate, the Governmental Lender Servicer shall forthwith deliver to the Governmental Lender or to whomever the Governmental Lender directs, all documents relating to the Loan and shall do such other acts as may reasonably be required by the Governmental Lender to facilitate the termination hereof.

D. Replacement Governmental Lender Servicer Following Termination. Upon termination of the rights and duties of the Governmental Lender Servicer hereunder (other than pursuant to Section 14B(3) hereof), the Fiscal Agent and the Borrower shall join the Governmental Lender in entering into a substantially similar agreement with a replacement Governmental Lender Servicer designated by the Governmental Lender.

## 15. AGREEMENTS RELATING TO CONTRACTORS.

A. Rights Inferior. The rights of all contractors, subcontractors, sub-subcontractors, laborers, suppliers and materialmen performing any work in connection with the Improvements, or furnishing any services, labor or materials thereto or to the Land, shall be subordinate and inferior to the Security Instrument. Neither the Fiscal Agent nor the Governmental Lender shall be liable to materialmen, contractors, subcontractors, sub-subcontractors, laborers, suppliers or others for goods or services delivered by them in or upon the Land or employed in the construction of the Improvements, or for any debts or claims accruing to any of said parties against the Borrower or against the Land, and it is distinctly understood and agreed that there is no contractual relationship, either express or implied, between either the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer and any materialmen, contractors, sub-contractors, sub-subcontractors, craftsmen, laborers or any person supplying any work, labor or material. The Borrower is not, and shall not be, the agent of either the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer for any purpose, nor shall any of them be the agent of Borrower for any purpose, except, as to both, as may be specifically set forth herein. It is specifically understood and agreed that no party shall be a third party beneficiary hereunder, except and unless it is specifically provided herein that any provision shall operate or inure to the use and benefit of a party, i.e., no subcontractor, sub-subcontractor or materialman, laborer or supplier shall have any rights hereunder against the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or be entitled to the protection of any of the covenants herein contained.

B. Borrower's Rights Assigned. The Borrower hereby assigns to the Governmental Lender and Funding Lender, effective, however, only after an Event of

Default and the expiration of applicable notice and cure periods, all rights of the Borrower under its contract with the Contractor and under its contract with the Architect, and the Governmental Lender or the Funding Lender shall have the option after an Event of Default, and the expiration of applicable notice and cure periods, in its sole discretion and in addition to any other rights and remedies the Governmental Lender or the Funding Lender may have, to exercise their rights under this assignment; provided, the Borrower shall be entitled to pursue any claims made against the Contractor or Architect prior to the occurrence of such Event of Default. Nothing herein shall be construed, however, to require the Governmental Lender or the Funding Lender to exercise any rights under this Paragraph.

C. No Other Contracts. Except for items set forth and approved by the Governmental Lender Servicer in the Budget, the Borrower represents that it has not and agrees that it will not enter into any significant contract or agreement (in excess of \$50,000) relating to the construction, purchase or installation of the Improvements other than the contracts with the property manager, the Developer, the Architect and the Contractor and a contract with its surveyors or engineers, nor will the Borrower agree to any material modification or amendment in its contract with the property manager, the Contractor or the Architect without first obtaining the Governmental Lender Servicer's written approval of and consent to such contract, agreement or amendment, which consent shall not be unreasonably withheld or delayed for more than five (5) days after receipt of said notice.

D. Change Orders. The Borrower covenants and warrants that any change order of \$25,000 or more, or \$50,000 in the aggregate, or which would extend the Completion Date (as defined in the Loan Documents) by more than sixty (60) calendar days, shall require the prior written approval of the Governmental Lender Servicer, which approval shall not be unreasonably withheld or delayed. Notwithstanding the foregoing, the Governmental Lender Servicer shall be provided with copies of all change orders, regardless of amount.

E. No Joint Venture. Nothing herein nor the acts of the parties hereto shall be construed to create a partnership or joint venture between the Borrower and any of the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer with respect to the Loan.

## 16. EVENTS OF DEFAULT.

A. Subject in all instances to the provisions of Paragraph B of this Section 16 (concerning rights to notice of and cure an Event of Default) and the provisions of the Funding Loan Agreement, an Event of Default under this Agreement shall, at the Governmental Lender's option, be deemed to have occurred hereunder if:

(1) Default Under Loan Documents. Any Event of Default, as defined therein, shall occur under any of the other Loan Documents which is not cured within any applicable grace or cure period; or



(2) Breach of Covenant. The Borrower shall breach or fail to perform, observe or meet any material covenant or condition in this Agreement within thirty (30) days after written notice thereof from any other party hereto; or

(3) Filing of Liens Against the Land. Any lien for labor, materials, or taxes (except for ad valorem taxes not yet due and payable) or otherwise shall be filed against Borrower's interest in the Land and not be either released (by payment, bonding or otherwise) within the earlier of forty (40) days after the date of filing thereof or thirty (30) days after the Borrower receives actual notice thereof or properly contested as provided for in the Loan Documents, except for Permitted Encumbrances (as defined in the Project Loan Agreement) or items disclosed in the pending litigation schedule attached hereto as Exhibit "C" and made a part hereof; or

(4) Levy Upon The Development. A levy shall be made under any process on, or a receiver be appointed for, the Development or any part thereof; or

(5) Abandonment or Cessation of Construction. Construction of the Improvements shall cease and not be resumed within sixty (60) days thereafter, unless the Borrower is prevented from resuming same as a result of Force Majeure, or shall be abandoned for more than thirty (30) days; or

(6) Denial of Inspection. The Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or representatives shall not be permitted, at all reasonable times and after reasonable notice, to enter upon the Land, to inspect the Improvements and the construction thereof and all materials, fixtures, and articles used or to be used in the construction of the Improvements, and to examine all detailed plans, shop drawings, specifications and other records which relate to the Improvements, or the Borrower shall fail to furnish to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or to their authorized representatives, when reasonably requested, copies of such plans, shop drawings, specifications, and records; or

(7) Improper Materials. Any of the materials, fixtures, machinery, equipment, articles and/or personal property used in the construction of the Improvements or the appurtenances thereto, or to be used in the operation thereof, shall not, in the reasonable opinion of the Governmental Lender Servicer or the Governmental Lender, substantially comply with the Plans and Specifications as approved by the Governmental Lender Servicer on behalf of the Governmental Lender and such default is not cured by the Borrower within forty-five (45) days after the Governmental Lender Servicer or the Governmental Lender has given notice to the Borrower to cure same; or

(8) Materials Not Free and Clear. The Borrower shall not, except in the case of leased washing machines, dryers, vending machines, office telephones, office equipment, office communications equipment and model furniture and other items normally used in common by tenants, execute (other than to the

Governmental Lender or the Fiscal Agent or any mortgage constituting a Permitted Encumbrance) any conditional bill of sale, chattel mortgage, security agreement or other security instrument covering any materials, fixtures, machinery, equipment, articles, and/or personal property intended to be incorporated in the Improvements or the appurtenances thereto, or placed in the Improvements, or if a financing statement publishing notice of such security instrument shall be filed, or if any of such materials, fixtures, machinery, equipment, articles, and/or personal property shall not be purchased so that the ownership thereof will vest unconditionally in the Borrower, free from encumbrances other than the Governmental Lender and the Fiscal Agent or any mortgage constituting a Permitted Encumbrance, on delivery at the Land, or if the Borrower shall not produce to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer upon demand the contracts, bills of sale, statements, receipted vouchers or agreements, or any of them, under which the Borrower claims title to any thereof; or

(9) Failure to Complete Improvements. The Improvements, in the reasonable judgment of the Governmental Lender Servicer or the Governmental Lender, are not, or cannot reasonably be, completed on or before the Completion Date (as defined in the Loan Documents), subject, however, to Force Majeure; or

(10) False Representation or Warranty. At any time any representation, warranty or statement made by the Borrower in any Loan Document shall be incorrect or misleading in any material respect when made.

Notwithstanding anything herein to the contrary, this Paragraph shall in no way be construed to limit the Governmental Lender's, the Fiscal Agent's or the Governmental Lender Servicer's right to seek specific performance of this Agreement against the Borrower or to enforce its remedies under Section 18 hereof or to withhold approval of a Draw Request until the Borrower is in compliance with this Agreement.

B. Notice of Default; Opportunity to Cure. Except as set out below, no default under the preceding Section shall constitute an Event of Default hereunder until:

(1) The Governmental Lender Servicer and/or the Fiscal Agent, by registered or certified mail, shall give notice to the Governmental Lender, the Funding Lender, the Borrower, the Borrower's investor limited partner and the Fiscal Agent of such default specifying the same and stating that such notice is a "Notice of Default"; and

(2) The Borrower shall have had thirty (30) days (or such extended period as permitted (approved in writing with notice to the Fiscal Agent and the Governmental Lender Servicer) by the Governmental Lender when curative action is being diligently pursued) after receipt of such notice to correct the default and shall not have corrected it or, if such default cannot be corrected within thirty (30) days, shall have failed to initiate and diligently pursue (in the sole reasonable judgment of the Governmental Lender) appropriate corrective

action. The Borrower's investor limited partner shall have the right, but not the obligation to cure any default.

Notwithstanding the foregoing, notice of and opportunity to cure any default arising from a default under the other Loan Documents shall be governed by the terms of such agreements, and no additional notices of or opportunity to cure any default under such agreements shall be required hereunder to complete the notice and cure procedure provided in such agreements.

**17. MISCELLANEOUS PROVISIONS:**

A. No Waiver. Nothing herein shall be construed to waive or diminish any right or security of the Governmental Lender or the Fiscal Agent under the Loan Documents. It is the purpose and intent hereof to provide safeguards, protections and rights for the Governmental Lender and the Fiscal Agent in addition to those provided in the other Loan Agreement.

B. Cumulative Remedies. The remedies provided herein shall be in addition to and not a substitution for the rights and remedies which would otherwise be vested under any Loan Document or in law or equity, all of which rights and remedies are specifically reserved. The remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer shall be cumulative and may be exercised separately or concurrently and as often as the occasion therefor may arise. The failure to exercise any of the remedies herein shall not constitute a waiver thereof, nor shall use of any of the remedies hereby provided prevent the subsequent or concurrent use of any other remedy or remedies. It is intended that this clause shall be broadly construed so that all remedies herein provided or otherwise available to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer shall continue and be each and all available until all sums due from the Borrower under the Loan Documents are paid in full and all obligations incurred by the Borrower in connection with the construction or operation of the Improvements have been fully discharged.

C. Binding Effect. This Agreement shall be binding upon and shall inure to the benefit of the parties hereto and their heirs, legal representatives, successors and assigns. The Borrower may be released from obligations and agreements hereunder only by a written instrument of the Fiscal Agent and the Governmental Lender specifically providing for such release. Notwithstanding the immediately preceding sentence, the Borrower shall be released from any and all liability hereunder, upon the earlier of (i) the completion of construction of the improvements or (ii) the payment of all amounts due from the Borrower under the Loan Documents.

D. Assignability. This Agreement shall not be assignable by the Borrower or the Governmental Lender Servicer without the prior written consent of the Governmental Lender and the Fiscal Agent. If the Governmental Lender and the Fiscal Agent approve an assignment hereof by the Borrower, the Fiscal Agent shall be entitled to make Advances to such assignee and such Advances shall be secured by the Loan Documents.

E. Governing Law. This Agreement shall be construed under the laws of the State of Florida, regardless of where it may have been executed or delivered.

F. Construction. Whereas this Agreement was negotiated with input from all parties hereto, this Agreement shall not be construed more strongly against any party regardless of who was more responsible for its preparation.

G. Costs and Legal Fees. In the event that any party shall be required to enforce this Agreement and whether or not suit be brought, the prevailing parties shall be entitled to recover from the losing parties all reasonable legal fees and costs incurred in connection therewith, whether incurred in collection, at trial, on appeal, in bankruptcy or other similar proceedings affecting creditors' rights or otherwise.

H. Invalid Provisions. All rights, powers and remedies provided herein may be exercised only to the extent that the exercise thereof does not violate any applicable law and are intended to be limited to the extent necessary so that they will not render this Agreement invalid, illegal, or unenforceable under any applicable law. If any term of this Agreement shall be held to be invalid, illegal or unenforceable, the validity of the other terms of this Agreement shall in no way be affected thereby, nor shall such terms be invalid or unenforceable under other, dissimilar facts and circumstances.

I. Headings. The paragraph headings contained in this Agreement are for reference purposes only and shall not in any way affect the meaning, content, or interpretation hereof.

J. Amendments. This Agreement shall not be amended or modified except by an amendment in writing, executed by all parties hereto in the same form as this Agreement.

K. Dealings with the Governmental Lender Servicer. The Governmental Lender Servicer shall be protected and shall incur no liability in acting or proceeding in good faith upon resolution, notice, telegram, consent, waiver, certificate, affidavit, voucher, bond, title insurance commitment or policy or endorsement thereto or other paper or document which it shall in good faith reasonably believe (i) to be genuine and, (ii) to have been passed or prepared and furnished pursuant to the provisions of the Loan Documents, and the Governmental Lender Servicer shall be under no duty to make any investigation or inquiry as to any statements contained or matters referred to in any such instrument, but may accept and rely upon the same as conclusive evidence of the truth and accuracy of such statements unless the instrument on its face reasonably indicated that the Governmental Lender Servicer should inquire further or unless the Governmental Lender Servicer has actual knowledge or information which reasonably should cause the Governmental Lender Servicer to inquire further. The Governmental Lender Servicer shall not be held liable under this Agreement except for its own negligence or willful misconduct. The Borrower shall indemnify and hold the Governmental Lender Servicer harmless from any claim, action or liability of any kind or character whatsoever arising from or in any way related to acts or omissions of the Borrower or any of its agents, employees, consultants, counsel, or independent contractors. This Paragraph shall in no

way be construed to relieve the Governmental Lender Servicer of the normal and usual duties of a reasonably prudent loan servicer or monitoring agent.

L. Terms. Wherever used herein, the terms utilized shall include masculine, feminine, neuter, singular and/or plural, as the context admits or requires.

M. Conflicts. Notwithstanding anything herein to the contrary, the terms and conditions of the Governmental Note, the Project Loan Agreement and the Security Instrument shall govern, control and prevail, in the event of any conflict between the terms and conditions hereof and those contained in the Governmental Note, the Project Loan Agreement and the Security Instrument.

**18. REMEDIES.** Subject to the terms of the Land Use Restriction Agreement upon the occurrence of any Event of Default which is not cured within the applicable notice and cure period, the Governmental Lender (or the Fiscal Agent or the Governmental Lender Servicer), shall be entitled to seek specific performance hereof against the Borrower, and/or in addition to any other right or remedy available to it in law or equity. It is specifically agreed by the Borrower that a violation of this Agreement or the Land Use Restriction Agreement could cause harm for which no damages could be calculated, therefore entitling the Governmental Lender to immediate equitable relief, including without limitation a temporary restraining order or mandatory injunction without notice.

**19. EXERCISE OF RIGHTS BY GOVERNMENTAL LENDER.** Notwithstanding any provision herein to the contrary, the Governmental Lender Servicer shall approve or disapprove all advances requested hereunder by the Borrower except that the Governmental Lender Servicer is hereby permitted to disapprove any such request by the Borrower for advances hereunder which is not in substantial compliance with the credit underwriting guidelines of the Governmental Lender.

**20. NOTICES.** Any notice required to be given hereunder shall be given by personal delivery, by registered U.S. mail or by expedited service at the addresses specified below or at such other addresses as may be specified in writing by the parties hereto, and any such notice shall be deemed received on the date of delivery if by personal delivery or expedited delivery service, or upon actual receipt of sent by registered U.S. Mail.

The Governmental Lender: Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, Florida 32084  
Attention: Executive Director  
Email: [ ]  
Telephone: ( ) [ ] - [ ]  
Facsimile: ( ) [ ] - [ ]

To the Borrower: San Marcos Heights, LLC  
1100 NW 4th Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith

Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520  
Facsimile: ( ) [ - ]

with a copy to:

Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, FL 33131  
Attention: Robert Cheng, Esq.

and a copy to:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

with a copy to:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: CREB Loan Administration  
Fax Number: (704) 719-8659

To the Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department  
Email: [ ]  
Telephone: (904) 645-19[ ]  
Facsimile: (904) 645-19[ ]

To the Governmental  
Lender Servicer:

First Housing Development Corporation of Florida  
107 S. Willow Avenue  
Tampa, FL 32202  
Attention: Ed Busansky  
Email: ebusansky@firsthousinfl.com  
Telephone: (813) 283-1043  
Facsimile: (813) 289-5580

To the Funding Lender:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

With a copy to:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: CREB Loan Administration  
Fax Number: (704) 719-8659

**21. ENTIRE AGREEMENT.** This Agreement sets forth the entire agreement among the Governmental Lender, the Governmental Lender Servicer, the Fiscal Agent and the Borrower as to the subject matter hereof, and all prior agreements, negotiations and understandings with respect thereto are merged into and superseded by this Agreement.

**22. WAIVER OF TRIAL BY JURY. THE BORROWER, THE GOVERNMENTAL LENDER, THE FISCAL AGENT AND THE GOVERNMENTAL LENDER SERVICER KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EACH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, ANY OTHER LOAN DOCUMENT AND ANY OTHER AGREEMENT EXECUTED OR CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ARISING OUT OF, UNDER, OR IN CONNECTION WITH ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF PARTIES, WHETHER IN CONNECTION WITH THE MAKING OF THE LOAN, COLLECTION OF THE LOAN, OR OTHERWISE. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE GOVERNMENTAL LENDER TO MAKE THE LOAN EVIDENCED BY THE PROJECT LOAN AGREEMENT.**

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

**IN WITNESS WHEREOF**, the parties have caused this Agreement to be executed in their respective names by their duly authorized representatives as of the day and year first set forth above.

**Authorized Borrower Representative:**

**SAN MARCOS HEIGHTS, LLC,  
a Florida limited liability company**

By: San Marcos Heights MM, LLC,  
a Florida limited liability  
company, its Manager

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

Name: Darren Smith

Title: Manager



**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA**

By: \_\_\_\_\_  
Mitchell O'Donnell, Chair

ATTEST:

\_\_\_\_\_  
Linda DeGrande, Secretary

**FIRST HOUSING DEVELOPMENT  
CORPORATION OF FLORIDA**, a Florida  
corporation, as Governmental Lender Servicer

By: \_\_\_\_\_  
Print: [ \_\_\_\_\_ ]  
Title: [ \_\_\_\_\_ ]

**THE BANK OF NEW YORK MELLON  
TRUST COMPANY, N.A., as Fiscal Agent**

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

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**BUDGET**

EXHIBIT "C"

**PENDING LITIGATION SCHEDULE**

[NONE]

**EXHIBIT G**  
**GUARANTY OF COMPLETION**

**ABSOLUTE AND UNCONDITIONAL GUARANTY OF COMPLETION  
(San Marcos Heights)**

This **ABSOLUTE AND UNCONDITIONAL GUARANTY OF COMPLETION** (this "Guaranty") is made as of February 1, 2021, by **SAN MARCOS HEIGHTS, LLC**, a Florida limited liability company (the "Borrower"), **SAN MARCOS HEIGHTS MM, LLC**, a Florida limited liability company, its manager, [\_\_\_\_\_] a [\_\_\_\_\_] and [\_\_\_\_\_] individually (each a "Guarantor" and together with the Borrower, the "Guarantors"), to the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA**, a public body corporate and politic organized and existing under the laws of the State of Florida (the "Governmental Lender"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, with a representative office located in Jacksonville, Florida, as fiscal agent under the below-described Funding Loan Agreement (in such capacity, the "Fiscal Agent").

**RECITALS:**

A. All capitalized terms in this Guaranty not otherwise defined herein shall have the meanings set forth in the Funding Loan Agreement (as hereinafter defined).

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

C. Pursuant to the Act, the Board of County Commissioners of St. Johns County, Florida (the "County") enacted Ordinance 80-7 on February 26, 1980, as amended (the "Ordinance"), and adopted Resolution 80-25 on March 11, 1980, as amended (the "Resolution"), creating the Governmental Lender to carry out and exercise, without limitation except as expressly stated in the Ordinance and the Resolution, all powers and public and governmental functions set forth in and contemplated by the Act.

D. Pursuant to the Act, the Governmental Lender, the Fiscal Agent and the Borrower, have entered into that certain Construction Phase Project Loan Agreement dated February 1, 2021 and that certain Project Loan Agreement dated as of February 1, 2021 (collectively, the "Project Loan Agreements"), the terms of which are hereinafter incorporated by this reference, under which the Governmental Lender has agreed to make a loan pursuant to the Project Loan Agreements (the "Project Loan") in the original principal amount of Sixteen Million No/100 Dollars (\$16,000,000) to the Borrower to provide for the financing or refinancing of the acquisition, construction and development of a multifamily rental housing development to be known as San Marcos Heights, to be constructed on an approximately 15.0-acre site located at 127 Adair Road, in an unincorporated area of St. Johns County, Florida (the "Project"), to be occupied or reserved for occupancy by individuals of low income within the meaning of Section 142(d) of the Internal Revenue Code of 1986, as amended, for the public purpose of assisting persons or



families of low, moderate or middle income within the County to afford the costs of decent, safe and sanitary housing; and

E. In order to provide the funds with which to make the Project Loan to the Borrower, the Governmental Lender has authorized the issuance of its \$16,000,000 Housing Finance Authority of St. Johns County, Florida Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "Governmental Note") pursuant to that certain Funding Loan Agreement dated as of February 1, 2021, among CBRE Capital Markets, Inc., in its capacity as initial Funding Lender, the Governmental Lender and the Fiscal Agent (the "Funding Loan Agreement"), the terms of which are incorporated herein by this reference.

F. As a condition to the Governmental Lender making the Project Loan to the Borrower, and pursuant to the requirements of the Project Loan Agreements and the Funding Loan Agreement, the Governmental Lender, the Fiscal Agent and Borrower have executed a Land Use Restriction Agreement dated February 1, 2021, the terms of which are incorporated herein by this reference, setting forth certain terms and conditions relating to the acquisition, rehabilitation, operation and equipping of the Project and which sets forth various other covenants and agreements that run with the land on which the Project is located.

G. The Borrower has entered into a Construction Loan Servicing Agreement (the "Loan Servicing Agreement") by and among the Governmental Lender, the Fiscal Agent, the Borrower, and Seltzer Management Group, Inc., a Florida corporation (the "Servicer"), to provide for the proper disbursement of the Project Loan; the terms of the Loan Servicing Agreement are incorporated herein by this reference.

H. To induce the Governmental Lender to authorize the issuance and sale of the Governmental Note pursuant to the Funding Loan Agreement for the purpose of providing a portion of the funds for the acquisition, rehabilitation and equipping of the Project; and to further induce the Governmental Lender to make the Project Loan to the Borrower pursuant to the Project Loan Agreements and in accordance with the Loan Servicing Agreement and to further induce the Governmental Lender to accept the Construction Phase Project Note, the Guarantors have agreed to deliver this Guaranty.

I. Each of the Guarantors acknowledges and agrees that each will benefit from the development of the Project.

**NOW, THEREFORE**, for and in consideration of the premises and as part of the consideration for the Project Loan by the Governmental Lender to the Borrower and for other good and valuable consideration, the receipt and adequacy of which are hereby acknowledged, Guarantors hereby covenant and agree with the Governmental Lender for the benefit of the Governmental Lender, its successors and assigns, including the Fiscal Agent, as follows:

1. **Obligation of Guarantors.**

(a) During the term hereof, the Guarantors hereby, jointly and severally, unconditionally guaranty to the Governmental Lender, its successors and assigns, including the Fiscal Agent, that (i) the Borrower shall construct, equip and complete the Improvements (as

defined in the Loan Servicing Agreement) substantially in accordance with the Plans (as defined in the Loan Servicing Agreement) heretofore delivered to the Governmental Lender on or before the completion date as set forth in the Loan Servicing Agreement or such extension thereof as authorized in writing by the Governmental Lender, and shall comply with all of the terms, covenants and conditions of the Loan Servicing Agreement with respect to the completion of the Improvements in accordance with the terms of the Loan Servicing Agreement; (ii) the Borrower shall fully and punctually comply with all terms, covenants and conditions of all documents executed by the Borrower in connection with the Project Loan with respect to the completion of the Improvements in accordance with the terms of the Project Loan Documents (as defined in the Funding Loan Agreement); (iii) the Borrower shall fully and punctually pay and discharge any and all costs and expenses and liabilities incurred in connection with the acquisition, construction, equipping and completion of the Improvements when and as the same may become due and payable, subject to the rights, if any, of the Borrower to contest such claims and demands pursuant to the provisions of the Loan Documents, and also pay and discharge any and all claims and demands for labor and materials used and services rendered for or in connection with the acquisition, construction, equipping and completion of the Improvements; (iv) the Property and the Improvements shall be and remain free and clear of any and all liens from any and all persons, firms, corporations or other entities furnishing materials, labor or services for or in connection with the acquisition, construction, equipping or completion of the Improvements that are not bonded in accordance with the terms of the Loan Servicing Agreement; and (v) the Borrower will promptly pay any and all reasonable legal and other costs and expenses incurred by the Governmental Lender in connection with or in any way related to the completion of the Improvements in accordance with the terms of the Loan Servicing Agreement. All of the matters referred to in subparagraphs (i) through (v) of this paragraph are hereinafter collectively referred to as the "Indebtedness." The term "Indebtedness" shall also include all reasonable costs of collection of the foregoing or enforcement of this Guaranty, including reasonable legal fees (as provided herein). In the event the Governmental Lender or the Fiscal Agent must repay any part of the Indebtedness paid by the Borrower, any co-guarantor (whether hereunder or under a separate instrument) or any other person because of any bankruptcy, liquidation, dissolution, receivership, insolvency, assignment for the benefit of creditors, reorganization, arrangement, composition or other similar proceedings relating to creditors' rights, then the amount so repaid shall again become part of the Indebtedness, the repayment of which is guaranteed hereby. Subject to the terms and conditions of the Funding Loan Agreement, the Project Loan Agreements and the Loan Servicing Agreement, the Governmental Lender agrees to give the Guarantors the benefit of the Project Loan, and all non-recourse provisions in the Project Loan Agreements and the Project Loan Documents, if the Guarantors actually cure all defaults under the Loan Servicing Agreement and proceed to complete the Project, including the right to apply to the Fiscal Agent for funds that would otherwise have been distributed to the Borrower as costs of completing the Project.

(b) The liability of the Guarantors to pay or perform the Indebtedness applies irrespective of the genuineness, validity, regularity or enforceability of any Project Loan Documents evidencing, relating to, securing or guarantying payment and/or performance of the Indebtedness. Without limiting the generality of the foregoing, Guarantors hereby agree to pay and/or perform the Indebtedness in the event that the Borrower does not or is not able to pay and/or perform in accordance with the terms of all Project Loan Documents evidencing such Indebtedness for any reason, including without limitation because a court of competent jurisdiction rules that the Indebtedness is not valid or enforceable, whether by reason of waiver, running of any statute

of limitation, or otherwise, or because of the bankruptcy, liquidation, dissolution, receivership, insolvency, assignment for the benefit of creditors, reorganization, arrangement, composition or readjustment of, or similar proceedings affecting the status, existence, assets or obligations of the Borrower, or because of the limitation of damages for the breach, or the disaffirmance of any of the Indebtedness, or any other circumstance that might otherwise constitute a legal, equitable or statutory discharge or defense or otherwise impair the Governmental Lender's ability to enforce the same.

(c) Guarantors agree that they will fully indemnify and save the Governmental Lender and the Fiscal Agent harmless from any and all costs, expenses and losses (other than losses relating to principal and interest under the Governmental Note (as defined in the Funding Loan Agreement) that may incur as a result of the failure of Borrower to complete the Improvements in accordance with the terms of the Loan Servicing Agreement and pay upon demand by the Governmental Lender and the Fiscal Agent any and all such losses, costs and expenses arising as a result of the failure of Borrower to complete the Improvements in accordance with the terms of the Loan Servicing Agreement, including but not limited to any changes, alterations, modifications or deviations from the Plans and Specifications for the Improvements heretofore approved by the Governmental Lender; provided, however, the Guarantors shall have the right to receive adequate notice and an opportunity to defend against any such action or proceeding brought by a third party.

(d) Neither the Governmental Lender nor the Fiscal Agent, shall have any obligation to exercise, pursue, exhaust or enforce any right or remedy it has or may have, or to institute suit, against the Borrower, any co-guarantor (whether hereunder or under a separate instrument) or any other person or to realize or attempt to realize on any collateral securing payment of the Project Loan or any Indebtedness in order to enforce this Guaranty.

(e) In the event the Improvements are not timely completed and paid for in substantial accordance with the Plans and Specifications and the Loan Servicing Agreement, or if the Property, the Improvements and/or the Project are not free of all liens, claims and demands upon the completion thereof, which have not been bonded in accordance with applicable law or insured over within the time period referenced in the Loan Servicing Agreement, then the Guarantors shall, after default by the Borrower (1) fully indemnify and save harmless the Governmental Lender from all costs and damages that the Governmental Lender may suffer by reason thereof other than with regard to the repayment of the principal of and interest on the Project Loan; (2) reimburse the Governmental Lender for all sums paid and all reasonable costs and expenses incurred by it in connection therewith; and (3) if requested by the Governmental Lender, complete or cause the completion of the acquisition, construction and equipping of the Improvements in accordance with the Loan Servicing Agreement.

(f) Guarantors hereby covenant that this Guaranty and Guarantors' obligations hereunder shall not be discharged or released until such time as the Improvements are fully acquired, constructed, equipped and one hundred percent (100%) completed pursuant to the terms of the Loan Servicing Agreement and the requirements of the Loan Servicing Agreement for the final loan advance shall have been fulfilled as evidenced by the Servicer's approval of the final loan advance pursuant to the Loan Servicing Agreement, at which time such obligations shall be discharged and released automatically and without further action required on the part of any Guarantor. Furthermore, Guarantors shall not be released by any act or thing which might, but for

this provision of this instrument, be deemed a legal or equitable discharge of a surety, or by reason of any waiver, extension, modification, forbearance or delay or other act or omission of the Governmental Lender or the Fiscal Agent or their failure to proceed promptly or otherwise, or by reason of any action taken or omitted or circumstance which may or might vary the risk or affect the rights or remedies of Guarantors or by reason of any further dealings between Borrower and the Governmental Lender or the Fiscal Agent, whether relating to this Project Loan or otherwise, and Guarantors hereby expressly waive and surrender any defenses to their liability hereunder based upon any of the foregoing acts, omissions, things or agreements or waivers of the Governmental Lender or the Fiscal Agent; it being the purpose and intent of the parties hereto that the obligations of Guarantors hereunder are absolute and unconditional under any and all circumstances.

2. **Consents to the Governmental Lender's Acts.** The Guarantors consent that, at any time and from time to time, the Governmental Lender may, in its sole discretion, without notice to Guarantors, or any of them, which notice is expressly waived, and without affecting any liability of Guarantors, or any of them: (a) refinance, rearrange, postpone, extend, renew, accelerate or demand payment of the indebtedness (provided same may be accelerated as provided in the Project Loan Documents) evidencing the Project Loan in whole or in part and as often as the Governmental Lender may wish; (b) waive, fail to enforce, surrender, impair, modify or exchange any of its rights under any Project Loan Documents or any other instruments evidencing, relating to, securing or guarantying any of the Indebtedness; (c) settle, release (by operation of law or otherwise), compound, compromise, collect or liquidate, in any manner, any of the Indebtedness; (d) release the Borrower, any co-guarantor (whether hereunder or under a separate instrument) or any other person from liability on any Indebtedness; (e) release, exchange, add to or substitute all or any part of the collateral securing payment of any Indebtedness; or (f) alter and modify the Plans and Specifications, but not so as to substantially increase costs or time of completion, and alter, extend, modify, release or cancel the conditions for advances, if any, and any other terms, covenants and provisions contained in the Loan Servicing Agreement or any other Project Loan Document. With respect to San Marcos Heights, LLC, the consents set forth in this paragraph 2 are intended to apply to San Marcos Heights, LLC, in its capacity as Guarantor and nothing in this paragraph 2 is intended to constitute a waiver of any notice rights afforded to San Marcos Heights, LLC, in its capacity as Borrower under the Project Loan Documents or any other document entered into in connection with the Project Loan.

3. **Waivers by Guarantors.** The Guarantors waive all: (a) notice of acceptance of this Guaranty and the creation or existence of any Indebtedness or other obligation of the Borrower guarantied hereby; (b) presentment, demand for payment, notice of dishonor, protest, notice of nonpayment or protest and any other requirement of notice whatsoever; (c) defenses, offsets and counterclaims which Guarantors may at any time have to any claim of the Governmental Lender against the Borrower; and (d) valuation and appraisal of any collateral and diligence in collection. With respect to San Marcos Heights, LLC, the waivers set forth in this paragraph 3 are intended to apply to San Marcos Heights, LLC, in its capacity as Guarantor and nothing in this paragraph 3 is intended to constitute a waiver of any notice rights afforded to San Marcos Heights, LLC, in its capacity as Borrower under the Project Loan Documents or any other document entered into in connection with the Project Loan.

4. **Persons Bound.** This Guaranty is binding upon Guarantors and Guarantors' heirs, successors and assigns; is assignable and transferable, without prior notice to or consent of Guarantors; and shall inure to the benefit of the Governmental Lender's successors and assigns.

5. **Applicable Law.** The laws of the State shall control the construction, interpretation and enforcement of this Guaranty and all matters related to this Guaranty notwithstanding its place of execution and delivery.

6. **Subrogation; Contribution.** Until the Indebtedness is paid in full, nothing herein contained is intended or shall be construed to give to Guarantors any right of subrogation in or under any Project Loan Documents evidencing in any way or relating to any obligation of the Borrower to the Governmental Lender which is or may be covered by this Guaranty, or any right of contribution from the Borrower, any co guarantor (whether hereunder or under a separate instrument) or any other person for liability on any Indebtedness, or any right to participate (as a third party beneficiary or otherwise) in any way in any of the Project Loan Documents, except as may be expressly provided in such Project Loan Documents. Notwithstanding any payments made by Guarantors under this Guaranty, all such rights of subrogation, contribution and participation are hereby deferred until this Guaranty is released in accordance with the terms hereof.

7. **Subordination.** In the event that for any reason whatsoever the Borrower is now or hereafter becomes indebted to any Guarantor, each Guarantor agrees that the amount of such indebtedness and all interest thereon shall at all times be subordinate as to lien, time of payment and in all other respects to the Indebtedness guaranteed hereby, and that Guarantors shall not be entitled to enforce or receive payment thereof until all Indebtedness shall have been paid in full, or performed, provided that so long as the Guarantors are not in default hereunder or the Project Loan Documents, Guarantors may be entitled to receive and retain payments made to the Guarantors.

8. **Representations and Warranties.** The Guarantors represent and warrant that:

(a) This Guaranty does not conflict with or result in a breach or default under any law, administrative regulation, judgment, decree, order, agreement or instrument to which any of the Guarantors are subject or by which any of the Guarantors are bound; and

(b) This Guaranty is, upon execution and delivery by any Guarantor, the valid and binding agreement of such Guarantor enforceable in accordance with its terms.

9. **Specific Performance.** Guarantors acknowledge and agree that it may be impossible to accurately measure the damages to the Governmental Lender resulting from a breach of its covenant to complete or to cause the completion of the acquisition, construction and equipping of the Improvements and that such a breach will cause irreparable injury to the Governmental Lender and that the Governmental Lender may not have an adequate remedy at law in respect of such breach and, as a consequence, agrees that such covenant shall be specifically enforceable against the Guarantors and hereby waive and agree not to assert any defense against an action for specific performance of such covenant. This clause shall not prejudice the Governmental Lender's rights to assert any and all claims for damages incurred as a result of Guarantors' default hereunder in the event of default of Guarantors, and the Governmental Lender

may, before, during, or after any foreclosure of the underlying Security Instrument, hold Guarantors liable for all losses and damages sustained and expenses incurred by reason of the Borrower or Guarantors failing to acquire, construct and equip the Improvements in accordance with the Loan Servicing Agreement, including without limitation, the cost of such completion and the payment of real estate taxes and insurance premiums, with interest thereon at a rate equal to the lesser of (i) the maximum rate permitted under applicable law or (ii) eighteen percent (18%) from the date of such expenditures.

10. **Judgment Interest.** In the event the Governmental Lender obtains a final judgment against any Guarantor upon this Guaranty, the judgment shall bear interest at the judgment rate.

11. **Legal Fees.** Each Guarantor agrees to pay all reasonable costs and expenses, including reasonable legal fees, which may be incurred by the Governmental Lender or the Fiscal Agent in any effort to collect or enforce any obligations of the Guarantors hereunder, whether or not any lawsuit is filed, including, without limitation, all costs and legal fees incurred by the Governmental Lender or the Fiscal Agent in any bankruptcy proceeding (including, without limitation, any action for relief from the automatic stay of any bankruptcy proceeding) and in any judicial or nonjudicial foreclosure action.

12. **Consent to Jurisdiction.** Any action to enforce or interpret this Guaranty, whether arising in contract or tort, by statute or otherwise, may be brought in or removed to a state or federal court of competent jurisdiction in or for St. Johns County, Florida, and Guarantors hereby submit themselves to the jurisdiction of said courts.

13. **Cumulative Remedies.** All rights, remedies or recourses of the Governmental Lender under this Guaranty or any Project Loan Documents, under the Uniform Commercial Code or other law, in equity or otherwise, are cumulative, and exercisable concurrently, and may be pursued singularly, successively or together and may be exercised as often as occasion therefor shall arise. No act of commission or omission by the Governmental Lender, including, but not limited to, any failure to exercise, or any delay, forbearance or indulgence in the exercise of, any right, remedy or recourse hereunder or any other Project Loan Document shall be deemed a waiver, release or modification of that or any other right, remedy or recourse, and no single or partial exercise of any right, remedy or recourse shall preclude the Governmental Lender from any other or future exercise of the right, remedy or recourse or the exercise of any other right, remedy or recourse. A waiver, release or modification with reference to any one event shall not be construed as continuing or constituting a course of dealing, nor shall it be construed as a bar to, or as a waiver, release or modification of, any subsequent right, remedy or recourse as to a subsequent event.

14. **Miscellaneous Provisions.** Whenever the context so requires, the neuter gender includes the feminine and/or masculine, as the case may be, and the singular number includes the plural, and the plural number includes the singular. Each provision of this Guaranty shall be deemed separate from each other provision and the invalidity or unenforceability, for any reason or to any extent, of any such provision of this Guaranty shall not affect the enforceability of the remaining provisions of this Guaranty or the application of such provision to other, dissimilar facts and circumstances.

15. **Amendments.** This Guaranty can be modified only by a written instrument manually signed by the party to be charged therewith, and no verbal or written agreement, understanding or custom affects the terms hereof.

16. **Counterparts.** This Guaranty may be executed in one or more counterparts, each of which shall be deemed to be an original and all of which shall be deemed to be the same instrument. In the event that not all Guarantors execute this Guaranty, this Guaranty shall nevertheless be valid and binding upon those Guarantors who execute it.

17. **Receipt of Project Loan Documents.** Guarantors acknowledge that they have received and reviewed a copy of the Loan Servicing Agreement, the Project Loan Documents and the Plans and Specifications.

18. **Financial Statements.** During the term of this Guaranty, the Guarantors covenant and agree to provide the Servicer, on or before December 31 of each year, commencing December 31, 2021, with unaudited financial statements (or such other documents accepted by the Servicer in lieu of financial statements), including a balance sheet, an income statement, a statement of changes in financial position and such other statements as may be reasonably required by the Governmental Lender, prepared, where applicable, in accordance with generally accepted accounting practices (or other accepted accounting standard) consistently applied and certified as true and complete in all material respects without qualification by the Guarantors or, if required by the Governmental Lender, a certified public accountant acceptable to the Governmental Lender. The Guarantors further covenant and agree to immediately notify the Servicer of any material adverse changes in the Guarantors' financial condition.

19. **Notices.** All notices, requests, demands, consents, and other communications required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been duly given if telecopied or mailed, certified first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made, at the telecopy number or address of such party as set forth below, which telecopy number or address may be changed by notice to the other parties hereto duly given pursuant hereto: Until otherwise provided by the respective parties, all notices, certificates and communications to each of them shall be addressed as follows:

To the Governmental Lender:

Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, Florida 32084  
Attention: Executive Director  
Email: [ ]  
Telephone: ( ) [ - ]  
Facsimile: ( ) [ - ]

To the Fiscal Agent:

The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department  
Email: [ ]

Telephone: (904) 645-19[ ]  
Facsimile: (904) 645-19[ ]

To the Servicer:

First Housing Development Corporation of Florida  
107 S. Willow Avenue  
Tampa, FL 32202  
Attention: Ed Busansky  
Email: ebusansky@firsthousinfl.com  
Telephone: (813) 283-1043  
Facsimile: (813) 289-5580

To the Guarantors:

San Marcos Heights, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520

San Marcos Heights MM, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520

[ ]  
[ ]  
[ ]

Attention: [ ]  
Email: [ ]  
Telephone: ( ) [ ] - [ ]

with a copy to:

Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, FL 33131  
Attention: Robert Cheng, Esq.

To the Funding Lender  
Representative (during the  
Construction Phase):

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

with a copy to:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor



Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: CREB Loan Administration  
Fax Number: (704) 719-8659

To Servicer (as of Freddie Mac  
Purchase Date):

Walker & Dunlop, LLC  
7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814  
Attention: Loan Servicing

To Funding Lender Representative  
(as of Freddie Mac Purchase Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel --  
Multifamily Legal Division  
Email: guy\_nelson@freddiemac.com  
Telephone: (703) 903-2000

20. **Complete Agreement.** This instrument sets forth the entire agreement between the Governmental Lender and the Guarantors with respect to the subject matter hereof and no verbal or written agreement, understanding or custom affects the terms hereof.

21. **Personal Liability.** The obligations of the Guarantors under this Guaranty shall be the unconditional personal obligations of the Guarantors, and the Governmental Lender would not enter into the Project Loan except on the condition that the Guarantors be personally liable for their undertakings under this Guaranty. This Guaranty shall not be construed to make the Guarantors personally liable for payments under the Governmental Note.

22. **Waiver of Jury Trial.** GOVERNMENTAL LENDER AND GUARANTORS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HEREWITH, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE GOVERNMENTAL LENDER ENTERING INTO THE PROJECT LOAN AND ACCEPTING THIS GUARANTY.

23. **Limitation of Liability.** Any payments with respect to the Improvements, including but not limited to payments under any performance and payment bond or other security related to the Project, will be credited against Guarantors' liability hereunder subject to acknowledgment of such payments by the Governmental Lender.

**[Signature pages follow]**

**IN WITNESS WHEREOF**, the Guarantors have caused this Guaranty to be duly executed and delivered as of the date set forth above.

**BORROWER/GUARANTORS:**

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

**SAN MARCOS HEIGHTS MM, LLC,** a  
Florida limited liability company

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

[\_\_\_\_\_] }, a [\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

\_\_\_\_\_, individually

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT H**  
**GUARANTY OF RECOURSE OBLIGATIONS**

**ABSOLUTE AND UNCONDITIONAL GUARANTY OF RECOURSE OBLIGATIONS  
(San Marcos Heights)**

This CONTINUING, ABSOLUTE AND UNCONDITIONAL GUARANTY OF RECOURSE OBLIGATIONS (the "Guaranty") is made as of February 1, 2021, by SAN MARCOS HEIGHTS, LLC, a Florida limited liability company (the "Borrower"), SAN MARCOS HEIGHTS MM, LLC, a Florida limited liability company, its manager, [\_\_\_\_\_] , a [\_\_\_\_\_] and [\_\_\_\_\_] , individually (each a "Guarantor" and together with the Borrower, the "Guarantors"), for the benefit of the HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA, a public body corporate and politic organized and existing under the laws of the State of Florida (the "Governmental Lender"), and THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., a national banking association, with a representative office located in Jacksonville, Florida, as fiscal agent under the below-described Funding Loan Agreement (in such capacity, the "Fiscal Agent").

**RECITALS:**

A. All capitalized terms in this Guaranty not otherwise defined herein shall have the meanings set forth in the Funding Loan Agreement (as hereinafter defined).

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

C. Pursuant to the Act, the Board of County Commissioners of St. Johns County, Florida (the "County") enacted Ordinance 80-7 on February 26, 1980, as amended (the "Ordinance"), and adopted Resolution 80-25 on March 11, 1980, as amended (the "Resolution"), creating the Governmental Lender to carry out and exercise, without limitation except as expressly stated in the Ordinance and the Resolution, all powers and public and governmental functions set forth in and contemplated by the Act.

D. Pursuant to the Act, the Governmental Lender, the Fiscal Agent and the Borrower have entered into that certain Construction Phase Project Loan Agreement dated as of February 1, 2021 and that certain Project Loan Agreement dated as of February 1, 2021 (collectively, the "Project Loan Agreements"), the terms of which are hereinafter incorporated by this reference, under which the Governmental Lender has agreed to make a loan (the "Project Loan") in the maximum aggregate principal amount of SIXTEEN MILLION AND NO/100 DOLLARS (\$16,000,000) to the Borrower to provide for the financing of the acquisition and rehabilitation of a multifamily rental housing development known as San Marcos Heights (the "Project"), located on property within unincorporated St. Johns County, Florida, the legal description for which is set forth in Exhibit "A" attached hereto and incorporated herein by this reference, to be occupied or reserved for occupancy by Eligible Persons and Lower-Income Tenants (as defined in the hereinafter described Tax Regulatory Agreement).

E. In order to provide the funds with which to make the Project Loan to Borrower, the Governmental Lender has authorized the issuance of its \$16,000,000 aggregate principal amount of its Housing Finance Authority of St. Johns County, Florida Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "Governmental Note") pursuant to that certain Funding Loan Agreement dated as of February 1, 2021 among the Governmental Lender, CBRE Capital Markets, Inc., as Funding Lender and the Fiscal Agent (the "Funding Loan Agreement"), the terms of which are incorporated herein by this reference.

F. As a condition to the Governmental Lender making the Project Loan to Borrower, and pursuant to the requirements of the Project Loan Agreements and the Funding Loan Agreement, the Governmental Lender, the Fiscal Agent and Borrower have executed that certain Land Use Restriction Agreement dated as of February 1, 2021 (the "Tax Regulatory Agreement"), the terms of which are incorporated herein by this reference, setting forth certain terms and conditions relating to the permanent financing for the Project and which sets forth various other covenants and agreements that run with the land on which the Project is located.

G. To induce the Governmental Lender to authorize the issuance and sale of the Governmental Note pursuant to the Funding Loan Agreement for the purpose of providing construction and permanent financing for the Project; and to further induce the Governmental Lender to make the Project Loan to the Borrower pursuant to the Project Loan Agreements, the Guarantors have agreed to deliver this Guaranty.

H. The Guarantors acknowledge and agree that they will benefit from the Project of the Project.

**NOW THEREFORE**, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1 Definitions.** Capitalized terms used but not defined herein shall have the meanings ascribed thereto in the Funding Loan Agreement.

## **ARTICLE 2 REPRESENTATIONS AND WARRANTIES**

The Guarantors make the following representations and warranties which shall be continuing representations and warranties until this Guaranty terminates in accordance with the provisions contained herein:

**Section 2.1 Existence and Rights.** The Guarantors are of sound mind and body or an entity duly organized under the laws of the State and in good standing thereunder. The Guarantors have powers and adequate authority, rights and franchises to own property and to carry on their business as now owned and carried on, and are duly qualified and in good standing in each jurisdiction in which the property owned by them or the business conducted by them makes such



qualification necessary, including, without limitation, the State, and the Guarantors have the power and adequate authority to make and carry out this Guaranty.

**Section 2.2 Guaranty Authorized and Binding.** The execution, delivery and performance of this Guaranty are duly authorized, where appropriate, and do not require the consent or approval of any governmental body or other regulatory authority; are not in contravention of, or in conflict with, any law or regulation or any term or provision of the organizational documents of the Guarantors, where applicable; and this Guaranty is a valid and legally binding obligation of the Guarantors enforceable in accordance with its terms.

**Section 2.3 No Conflict.** The execution and delivery of this Guaranty are not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which the Guarantors are a party or by which the Guarantors or any of the Guarantors' properties are or may be bound or affected and do not, and will not, cause any security interest, lien or other encumbrance to be created or imposed upon any such property.

**Section 2.4 Litigation.** Except as set forth in Exhibit "B" attached hereto, there is no litigation or other proceeding pending or, to the best of the Guarantors' knowledge, threatened against, or affecting, the Guarantors or the Guarantors' properties which, if determined adversely to the Guarantors, would have a materially adverse effect on the financial condition, properties, businesses or operations of the Guarantors, or which prevents or interferes with or adversely affects the Guarantors' entering into this Guaranty or the validity of this Guaranty or the carrying out of the terms hereof, and the Guarantors are not in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority which would have a materially adverse effect on the financial condition, properties or operations of any such Guarantor.

**Section 2.5 Financial Condition.** The Guarantors' financial statements (or such other documents submitted in lieu of financial statements), if any, which have heretofore been submitted in writing by the Guarantors (including all footnotes) to the Governmental Lender in connection herewith, are true and correct in all material respects and fairly present the financial condition of the Guarantors for the period covered thereby. Since the date of said financial statements (or such other documents submitted in lieu of financial statements), there have been no material adverse changes in the Guarantors' financial condition. The Guarantors have no knowledge of any liabilities, contingent or otherwise, as of the date of their respective financial statements which are not reflected in said financial statements (or such other documents submitted in lieu of financial statements); and, other than in the ordinary course of the Guarantors' business, the Guarantors have not entered into any material commitments or contracts which are not reflected in the Guarantors' respective financial statements (or such other documents submitted in lieu of financial statements) or which may have a materially adverse effect upon the Guarantors' financial condition, operations or business as now conducted.

**Section 2.6 Solvency.** The Guarantors are not Insolvent (as defined below) as of the date hereof and the execution and delivery of this Guaranty will not (a) render the Guarantors insolvent under generally accepted accounting principles nor render the Guarantors Insolvent, (b) leave the Guarantors with remaining assets which constitute unreasonably small capital given the nature of the Guarantors' business, and (c) result in the incurrence of Debts (defined below) beyond the Guarantors' ability to pay them when and as they mature. For the purposes of this Section,

"Insolvent" means that the present fair salable value of assets is less than the amount that will be required to pay the probable liability on existing Debts as they become absolute and matured. For the purposes of this Section, "Debts" includes any legal liability for indebtedness, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

**Section 2.7 Financial or other Benefit or Advantage.** The Guarantors hereby acknowledge and warrant that the Guarantors have derived or expect to derive a financial or other benefit from the Project.

### ARTICLE 3 AGREEMENTS

**Section 3.1 Guaranteed Obligations.** The Guarantors hereby covenant and unconditionally guarantee to the Governmental Lender and the Fiscal Agent and their respective successors or assigns the due and punctual payment of the Governmental Lender Fee, the Compliance Monitoring Agent fees, the Ordinary Fiscal Agent's Fees and Expenses, the Governmental Lender Servicer fees and reasonable extraordinary costs and expenses, including, without limitation, legal fees and out of pocket costs and expenses of Bond Counsel, Governmental Lender's counsel and Fiscal Agent's counsel incurred in connection with the interpretation or enforcement of the Funding Loan Documents, as well as any and all indemnity obligations running to the Governmental Lender or Fiscal Agent from the Borrower set forth in the Funding Loan Documents and the Indenture (collectively the "**Guaranteed Obligations**"). Notwithstanding the foregoing, "Guaranteed Obligations" shall not include principal or interest under the Funding Loan Documents or corresponding payments thereunder.

This Guaranty is a guaranty of payment and not of collection only, and the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances, without regard to the validity or enforceability of the Financing Documents against the Borrower.

The parties hereto agree that there shall be no third party beneficiaries of this Guaranty.

The Borrower and Guarantors further agree that if the Surplus Cash Limitation (as set forth in the Project Loan Agreements) is not sufficient to pay the Governmental Lender Fee when due, the Borrower and Guarantors will pay such fee, without request or demand, to the Fiscal Agent for deposit to the Administration Fund at least one business day prior to the date such payment is due to the Governmental Lender.

**Section 3.2 Further Assurances.** The Guarantors will, at their expense, execute, acknowledge and deliver all such further documentation, instruments and assurances and the like and take all such further action as the Governmental Lender shall reasonably require in order to carry out the intentions or facilitate the provisions of this Guaranty.

**Section 3.3 Obligations Absolute.** The Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be affected or impaired by the following, any of which may be taken without the consent of, or notice to, the Guarantors, nor shall any of the

following give the Guarantors any recourse or right of action against the Governmental Lender or the Fiscal Agent:

(a) Any delay, exercise or non-exercise by the Governmental Lender or the Fiscal Agent of any right or privilege under this Guaranty;

(b) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Guarantors, the Borrower, any general partner, member or any other guarantor (which term shall include any other party at any time directly or contingently liable for any of the Guarantors' obligations under this Guaranty, including without limitation, any general partner, member or property manager) or any affiliate of the Borrower or the Guarantors, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantors shall have had notice or knowledge of any of the foregoing;

(c) Any assignment or other transfer of this Guaranty in whole or in part;

(d) Any acceptance of partial funding of the Guaranteed Obligations; and

(e) Any subordination, compromise or release of any or all of the property or other collateral, if any, securing the Guarantors' obligations under this Guaranty, or any substitution with respect thereto.

**Section 3.4 Waivers.** The Guarantors unconditionally waive the following defenses to the enforcement of this Guaranty:

(a) All presentments, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty;

(b) Any right to require the Governmental Lender or the Fiscal Agent to proceed against the Borrower or any other guarantor at any time, or to proceed against or exhaust any security held by the Governmental Lender at any time, or to pursue any other remedy whatsoever at any time;

(c) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower, or the Guarantors or any affiliate of the Borrower or the Guarantors or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not the Guarantors shall have had notice or knowledge of any of the foregoing;

(d) Any right the Guarantors might have under the laws of the State to revoke this Guaranty, it being the intention of the Guarantors that this Guaranty remain in full force and effect until termination, as provided herein;

(e) Any defense based upon an election of remedies by the Governmental Lender or the Fiscal Agent, including, without limitation, any remedies which destroy or impair the

subrogation rights of the Guarantors to proceed against the Borrower or any general partner or managing member, as applicable, for reimbursement or both;

(f) Any duty of the Governmental Lender or the Fiscal Agent to advise the Guarantors of any information known to the Governmental Lender or the Fiscal Agent regarding the financial condition of the Borrower or any general partner or managing member, as applicable, and all other circumstances affecting the ability of the Borrower or any general partner or managing member, as applicable, to perform its obligations to the Governmental Lender or the Fiscal Agent, it being agreed that the Guarantors assume the responsibility for being and keeping informed regarding such conditions or any such circumstances;

(g) Any rights to enforce any remedy which the Governmental Lender or the Fiscal Agent now has or may hereafter have against the Borrower, or any general partner or managing member, as applicable and any benefit of, and any right to participate in, any security now or hereafter held by the Governmental Lender or the Fiscal Agent; and

(h) Any defense based upon the unenforceability for any reason of the Financing Documents or the Funding Loan Agreement, or the failure of such documents for any reason to be valid, binding and enforceable obligations of the Borrower, other than full performance by the Borrower of its obligations thereunder.

**Section 3.5 Subrogation.** Notwithstanding any other provision of this Guaranty to the contrary and until all outstanding obligations of the Guarantors due and owing hereunder have been paid in full, the Guarantors hereby waive any claims or other rights which the Guarantors may now have or hereafter acquire against any other guarantor of all or any of the obligations of the Guarantors under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of the Governmental Lender against the Borrower, any general partner or managing member, as applicable, or the Guarantors or any collateral which the Governmental Lender or the Fiscal Agent now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from the Borrower, any general partner or managing member or the Guarantors, directly or indirectly, in cash or other property or by set off or in any other manner, payment or security on account of such claim or other rights; provided that so long as the Borrower and the Guarantors are not in default hereunder or under the Financing Documents, then the Guarantors may be entitled to receive and retain payments made to the Guarantors.

**Section 3.6 Additional Waivers.** The Guarantors shall not be released or discharged, either in whole or in part, by the Governmental Lender's or the Fiscal Agent's failure or delay to (a) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of any other guarantor, or (b) protect the property covered by such lien or security interest.

**Section 3.7 Dealings with Parties.** The Governmental Lender shall have complete discretion, without giving notice to or obtaining the consent of the Guarantors, the Borrower and each other person or entity who now is or after the date hereof becomes liable in any manner for

any of the Guarantors' obligations under this Guaranty, in such manner as the Governmental Lender shall decide, and accordingly each Guarantor grants to the Governmental Lender full authority, in its sole discretion, whether before or after termination of this Guaranty, to do any and all of the following, without limiting the generality of the foregoing: extend credit, make loans and afford such financial accommodation to the Borrower or any general partner or managing member, as applicable, at such times, in such amounts and on such terms as the Governmental Lender may approve; vary the terms or alter, compromise, accelerate and grant extensions or renewals of time or manner of payment of any present or future obligations under this Guaranty, assign or transfer this Guaranty or any other instrument evidencing or securing the obligations under this Guaranty in whole or in part; vary, exchange, release or discharge, wholly or partially, the Borrower or any general partner, member or any other guarantor or obligor of the obligations under this Guaranty, and compromise or make any settlement or other arrangement with the Borrower, any general partner or managing member and/or any other guarantor, and if the obligations under this Guaranty are now or hereafter secured, exchange, substitute or release in part or in full all of the security given for the payment and performance of the Guarantors' obligations under this Guaranty.

With respect to San Marcos Heights, LLC, the provisions of this paragraph 3.7 are intended to apply to San Marcos Heights, LLC, in its capacity as Guarantor and nothing in this paragraph 3.7 is intended to constitute a waiver of any notice rights afforded to San Marcos Heights, LLC, in its capacity as Borrower under the Financing Documents or any other document entered into in connection with the Project Loan.

**Section 3.8 Bankruptcy No Discharge; Repayments.** So long as any of the Guaranteed Obligations shall be owing to the Governmental Lender or the Fiscal Agent, the Guarantors shall not, without the prior written consent of the Governmental Lender and the Fiscal Agent, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against the Borrower or any general partner or managing member, as applicable. The Guarantors understand and acknowledge that by virtue of this Guaranty, the Guarantors have specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to the Borrower and any general partner or managing member, as applicable. As an example and not in any way of limitation, a subsequent modification of the Guaranteed Obligations in any reorganization case concerning the Borrower or any general partner or managing member, as applicable, shall not affect the obligation of the Guarantors to pay and perform the Guaranteed Obligations in accordance with their respective original terms. If claim is ever made upon the Governmental Lender or the Fiscal Agent for repayment of any amount or amounts received by the Governmental Lender or the Fiscal Agent in payment of the obligations under this Guaranty (whether or not all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by the Governmental Lender or the Fiscal Agent) and the Governmental Lender or the Fiscal Agent repays all or any part of said amount, then, notwithstanding any revocation or termination of this Guaranty or the cancellation of any other instrument evidencing the Guaranteed Obligations, the Guarantors shall be and remain liable to the Governmental Lender or the Fiscal Agent for the amount so repaid by the Governmental Lender or the Fiscal Agent, to the same extent as if such amount had never originally been received by the Governmental Lender or the Fiscal Agent; provided that as long as the Borrower and the Guarantors are not in default hereunder or under the Financing Documents then the Guarantors may be entitled to receive and retain payments made to the Guarantors.

**Section 3.9 Subordination.** So long as any of the obligations of the Guarantors hereunder remain unpaid or undischarged, the Guarantors agree that any and all claims they may have against the Borrower or any authorized or managing member shall be and hereby are subordinated to the Guaranteed Obligations and all other claims of the Governmental Lender and the Fiscal Agent against the Borrower or any authorized or managing member. Any indebtedness of the Borrower or any authorized or managing member, as applicable, to the Guarantors shall be collected and received by the Guarantors as trustee for the Governmental Lender and the Fiscal Agent and be paid over to the Governmental Lender or the Fiscal Agent, as the case may be, on account of the indebtedness of the Guarantors to the Governmental Lender or the Fiscal Agent, as the case may be, upon demand by such party; provided that so long as the Borrower and the Guarantors are not in default hereunder or under the Financing Documents then the Guarantors may be entitled to receive and retain payments made to the Guarantors.

**Section 3.10 Independent and Separate Obligations.** The obligations of the Guarantors hereunder are independent of any obligation of the Borrower or any general partner or managing member and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against the Guarantors whether or not the Guarantors are the alter ego of the Borrower, any general partner or managing member, or any other guarantor. The Governmental Lender's and the Fiscal Agent's rights hereunder shall not be exhausted until the conditions to termination in Section 4.6 below have been satisfied.

**Section 3.11 Setoff.** The Governmental Lender and the Fiscal Agent shall have a right of setoff against, and the Guarantors hereby grant a security interest in, all moneys, securities and other property of the Guarantors now or hereafter in the possession of, or on deposit with the Governmental Lender or the Fiscal Agent in connection with the Project Loan, whether held in a general or special account or deposit, or for safekeeping or otherwise. Such right is in addition to any right of setoff the Governmental Lender or the Fiscal Agent may have by law. After an event of default hereunder which has not been cured within any applicable grace or cure period, all rights of setoff may be exercised without any further notice or demand to the Guarantors. No right of setoff shall be deemed to have been waived by any act or conduct on the part of the Governmental Lender or the Fiscal Agent, or by any neglect to exercise such right of setoff, or by any delay in doing so. Every right of setoff shall continue in full force and effect until the expiration of this Guaranty.

**Section 3.12 Payments.** The Guarantors shall not be credited for the funding of any of the Guaranteed Obligations unless and until the Borrower has delivered to the Governmental Lender and the Fiscal Agent written acknowledgment of receipt of the required payment in immediately available funds from the Guarantors after a demand has been made by the Governmental Lender or the Fiscal Agent pursuant to this Guaranty. The Guarantors agree that whenever the Guarantors shall pay any amount to the Governmental Lender or the Fiscal Agent hereunder on account of the liability hereunder, the Guarantors will deliver such payment to the Borrower with a copy of such evidence of payment and notice to the Governmental Lender and the Fiscal Agent at the addresses provided in Section 4.1 below. The Guarantors understand that the Borrower and/or any general partner or managing member may have obligations to the Governmental Lender or the Fiscal Agent with respect to the Project that are not part of the Guarantors' obligations under this Guaranty.

**Section 3.13 Financial Statements.** During the term of this Guaranty, the Guarantors covenant and agree to provide the Governmental Lender, on or before December 31 of each year, commencing December 31, 2021, with unaudited financial statements, including a balance sheet, an income statement, a statement of changes in financial position and such other statements as may be reasonably required by the Governmental Lender, prepared, where applicable, in accordance with generally accepted accounting practices consistently applied and certified as true and complete without qualification by the Guarantors or, if required by the Governmental Lender with respect to the Guarantors other than individuals, a certified public accountant acceptable to the Governmental Lender. The Guarantors further covenant and agree to immediately notify the Governmental Lender of any material adverse changes in the Guarantors' financial condition.

**Section 3.14 Governing Law/Consent to Jurisdiction.** This Guaranty shall be governed by and construed in accordance with the laws of the State applicable to contracts entered into and entirely to be performed therein. The Guarantors hereby irrevocably submit and consent to the jurisdiction of the courts of the State of Florida and of the United States District Court for the district in which the Project is located in connection with any action, suit or other proceeding arising out of or relating to this Guaranty or any action taken or omitted hereunder. If the Guarantors are served in accordance with applicable law and should fail to appear or answer within the time prescribed by law, then the Guarantors shall be deemed in default and judgment may be entered against the Guarantors for the amount or other relief as demanded in any summons, complaint or other process so served. The Guarantors agree that a final judgment in any such action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

#### ARTICLE 4 MISCELLANEOUS

**Section 4.1 Notices.** All notices, requests, demands, consents, and other communications required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been duly given if mailed, certified first class mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made, at the address of such party as set forth below, which address may be changed by notice to the other parties hereto duly given pursuant hereto:

To the Governmental Lender: Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, Florida 32084  
Attention: Executive Director  
Email: [ ]  
Telephone: ( ) [ ]-[ ]  
Facsimile: ( ) [ ]-[ ]

To the Fiscal Agent: The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department

Email: [ ]  
Telephone: (904) 645-19[ ]  
Facsimile: (904) 645-19[ ]

To the Governmental Lender  
Servicer:

First Housing Development Corporation of Florida  
107 S. Willow Avenue  
Tampa, FL 32202  
Attention: Ed Busansky  
Email: ebusansky@firsthousinfl.com  
Telephone: (813) 283-1043  
Facsimile: (813) 289-5580

To the Guarantors:

San Marcos Heights, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520

San Marcos Heights MM, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520

[ ]  
[ ]  
[ ]  
Attention: [ ]  
Email: [ ]  
Telephone: ( ) [ ] - [ ]

with a copy to:

Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, FL 33131  
Attention: Robert Cheng, Esq.

To the Funding Lender  
Representative (during the  
Construction Phase):

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

with a copy to:

Bank of America, N.A.



101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: CREB Loan Administration  
Fax Number: (704) 719-8659

To Servicer (as of Freddie Mac  
Purchase Date):

Walker & Dunlop, LLC  
7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814  
Attention: Loan Servicing

To Funding Lender Representative  
(as of Freddie Mac Purchase Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel -  
Multifamily Legal Division  
Email: guy\_nelson@freddiemac.com  
Telephone: (703) 903-2000

**Section 4.2 Expenses.** The Guarantors agree to pay all reasonable costs and expenses, including reasonable legal fees, which may be incurred by the Governmental Lender or the Fiscal Agent in any effort to collect or enforce any of the obligations of the Guarantors hereunder, whether or not any lawsuit is filed, including, without limitation, all costs and legal fees incurred by the Governmental Lender or the Fiscal Agent in any bankruptcy proceeding (including, without limitation, any action for relief from the automatic stay of any bankruptcy proceeding) and in any judicial or nonjudicial foreclosure action.

**Section 4.3 Amendments; Successors.** Neither this Guaranty nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought, subject to the prior written consent of the Governmental Lender and the Fiscal Agent. All of the terms of this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that the Guarantors shall not have the right to assign any of the Guarantors' rights or obligations under this Guaranty. All remedies of the Governmental Lender and the Fiscal Agent are cumulative. When the context in which the words are used in this Guaranty indicates that such is the intent, words in the singular number shall include the plural and vice versa. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective. No delay or failure by the

Governmental Lender or the Fiscal Agent to exercise any remedy against the Guarantors will be construed as a waiver of that right or remedy. If the Guarantors consist of more than one person or entity, the obligations hereunder shall be joint and several.

**Section 4.4 Assignability by the Governmental Lender and the Fiscal Agent.** The Governmental Lender and the Fiscal Agent may each, at any time and from time to time, assign, conditionally or otherwise, all of their respective rights under this Guaranty, whereupon such assignee shall succeed to all rights of the Governmental Lender hereunder. The Governmental Lender and the Fiscal Agent may each, at any time and from time to time, assign, conditionally or otherwise, all of their rights under this Guaranty, whereupon such assignee shall succeed to all rights of the assignor hereunder to the extent that such rights may be assigned to it. The Governmental Lender shall give written notice to the Guarantors of any such assignment, but any failure to give, or delay in giving, such notice shall not affect the validity or enforceability of any such assignment.

**Section 4.5 Demands.** Each demand by the Governmental Lender or the Fiscal Agent for performance or payment hereunder shall be in writing and shall be made in the manner set forth in Section 4.1 hereof. Interest shall accrue at the Default Interest Rate on all sums not paid by the Guarantors within thirty (30) days after demand.

**Section 4.6 Term.** The obligations of the Guarantors under this Guaranty and any instrument which grants collateral to secure such obligations shall continue in full force and effect until either the Guarantors have or the Borrower, as the case may be, has fully performed all of the Guaranteed Obligations and paid all other amounts payable hereunder in accordance with the terms of this Guaranty and the period of time has expired during which any payment received by the Governmental Lender or the Fiscal Agent hereunder or any act performed by the Guarantors may be determined to be a preferential or fraudulent transfer under the United States Bankruptcy Code or other similar applicable laws at which time this Guaranty shall automatically, and without further action, terminate and be of no further force and effect.

**Section 4.7 Complete Agreement.** This Guaranty supersedes any prior negotiations, discussions or communications between the Guarantors and the Governmental Lender and the Fiscal Agent and constitutes the entire agreement between the Governmental Lender and the Guarantors with respect to the Guaranteed Obligations.

**Section 4.8 Counterparts.** This Guaranty may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument.

**Section 4.9 Advice of Counsel.** The Guarantors represent and acknowledge to the Governmental Lender and the Fiscal Agent that the Guarantors have consulted with their attorneys regarding the terms and conditions and waivers set forth in this Guaranty. The Guarantors' attorneys have advised the Guarantors of the true legal consequences of each waiver set forth in this Guaranty, including the rights the Guarantors would have in the absence of such waivers.

**Section 4.10 Waiver of Jury Trial.** THE GOVERNMENTAL LENDER AND THE GUARANTORS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY

LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE GOVERNMENTAL LENDER ENTERING INTO THE PROJECT LOAN AND ACCEPTING THIS GUARANTY.

[Remainder of page intentionally left blank]

**IN WITNESS WHEREOF**, the Guarantors have caused this Guaranty to be duly executed and delivered as of the date set forth above.

**BORROWER/GUARANTORS:**

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

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

Name: Darren Smith

Title: Manager

**SAN MARCOS HEIGHTS MM, LLC, a**  
Florida limited liability company

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

Name: Darren Smith

Title: Manager

[\_\_\_\_\_] , a [\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

\_\_\_\_\_, individually

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT "B"**  
**PENDING LITIGATION**

**NONE**

**EXHIBIT I**  
**ENVIRONMENTAL INDEMNITY**



**ENVIRONMENTAL INDEMNITY AGREEMENT**  
(San Marcos Heights)

**THIS ENVIRONMENTAL INDEMNITY AGREEMENT** (the "Agreement") made and entered into as of February 1, 2021 by and among **SAN MARCOS HEIGHTS, LLC**, a Florida limited liability company (the "Borrower"), **SAN MARCOS HEIGHTS MM, LLC**, a Florida limited liability company, its manager, [\_\_\_\_\_] a [\_\_\_\_\_] and [\_\_\_\_\_] individually (each a "Guarantor" and together with the Borrower, the "Guarantors"), for the benefit of the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA** a public body corporate and politic, created and existing under the laws of the State of Florida (the "Authority"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association organized and existing under the laws of the United States of America and having a designed corporate trust office in Jacksonville, Florida, acting in its capacity as fiscal agent under the below-described Funding Loan Agreement (in such capacity, the "Fiscal Agent").

**WITNESSETH:**

**WHEREAS**, the Authority proposes to issue \$16,000,000 of its Housing Finance Authority of St. Johns County, Florida Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "Governmental Note") pursuant to Chapter 159, Part IV, Florida Statutes, as amended (the "Act"), Ordinance 80-7 enacted by the Board of County Commissioners of St. Johns County, Florida on February 26, 1980, as amended, Resolution 80-25 adopted by the Board on March 11, 1980, as amended, and a Funding Loan Agreement dated as of February 1, 2021 between the Authority and the Fiscal Agent (the "Funding Loan Agreement"), and to lend the proceeds from the sale of the Governmental Note to the Borrower pursuant to the Construction Phase Project Loan Agreement dated as of February 1, 2021 and the Project Loan Agreement dated as of February 1, 2021 (collectively, the "Project Loan Agreements"), each among the Authority, the Fiscal Agent and the Borrower to finance the acquisition, construction and development of a multifamily rental residential housing development known as San Marcos Heights (the "Development") located in unincorporated St. Johns County, Florida on the real property more particularly described in Exhibit "A" attached hereto and incorporated by reference herein (the "Real Property"); and

**WHEREAS**, issuance of the Governmental Note and entering into the Project Loan Agreements are subject to the specific agreement by the Borrower and the Guarantors to:

A. Represent and warrant to the Authority and the Fiscal Agent that, to the best knowledge of the Borrower and the Guarantors, except as disclosed in the Existing Environmental Report (as defined herein) the Real Property has never been used by the Borrower for the production, use, treatment, storage or disposal of Hazardous Substances (as hereinafter defined), and does not contain any Hazardous Substances, and covenant and agree with the Authority and the Fiscal Agent that so long as the Real Property is owned or controlled by the Borrower, said Real Property will never contain any such Hazardous Substances except as may be specifically disclosed in, and expressly permitted by, this Agreement; and

B. To the extent set forth in this Agreement, indemnify and hold the Authority and the Fiscal Agent harmless from and against all claims, damages, expenses (including attorneys' fees), liabilities and all other obligations which may arise as a result of the Real Property at any time containing, discharging or otherwise giving rise to any Hazardous Substances; and

C. Obtain at the request of the Authority or the Fiscal Agent in the event the Authority or the Fiscal Agent has discovered facts which could lead a reasonable person to believe that there are environmental concerns with respect to the Real Property an Environmental Report (as hereinafter defined) from an Environmental Professional (as hereinafter defined) reasonably acceptable to the Authority and the Fiscal Agent setting forth in acceptable form a report as to the status of the Real Property and its environmental condition; and

D. To the extent set forth in this Agreement, perform any Remedial Work (as herein after defined) associated with the Real Property, including proper disposal of any materials generated by such clean-up; and

**WHEREAS**, the Authority is unwilling to issue the Governmental Note and enter into the Project Loan Agreements unless the Borrower and the Guarantors execute and deliver this Agreement; and

**WHEREAS**, the Guarantors acknowledge and agree that they will benefit from the acquisition and rehabilitation of the Development.

**NOW, THEREFORE**, in consideration and mutual premises herein contained, the parties do hereby agree as follows:

1. **DEFINITIONS.** Capitalized terms used, but not defined herein, shall have the meanings ascribed to them in the Project Loan Agreements or the Funding Loan Agreement. In addition, for the purposes of this Agreement, the following definitions shall apply:

"Environmental Action" means any action, proceeding or investigation, claim, complaint, letter, document or any other writing whatsoever by any governmental authority or other person of any nature whatsoever in which there is raised a claim, inquiry or question regarding the Real Property and (i) any alleged or actual violation of any Environmental Law with respect to the Real Property, (ii) whether or not there are any Hazardous Substances stored, treated, disposed or released on the Real Property, and (iii) whether the Real Property or actions conducted on the Real Property are in compliance with all Environmental Laws.

"Environmental Law" means any and all federal, state, local, or municipal laws, rules, orders, regulations, statutes, ordinances, codes, decrees, or requirements of any governmental authority regulating, relating to or imposing liability or standards of conduct concerning, any Hazardous Substances or environmental protection or health and safety, as now or may at any time hereafter be in effect, including without limitation: the Clean Water Act also known as the Federal Water Pollution Control Act ("FWPCA"), 33 U.S.C. Section 1251 et seq.; the Clean Air Act ("CAA"), 42 U.S.C. Section 7401 et seq.; the Federal Insecticide, Fungicide, and Rodenticide Act ("FIFRA"), 7 U.S.C. Section 136 et seq.; the Surface Mining Control and Reclamation Act ("SMCRA"), 30 U.S.C. Section 1201 et seq.; the Comprehensive Environmental Response,

Compensation, and Liability Act ("CERCLA"), 42 U.S.C. Section 9601 *et seq.*; the Superfund Amendment and Reauthorization Act of 1986 ("SARA"), Public Law 99-499, 100 Stat. 1613; the Emergency Planning and Community Right to Know Act ("EPCRA"), 42 U.S.C. Section 11001 *et seq.*; the Resource Conservation and Recovery Act ("RCRA"), 42 U.S.C. Section 6901 *et seq.*; the Toxic Substances Control Act, 15 U.S.C. §§ 2601 through 929 ("TSCA"); the Florida Resource Recovery and Management Act, Section 403.701, *et seq.*, Florida Statutes; the Pollutant Spill Prevention and Control Act, Section 376.011-376.17 and 376.19-376.21, Florida Statutes; and the Occupational Safety and Health Act, as amended ("OSHA"), 29 U.S.C. Section 655 and Section 657, and Chapters 376 and 403, Florida Statutes; together, in each case, with any amendment thereto, and the regulations adopted and publications promulgated thereunder and all substitutions thereof.

"Environmental Professional" shall mean a Person possessing sufficient training and experience necessary to conduct a site reconnaissance, interviews, and other activities in determining whether the Real Property and its use complies with all Environmental Laws, the existence of any Hazardous Substances on the Real Property, and any required Remedial Work and from the information generated by such activities, having the ability to develop conclusions regarding recognized environmental conditions in connection with the Real Property. An individual's status as an environmental professional may be limited to the type of assessment to be performed or to specific segments of the assessment for which the professional is responsible.

"Environmental Report" shall mean an audit, assessment or report prepared with respect to the Real Property and meeting the following conditions or requirements:

(a) The Environmental Report shall be prepared by an Environmental Professional reasonably acceptable to the Authority and the Fiscal Agent, which Environmental Professional shall be experienced in providing environmental audits, assessments or reports in the area where the Real Property is located.

(b) The Environmental Report shall disclose any and all Hazardous Substances located on, impacting or in any other way involving the Real Property as well as any other environmental matters on which the Authority or the Fiscal Agent may request that an Environmental Report be furnished.

(c) The Environmental Report shall be directed to the Authority and the Fiscal Agent and shall contain an acknowledgement that the Authority and the Fiscal Agent and their agents, successors and assigns are entitled to rely upon and use the Environmental Report to the same extent as if it had been specifically prepared for and addressed to each of them.

"Existing Environmental Report" shall mean, collectively and individually, that certain Phase I Environmental Site Assessment Report dated [\_\_\_\_\_, 2020], prepared by [\_\_\_\_\_].

"Hazardous Substances" shall mean all hazardous and toxic substances, wastes or materials, all pollutants or contaminants, asbestos, or other similar substances, and all raw materials containing such substances which are regulated under any Environmental Law and

includes, but is not limited to, all petroleum based substances such as gasoline and oil based products. As such, reference to "Hazardous Substances" is not limited to substances which necessarily are "hazardous or toxic" but includes any substances regulated under any Environmental Law whether or not those substances are "hazardous or toxic." Notwithstanding anything to the contrary, Hazardous Substances shall not include cleaning materials, household products, grooming items sold in prepackaged containers for consumer use which may be used by tenants of dwelling units at the Real Property.

"Loan Documents" shall mean the Funding Loan Agreement, the Project Loan Agreements and the Tax Regulatory Agreement.

"Release" shall mean any spilling, leaking, migrating, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment of any Hazardous Substances in violation of any Environmental Law.

"Remedial Work" shall mean any work required under any Environmental Law, by any agreement, by any final judicial order, or by any final order of any governmental entity as it relates to the Real Property complying with any such Environmental Law, agreement or order.

2. REPRESENTATIONS, WARRANTIES AND COVENANTS IN REGARD TO THE REAL PROPERTY. The Borrower and the Guarantors hereby represent and warrant to and covenant with, the Authority and the Fiscal Agent as follows:

(a) That to the best of their knowledge after reasonable inquiry and investigation (solely in the form of the Existing Environmental Report), except as disclosed in the Existing Environmental Report, none of the Real Property has ever been used by the Borrower or any of Borrower's predecessors in title, nor by anyone else (including, by way of illustration and not limitation, any tenants which may occupy any portion of the Real Property), to generate, manufacture, refine, transport, treat, store, handle or dispose of Hazardous Substances in violation of any Environmental Law, nor have any Hazardous Substances ever been present on the Real Property in violation of any Environmental Law. To the best of the Borrower's and the Guarantors' knowledge, and after reasonable investigation and inquiry of past uses in the form of the Existing Environmental Report, no Hazardous Substances exist on, under, or about any property owned, leased, operated, or used by the Borrower in a manner that has reasonable possibility of giving rise to any Environmental Action that could impair the ability of the Borrower to perform each and every one of the obligations of the Borrower under the Loan Documents; or materially and adversely affect the Borrower's business or the Borrower's ability to carry on its business substantially in the manner as now conducted and the Borrower has not filed any notice or report of the Release of any Hazardous Substances that has a reasonable possibility of giving rise to any Environmental Action that could impair the ability of the Borrower to perform each and every one of the obligations of the Borrower under the Loan Documents; or materially and adversely affect the Borrower's business or the Borrower's ability to carry on its business substantially in the manner as now conducted. Neither the Borrower nor, to the best knowledge of the Borrower and the Guarantors, any of their predecessors, has disposed of any Hazardous Substances in a manner that has a reasonable possibility of giving rise to an Environmental Action that could impair the ability of the Borrower to perform each and every one of its obligations under the Loan Documents;

or materially adversely affect the Borrower's business or the Borrower's ability to carry on its business substantially in the manner now conducted.

(b) The operations of the Borrower have been and are conducted in a manner such that said operations have not created any level of regulatory concern with the Environmental Laws or harm or potential harm to third parties from violation of any Environmental Laws. The Borrower has obtained all governmental authorizations under Environmental Laws necessary to its operations, and all such governmental authorizations are in good standing, and the Borrower is in compliance with all material terms and conditions of such governmental authorizations.

(c) The Borrower has not received any notice, whether oral or written, of any Environmental Action, nor do the Borrower or the Guarantors have any reason to believe that any Environmental Action is pending or threatened and, to the best of the Borrower's and the Guarantor's knowledge, none of the operations of the Borrower have been subject to any federal or state investigation relating to or in connection with any Hazardous Substances at the Real Property. The Borrower has not received any notice or claim to the effect that it is or may be liable to any person as a result of or in connection with any Environmental Laws request for information under Section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (42 U.S.C. Section 9604) or comparable state laws. To the best of the Borrower's and the Guarantors' knowledge, and after reasonable inquiry, no lien in favor of any Person relating to or in connection with any Environmental Action has been filed or has been attached to the Real Property.

(d) To the best of the Borrower's and the Guarantor's knowledge, the Borrower has no contingent liability in connection with any Release of any Hazardous Substances in a reportable quantity, by the Borrower or any predecessor of the Borrower.

(e) None of the operations of the Borrower is subject to any judicial or administrative proceeding alleging the violation of or liability under any Environmental Law which if adversely determined could impair the ability of the Borrower to perform each and every one of the obligations under the Loan Documents, or materially and adversely affect the Borrower's business or the Borrower's ability to carry on its business substantially in the manner as now conducted. Neither the Borrower nor the Real Property are subject to any outstanding written order or agreement with any governmental authority or private party relating to any Environmental Laws.

(f) Neither the Borrower, nor to the best knowledge of the Borrower and the Guarantors, any predecessor of the Borrower, has filed any notice under any Environmental Laws indicating past or present release of Hazardous Substances in a reportable quantity at the Real Property, except as disclosed in the Existing Environmental Report, and none of the Borrower's operations involves the generation, transportation, treatment, storage, or disposal of Hazardous Substances that require notice to, registration with, or a permit or other authorization from, any governmental authority.

(g) That the use and operation of the Real Property complies, and shall continue to comply, with all Environmental Laws. The Borrower will exercise all due diligence in order to comply and cause all tenants under any leases or occupancy agreements affecting the Real Property and all other persons or entities on or occupying the Real Property, to comply with all

Environmental Laws. The Borrower agrees that the Authority or the Fiscal Agent may, from time to time if it in good faith believes that a Release of a Hazardous Substance may have occurred or that an Environmental Law may have been violated, retain, at the Borrower's expense, an independent professional consultant to review any report relating to Hazardous Substances prepared by or for the Authority or the Fiscal Agent and to conduct its own investigation of the Real Property. The Borrower grants to the Authority and the Fiscal Agent and its agents, employees, consultants and contractors the right to enter into or on the Real Property upon reasonable notice to the Borrower and at all reasonable times to perform such tests on such property as are reasonably necessary to conduct such a review or investigation.

(h) That there is not now and shall not at any time in the future be any Hazardous Substances located, stored in, used, generated, treated or disposed upon or at the Real Property except as set forth on Exhibit "B" attached hereto and except for materials which are normally and customarily used in the construction, maintenance or operation of the Development or kept or used by tenants of the Development for household purposes, but in all cases, in compliance with Environmental Laws.

(i) To the best of the Borrower's and the Guarantors' knowledge, and after reasonable investigation and inquiry of past uses solely in the form of the Existing Environmental Reports, no underground storage tanks or subsurface impoundments or contamination of soil or groundwater are on or at the Real Property. That the Real Property does not now, and at no time shall, contain or have placed upon it any underground tanks storing Hazardous Substances. Storage of Hazardous Substances in aboveground tanks or other containers shall be limited to those specified in Exhibit "B."

The provisions of this paragraph, and the representations, and warranties and covenants contained herein, are absolute and unconditional and do not, except as expressly stated, depend in any way whatsoever on any knowledge or notice which the Borrower or the Guarantors may have with respect to the matters set forth in this paragraph. Thus, for example, even if the Borrower or the Guarantors after due diligence and investigation is of the belief that there are no Hazardous Substances located on the Real Property, the provisions of this paragraph shall nevertheless obligate the Borrower and the Guarantors hereunder if any Hazardous Substances are located at any time upon the Real Property, and the fact that the Borrower or the Guarantors had no such knowledge shall not in any way whatsoever relieve the Borrower and the Guarantors of any of their duties and obligations under this Agreement.

3. ENVIRONMENTAL REPORT IN THE EVENT OF RELEASE OF HAZARDOUS SUBSTANCES. In the event the Authority or the Fiscal Agent should have learned of facts which could lead a reasonable person to believe that there may have been a violation of Environmental Laws with respect to the Real Property or any Release has occurred in connection with or upon the Real Property, the Borrower shall at the written request of the Authority or the Fiscal Agent, obtain at its own expense an Environmental Report under the following conditions:

(a) The cost for the Environmental Report shall be paid for by the Borrower.

(b) The Environmental Report may be required from time to time by the Authority or the Fiscal Agent, and the fact that such an Environmental Report has not been required from time to time by the Authority or the Fiscal Agent shall not constitute a waiver as to the right of the Authority or the Fiscal Agent hereunder to require that said Environmental Reports be furnished from time to time.

In the event said Environmental Report should disclose any Hazardous Substances located, treated, stored, disposed or released on the Real Property in violation of any Environmental Law or this agreement, or if said Environmental Report should otherwise recommend any actions, including any Remedial Work, to be taken in regard to any Hazardous Substances in order to comply with any Environmental Laws, the Borrower shall promptly, at its expense, remove and/or respond to said Hazardous Substances and comply with such recommendations.

Should the Borrower fail to obtain such an Environmental Report within thirty (30) days after the Authority's or the Fiscal Agent's request, the Authority or the Fiscal Agent shall have the right, but not the obligation, to retain an Environmental Professional to perform such an Environmental Report at the expense of the Borrower and the Environmental Professional retained by the Authority or the Fiscal Agent shall have a right of access to the Real Property to perform such work as deemed necessary by the Environmental Professional to complete the Environmental Report including, but not limited to, the collection of air, groundwater, surface water, sediment, soil and building material samples.

4. INDEMNIFICATION FOR HAZARDOUS SUBSTANCES. The Borrower and the Guarantors, jointly and severally, do hereby indemnify and agree to hold harmless the Authority and the Fiscal Agent, their members, directors, officers, employees, agents, successors and assigns, from and against all claims, damages, expenses (including attorneys' fees), liabilities and all other obligations including, without limitation, third party claims for personal injury or real or personal property damage (collectively, "Environmental Claims") which the Authority or the Fiscal Agent may incur or be exposed to as a result of any one or more of the following (except to the extent any of the foregoing is attributable to the gross negligence or willful misconduct of the Authority, its officers, directors, agents or employees or negligence or willful misconduct of the Fiscal Agent, its officers, directors, agents or employees):

(a) The breach of any representation, warranty, covenant, term or condition contained in this Agreement.

(b) The breach by the Borrower of any of its obligations to furnish an Environmental Report as set forth above.

(c) The presence, Release or suspected Release of any Hazardous Substance in, on or into the air, soil, surface water, groundwater or soil vapor at, on, about, under, within or from the Real Property, or any portion thereof.

(d) In the event the Borrower fails to undertake Remedial Work in accordance with this Agreement, any reasonable costs or expenses which may be incurred by the Authority or the Fiscal Agent in performing Remedial Work in connection with removing any Hazardous Substances from the Real Property; provided, however, nothing contained in this Agreement or in any other Loan

Document shall impose any duty or obligation whatsoever upon the Authority or the Fiscal Agent to perform any Remedial Work on the Real Property.

(e) Any Environmental Action connected in any way with the Real Property.

(f) Any acts of the Borrower, tenants or other users of the Real Property, or their respective agents or employees, in arranging for transport, disposal or treatment, or arranging with a transporter for transport, disposal or treatment, of Hazardous Substances owned or possessed by Borrower by any other party or entity, at any facility or incineration vessel owned or operated by another party or entity and containing such or similar Hazardous Substances.

(g) Any acts of the Borrower, tenants or other users of the Real Property, or their respective agents or employees, who accept or accepted any Hazardous Substances for transport to disposal or treatment facilities, incineration vessels or sites selected by Borrower from which there is a Release, or a threatened Release which causes the incurrence of remediation costs of a Hazardous Substance.

Such indemnification shall include without limitation (i) all actual damages; and (ii) the cost of any required or necessary repair, cleanup, or detoxification of the Real Property and the preparation and implementation of any closure, remedial or other required plans. This indemnity will survive the repayment of the indebtedness of the Borrower under the Project Loan Agreements, or the extinguishment of the lien of the mortgage securing the Governmental Note by foreclosure or action in lieu thereof, and this covenant will survive such repayment or extinguishment except as provided in Paragraph 7 below.

5. NOTICE OF ENVIRONMENTAL ACTION. If the Borrower receives any notice of:

(a) The occurrence of any Release on the Real Property, whether or not the same occurred in connection with the operations thereon of the Borrower, tenants or other users of the Real Property; or

(b) Any Environmental Action, then the Borrower immediately shall notify the Authority and the Fiscal Agent orally and promptly thereafter in writing of said Release or Action. In the event it is determined that any Remedial Work must be taken with regard to the presence, whether past, present or future, of any such Hazardous Substances on the Real Property, the Borrower covenants and agrees to take all such Remedial Work necessary to promptly bring the Real Property into compliance with all Environmental Laws, regardless of whether or not the Borrower caused said Release or Action.

(c) The Borrower will promptly advise the Authority and the Fiscal Agent in writing and in reasonable detail of any and all written communications with respect to any Environmental Actions or with respect to any Release of Hazardous Substances required to be reported to any federal, state or local governmental or regulatory agency; any remedial action taken by Borrower or any other person or entity in response to (i) any Hazardous Substances on, under, or about the Real Property or (ii) any Environmental Action that could cause such property or any part thereof to be subject to any restrictions on the ownership, occupancy, transferability or use thereof under



any Environmental Laws; and any request for information from any governmental agency that suggests such agency is investigating whether the Borrower may be potentially responsible for a Release of Hazardous Substances. The Borrower will, at its own expense, provide copies of such documents or information as the Authority or the Fiscal Agent may reasonably request in relation to any matters disclosed pursuant to this Section.

6. REMEDIAL WORK. In the event that an investigation, site monitoring, containment, cleanup, removal, restoration or other Remedial Work of any kind or nature (the "Remedial Work") is reasonably necessary under any Environmental Law or Environmental Report, any judicial order or by any governmental or non-governmental entity or person because of, or in connection with, the current or future presence, reasonably suspected presence, Release or reasonably suspected Release of Hazardous Substance on or into the air, soil, ground water, surface water or soil vapor at, on, about, under or within the Real Property (or any portion thereof) which is subject to the indemnity provisions in Paragraph 4, the Borrower hereby agrees that:

(a) The Borrower shall perform or cause to be performed all required Remedial Work in compliance with all Environmental Laws. The Borrower within 30 days after written demand for performance thereof by the Authority or the Fiscal Agent (or such shorter period of time as may be required under any applicable law, regulation, order or agreement, or to protect human health or prevent significant environmental damage), shall commence to perform, or cause to be commenced and thereafter diligently prosecute to completion all Remedial Work.

(b) All Remedial Work shall be performed by one or more Environmental Professionals selected by the Borrower.

(c) All costs and expenses of such Remedial Work shall be paid by the Borrower or the Guarantors, including, without limitation, the charges of such consultants and contractors, the Authority's and the Fiscal Agent's reasonable attorney's and paralegal's fees and costs (which may, at the Authority's or the Fiscal Agent's option, include consultants and contractors hired by the Authority or the Fiscal Agent to monitor the Remedial Work) incurred in connection with monitoring or review of such Remedial Work.

(d) In the event the Borrower shall fail to timely commence, or cause to be commenced, or fail to diligently prosecute to completion such Remedial Work, the Authority or the Fiscal Agent may, but shall not be required to, cause such Remedial Work to be performed after providing written notice to the Borrower and giving the Borrower reasonable time under the circumstances to perform the Remedial Work, and shall include a right of access to the Real Property for the Environmental Professional retained by the Authority or the Fiscal Agent to conduct such Remedial Work and all reasonable costs and expenses thereof, or incurred in connection therewith, if not promptly paid by the Borrower. All such costs shall be due and payable upon demand therefor by the Authority or the Fiscal Agent. Notwithstanding anything to the contrary herein, if any Remedial Work is required to be performed by the Borrower or the Guarantors pursuant to this Agreement, the Authority or the Fiscal Agent shall take no action to enforce its rights to require Remedial Work to be performed hereunder or to take any other action hereunder with respect thereto if (i) remediation has been commenced by or on behalf of the Borrower (or Guarantors on behalf of the Borrower) by the earlier of (A) the applicable deadline required by the applicable Environmental Law, or (B) 270 days after the Lender received the Environmental Report, or notice

of any Release on the Real Property or upon receipt of notice of Environmental Action or other notice of an event requiring Remedial Work and (ii) such remediation is being diligently prosecuted. If (i) and (ii) of the preceding sentence are applicable, the Authority or the Fiscal Agent shall suspend its rights to require Remedial Work hereunder until the Borrower (or Guarantors on behalf of the Borrower) completes or abandons the remediation. If the Borrower (or Guarantors on behalf of the Borrower) have not commenced remediation before the deadline required by the applicable Environmental Law, then the Authority or the Fiscal Agent may enforce its rights under this Agreement.

7. NOTICE OF ENVIRONMENTAL CLAIMS: LIMITATION ON LIABILITY OF BORROWER AND GUARANTORS. In the event any Environmental Claim is asserted against the Authority or the Fiscal Agent or the Real Property at any time and the Authority or the Fiscal Agent intends to seek indemnity hereunder from the Borrower or the Guarantors with regard to, or otherwise require the Borrower to perform Remedial Work in respect of, such Environmental Claim, the Authority or the Fiscal Agent shall give the Borrower, prompt written notice of such Environmental Claim (a "Notice of Claim") at the address of the Borrower set forth in the Funding Loan Agreement. Upon receipt of a Notice of Claim, the Borrower and/or such Guarantor(s), if applicable, shall have the responsibility of defending said Environmental Claim in good faith and with reasonable written notice to Authority and the Fiscal Agent of its actions provided, however, the foregoing shall in no way limit the Authority's or the Fiscal Agent's right simultaneously to defend such Environmental Claim.

Notwithstanding any provisions of paragraphs 4, 5, 6, 8 or 11 of this Agreement or this paragraph 7 to the contrary, the Borrower and the Guarantors shall not be liable to indemnify the Authority and the Fiscal Agent (except as set forth below) for any Environmental Claim or to perform any Remedial Work under this Agreement if, the basis for said Environmental Claim or the events which necessitated such Remedial Work occurred subsequent to the earlier of: (1) payment of all of the obligations in full under the Project Loan Agreements or (2) transfer of title to the Real Property (excluding a transfer made by the Borrower in violation of the provisions of any of the Loan Documents but including a transfer through foreclosure or acceptance of a deed in lieu of foreclosure by the Authority or the Fiscal Agent) and, as a result thereof, said Environmental Claim is released or dismissed with prejudice as against Borrower (the date of any such release or dismissal being the "Dismissal Date"); provided, however, (1) the Borrower and the Guarantors, jointly and severally, shall be liable to indemnify the Authority and the Fiscal Agent if any actions of Borrower, Borrower's tenants, or other users of the Development, prior to a transfer of title as referenced in (2) above, resulted in the Environmental Claim or created conditions which resulted in the Environmental Claim, or (2) the Borrower and the Guarantors, jointly and severally, nevertheless shall be responsible for the reimbursement of, and shall indemnify and hold the Authority and the Fiscal Agent harmless from and against, all costs and expenses (including reasonable attorneys' fees) incurred by the Authority or the Fiscal Agent in connection with defending or responding to the Environmental Claim prior to the Dismissal Date. Except as limited by the provisions of this paragraph 7, the Borrower's and the Guarantors' liability to indemnify the Authority and the Fiscal Agent and to perform Remedial Work shall be governed by the provisions of this Agreement set forth in paragraphs 4, 5, 6 and 7 above.

8. AUTHORITY'S AND FISCAL AGENT'S RESERVED RIGHTS. In the event of receipt of notice of Environmental Action, and in the event the Borrower and the Guarantors have

not performed their respective obligations hereunder, the Authority and the Fiscal Agent shall have the right, but not the obligation (and without limitation of the Authority's and the Fiscal Agent's rights under this Agreement) to enter onto the Real Property after reasonable notice to the Borrower and at all reasonable times or to take such other actions as it shall deem necessary or advisable to clean up, remove, resolve or minimize the impact of, or otherwise deal with, any such Hazardous Substances or Environmental Action following receipt of any notice from any person or entity having jurisdiction asserting the existence of any Hazardous Substances or an Environmental Action pertaining to the Real Property or any part thereof which, if true, could result in an order, suit or other action against the Borrower and/or which, in the Authority's and the Fiscal Agent's sole opinion, could jeopardize its security under the Financing Documents. All reasonable costs and expenses, including attorneys' fees, incurred by the Authority or the Fiscal Agent in the exercise of any such rights shall be secured by the Loan Documents and shall be payable to the Authority or the Fiscal Agent by the Borrower and the Guarantors upon demand.

If the Authority or the Fiscal Agent in good faith believes that a Release of Hazardous Substances may have occurred or that an Environmental Law may have been violated, after reasonable notice to the Borrower, the Authority or the Fiscal Agent, its agents, employees or workmen are authorized after reasonable notice to the Borrower and at all reasonable times to enter upon any part of the Real Property for the purposes of inspecting the same for Hazardous Substances and the Borrower's compliance with this section and such inspections may include, without limitation, soil borings. The Borrower and the Guarantors, jointly and severally, agree to pay to the Authority or the Fiscal Agent, upon their demand, all reasonable expenses, costs, or other amounts incurred by the Authority or the Fiscal Agent in performing any inspection for the purposes set forth in this clause (m), which expenses, costs, or amounts will become part of the obligations under the Project Loan Agreements.

The Authority and the Fiscal Agent will have the right to join and participate in, as a party if they so elect, any legal proceedings or actions initiated in connection with any Environmental Law and have their attorneys' fees in connection therewith paid by the Borrower (which attorneys' fees will become part of the obligations under the Project Loan Agreements).

9. DEFAULT UNDER DOCUMENTS. The (i) breach of any representations, warranties or covenants contained in this Agreement, or (ii) failure of the Borrower or the Guarantors to comply with any of the terms or conditions contained in this Agreement, in each case, which is not cured or corrected within thirty days after written notice to the Borrower, or, if such breach cannot reasonably be cured within such thirty day period, within such reasonable time as may be required to cure such breach so long as any necessary curative action is commenced within such thirty day period and is diligently pursued until complete shall each be and constitute a default under the Project Loan Agreements. In such event, the Authority and the Fiscal Agent shall be entitled to exercise any and all rights available to the Authority or the Fiscal Agent under the Project Loan Agreements and applicable law.

10. SURVIVAL OF AGREEMENT. This Agreement is separate and apart from each and every other Loan Document relating to the Governmental Note, and the provisions of this Agreement and the obligations of the Borrower and the Guarantors hereunder, shall survive (i) the payment of amounts due under the Project Loan Agreements, (ii) transfer of title to the Property, and (iii) any other term or provisions of the Loan Documents.

11. COUNTERPARTS. This Agreement may be executed in any number of counterparts, all of which taken together shall constitute one and the same instrument and any of the parties hereto may execute this Agreement by signing any such counterpart.

12. COMPLETE AGREEMENT. This Agreement represents the complete agreement of the parties with regard to the matters set forth herein and may not amended or modified except in writing signed by all of the parties hereto.

13. GOVERNING LAW. This Agreement shall be governed by the laws of the State of Florida.

*[Signature page(s) to follow]*

**IN WITNESS WHEREOF**, the parties have executed this Agreement as of the date and year first above written.

**BORROWER/GUARANTORS:**

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

**SAN MARCOS HEIGHTS MM, LLC,** a  
Florida limited liability company

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

[Signature page to Environmental Indemnity Agreement]

[\_\_\_\_\_] , a [\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

\_\_\_\_\_, individually

[Signature page to Environmental Indemnity Agreement – San Marcos Heights]

**HOUSING FINANCE AUTHORITY OF ST.  
JOHNS COUNTY, FLORIDA**

**ATTEST:**

By: \_\_\_\_\_  
Michael O'Donnell, Chair

\_\_\_\_\_  
Linda DeGrande, Secretary

[Signature page to Environmental Indemnity Agreement – San Marcos Heights]

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, N.A., as Fiscal Agent**

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

[Signature page to Environmental Indemnity Agreement]



EXHIBIT "A"

Legal Description

**EXHIBIT "B"**

**Disclosure of Hazardous Substances**

As listed in the Existing Environmental Report (as defined in this Agreement)

**EXHIBIT J**  
**OPERATING DEFICIT GUARANTY**

**ABSOLUTE AND UNCONDITIONAL GUARANTY OF OPERATING DEFICITS  
(San Marcos Heights)**

This **ABSOLUTE AND UNCONDITIONAL GUARANTY OF OPERATING DEFICITS** (as amended, modified and supplemented from time to time, this "**Guaranty**") is made as of February 1, 2021, by **SAN MARCOS HEIGHTS, LLC**, a Florida limited liability company (the "**Borrower**"), **SAN MARCOS HEIGHTS MM, LLC**, a Florida limited liability company, its manager, [\_\_\_\_\_] , a [\_\_\_\_\_] and [\_\_\_\_\_] , individually (together with their respective heirs, successors and assigns hereinafter referred to collectively as the "**Guarantor**" or the "**Guarantors**"), for the benefit of the **HOUSING FINANCE AUTHORITY OF ST. JOHNS COUNTY, FLORIDA**, a public body corporate and politic organized and existing under the laws of the State of Florida (the "**Governmental Lender**"), and **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, with a representative office located in Jacksonville, Florida, as fiscal agent under the below-described Funding Loan Agreement (in such capacity, the "**Fiscal Agent**").

**RECITALS**

A. All capitalized terms in this Guaranty not otherwise defined herein shall have the meanings set forth in the Funding Loan Agreement (as hereinafter defined).

B. The Governmental Lender has been created and organized pursuant to and in accordance with the provisions of Chapter 159, Part IV, Florida Statutes, as amended, Ordinance 80-7 enacted by the Board of County Commissioners (the "**Board**") of St. Johns County, Florida on February 26, 1980, as amended, Resolution 80-25 adopted by the Board on March 11, 1980, as amended, and all future acts supplemental thereto or amendatory thereof (collectively, the "**Act**"), for the purpose, among others, of financing multifamily rental housing within St. Johns County, Florida (the "**County**").

C. Pursuant to the Act, the Governmental Lender, the Fiscal Agent and the Borrower have entered into that certain Construction Phase Project Loan Agreement dated as of February 1, 2021 and the Project Loan Agreement dated as of February 1, 2021 (collectively, the "**Project Loan Agreements**"), the terms of which are hereinafter incorporated by this reference, under which the Governmental Lender has agreed to make a loan pursuant to the Project Loan Agreements (the "**Project Loan**") in the maximum aggregate principal amount of SIXTEEN MILLION AND NO/100 DOLLARS (\$16,000,000) to the Borrower to finance the acquisition, construction and development of a multifamily rental housing development known as San Marcos Heights (the "**Project**") located on property in unincorporated St. Johns County, Florida, the legal description for which is set forth in Exhibit "A" attached hereto and incorporated herein by this reference (the "**Land**").

D. In order to provide the funds with which to make the Project Loan to Borrower, the Governmental Lender has authorized the issuance of its \$16,000,000 Housing Finance Authority of St. Johns County, Florida Multifamily Mortgage Revenue Note, Series 2021 (San Marcos Heights) (the "**Governmental Note**") pursuant to that certain Funding Loan Agreement dated as of February 1, 2021 among CBRE Capital Markets, Inc., in its capacity as the Funding Lender, the

Governmental Lender and the Fiscal Agent (the "Funding Loan Agreement"), the terms of which are incorporated herein by this reference.

E. As a condition to the Governmental Lender making the Project Loan to Borrower and pursuant to the requirements of the Project Loan Agreements and the Funding Loan Agreement, the Governmental Lender, the Fiscal Agent and the Borrower have entered into a Land Use Restriction Agreement, the terms of which are incorporated herein by this reference, setting forth certain terms and conditions relating to the acquisition and rehabilitation of the Project and which sets forth various other covenants and agreements that run with the land on which the Project is located.

F. To induce the Governmental Lender to issue and sell the Governmental Note pursuant to the Funding Loan Agreement for the purpose of providing financing for the Project; and to further induce the Governmental Lender to make the Project Loan to the Borrower pursuant to the Project Loan Agreements; and to further induce the Governmental Lender to accept the Project Note evidencing the Project Loan securing the Project Loan and Project Note, the Guarantors have agreed to deliver this Guaranty.

G. Each Guarantor acknowledges and agrees that each will benefit from the development of the Project.

**NOW THEREFORE**, for and in consideration of the premises and as part of the consideration for the Project Loan by the Governmental Lender to the Borrower and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Guarantors hereby covenant and agree with the Governmental Lender for the benefit of the Governmental Lender and the Fiscal Agent, as follows:

## **ARTICLE 1 DEFINITIONS**

**Section 1.1. Definitions.** The following terms shall have the meanings ascribed thereto as set forth below:

(a) "Debt Service Coverage Ratio" shall mean the ratio of the Net Operating Income for each month to the monthly payments of principal and interest and recurring fees under the Project Note and the Project Loan Agreements.

(b) "Default Rate" shall mean the U.S. Prime Rate as published in the Wall Street Journal, plus 3%.

(c) "Force Majeure" -- An act of God, strikes, lockouts, act of public enemy, lightning, fire, storm, flood, or any other cause of delay beyond the reasonable control of the party claiming the applicability of the Force Majeure doctrine (financial inability excepted).

(d) "Guaranty Period" shall be the period commencing on the date hereof, and ending on the earlier of (i) the Project's achievement of the repayment in full of the Governmental Note, or (ii) an average 1.15 Debt Service Coverage Ratio, as determined by the Governmental Lender Servicer, ninety percent (90%) occupancy, and ninety percent (90%) of the potential rental income,

for a period equal to twelve (12) consecutive months, as certified by an independent certified public accountant. Failure to send notice of the expiration of the Guaranty Period shall have no effect on the expiration of the Guaranty Period.

(e) "Net Operating Income" shall mean for any fiscal period, the gross cash receipts of the Borrower from the operations of the Project (including business interruption insurance) for such period (other than capital contributions, any extraordinary transactions, the proceeds of the Project Loan, and any casualty insurance proceeds that will be used to repair or replace items within the Project) ("Project Revenues"), less Project Expenses for such period.

(f) "Operating Deficit" shall mean for any fiscal period, the excess of Project Expenses over the Project Revenues for such fiscal period and interest earnings on the funds and accounts under the Funding Loan Agreement available to pay debt service (excluding any non-recurring extraordinary expenses). "Operating Deficit" shall also include any shortfall in regular monthly payments due under the Project Note, excluding amounts which may be due solely by acceleration of the Project Note. Operating Deficit shall not include any shortfall in regular monthly payments due under the Project Note due to a disruption of the operation of the Project due to Force Majeure.

(g) "Project Expenses" shall mean debt service payments (other than debt service payments payable only if there is available cash flow), all cash costs and cash expenses of every kind and character which the Borrower incurs (and which is currently due and payable, excluding any expenses that are payable only if there is available cash flow) in connection with the operation of the Project (excluding those expenses previously accrued and principal and interest and recurring fees, but including without limitation capital expenditures (but not capital expenditures paid from insurance or reserves), amounts expressly stated or otherwise reasonably required by the Governmental Lender to be allocated to any reserve account and all amounts payable pursuant to the Project Loan Agreements, the Project Note or the Governmental Lender Servicing Agreement), and all operating expenses associated with the Project that must be accrued monthly (including property taxes and insurance premiums and excluding any non-recurring extraordinary expenses and expenses paid from the net cash flow of the Borrower to its partners or its affiliates) and including expenses paid from revenues.

(h) "Project Notes" shall mean the Construction Phase Project Note and the Permanent Phase Project Note, as defined in the Funding Loan Agreement.

## ARTICLE 2 REPRESENTATIONS AND WARRANTIES

The Guarantors jointly and severally make the following representations and warranties which shall be continuing representations and warranties until this Guaranty terminates in accordance with the provisions contained herein:

**Section 2.1. Existence and Rights.** Each Guarantor is a person of sound mind and body or an entity duly organized under the laws of the State of its existence and is in good standing thereunder. Each entity Guarantor has powers and adequate authority, rights and franchises to own its property and to carry on its business as now owned and carried on, and is duly qualified and in good standing in each jurisdiction in which the property owned by it or the business

conducted by it makes such qualification necessary, including without limitation, the State, and each entity Guarantor has the power and adequate authority to make and carry out this Guaranty.

**Section 2.2. Guaranty Authorized and Binding.** The execution, delivery and performance of this Guaranty are duly authorized, where appropriate, and do not require the consent or approval of any governmental body or other regulatory authority; are not in contravention of, or in conflict with, any law or regulation or any term or provision of the organizational documents of each Guarantor; and this Guaranty is a valid and legally binding obligation of each Guarantor enforceable in accordance with its terms subject to bankruptcy and other similar laws and equitable principles.

**Section 2.3. No Conflict.** The execution and delivery of this Guaranty are not, and the performance of this Guaranty will not be, in contravention of, or in conflict with, any agreement, indenture or undertaking to which any Guarantor is a party or by which any Guarantor or any of the Guarantor's property is or may be bound or affected and do not, and will not, cause any security interest, lien or other encumbrance to be created or imposed upon any such property.

**Section 2.4. Litigation.** As of the date of delivery of the Governmental Note, except as set forth in Exhibit "B" attached hereto, there is no litigation or other proceeding pending (i.e., with respect to which service of process has been made on any Guarantor) or, to the best of each Guarantor's knowledge, threatened against, or affecting, any Guarantor or such Guarantor's properties which, if determined adversely to any Guarantor, would have a materially adverse effect on the financial condition, properties, businesses or operations of any Guarantor, or which prevents or interferes with or adversely affects any Guarantor from entering into this Guaranty or the validity of this Guaranty or the carrying out of the terms hereof, and no Guarantor has been informed that it is in default with respect to any order, writ, injunction, decree or demand of any court or other governmental or regulatory authority which would have a materially adverse effect on the financial condition, properties, businesses or operations of any such Guarantor.

**Section 2.5. Financial Condition.** Each Guarantor's financial statements (or such other documents submitted in lieu of financial statements), which have heretofore been submitted in writing by each Guarantor to the Governmental Lender or the Governmental Lender's agents or consultants in connection herewith, are true and correct in all material respects and fairly present the financial condition of such Guarantor for the period covered thereby. As of the date of delivery of the Governmental Note, since the date of said financial statements (or such other documents submitted in lieu of financial statements), there has been no materially adverse change in any Guarantor's financial condition. As of the date of delivery of the Governmental Note, the Guarantors have no knowledge of any material liabilities, contingent or otherwise, as of the date of their respective financial statements (or such other documents submitted in lieu of financial statements) which are not reflected in said financial statements; and, other than in the ordinary course of any Guarantor's business, the Guarantors have not entered into any material commitments or contracts which are not reflected in their respective financial statements (or such other documents submitted in lieu of financial statements) or which may have a materially adverse effect upon any Guarantor's financial condition, operations or business as now conducted.

**Section 2.6. Solvency.** Each Guarantor is not Insolvent (as defined below) as of the date hereof and the execution and delivery of this Guaranty will not (a) render any Guarantor insolvent

under generally accepted accounting principles (or other accepted accounting standards), (b) leave any Guarantor with remaining assets which constitute unreasonably small capital given the nature of any Guarantor's business, and (c) result in the incurrence of Debts (defined below) beyond any Guarantor's ability to pay them when and as they mature. For the purposes of this Section, "Insolvent" means that the present fair salable value of assets is less than the amount that will be required to pay the probable liability on existing Debts as they become absolute and matured. For the purposes of this Section, "Debts" includes any legal liability for indebtedness, whether matured or unmatured, liquidated or unliquidated, absolute, fixed or contingent.

**Section 2.7. Financial or other Benefit or Advantage.** Each Guarantor hereby acknowledges and warrants that such Guarantor has derived or expects to derive a financial or other benefit from the Project.

### **ARTICLE 3 AGREEMENTS**

**Section 3.1. Guaranteed Obligations.** Each Guarantor hereby jointly and severally covenants and agrees to advance, on the terms set forth below, the funds required to fund Operating Deficits incurred by the Borrower during the Guaranty Period (the "Guaranteed Obligations"). Nothing contained in this Agreement shall be deemed to constitute a guarantee by the Guarantors of accelerated principal and interest on the Project Loan. If the Borrower anticipates the need to request the Guarantors to make a payment under this Guaranty to fund an Operating Deficit, the Borrower will promptly notify the Guarantors, in writing, with a copy to the Governmental Lender, the Fiscal Agent and the Governmental Lender Servicer of the amount of such Operating Deficit (with sufficient supporting documentation to evidence the need to make a payment under this Guaranty). Unless the Governmental Lender or the Governmental Lender Servicer objects to such request within ten (10) days of receipt of such request and supporting documentation, the Guarantors shall promptly provide the Borrower with funds sufficient to pay the amount of such Operating Deficit and promptly upon receipt of such funds, the Borrower shall pay the Project Expenses causing such Operating Deficit. Notwithstanding the foregoing, the Governmental Lender, the Governmental Lender Servicer or the Fiscal Agent may submit a request directly to the Guarantors, on behalf of the Borrower, to make a payment under this Guaranty upon making a determination of the existence of an Operating Deficit.

Failure of the Borrower to provide such a request and/or notice to the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer or the failure of the Guarantors to pay such Operating Deficit, shall neither impair nor reduce the Guarantors' obligation to pay any of the Guaranteed Obligations hereunder upon direct written demand by the Governmental Lender, the Fiscal Agent or the Governmental Lender Servicer. Upon payment of such Operating Deficit by the Guarantors, the same shall be credited towards the Guaranteed Obligations.

The Governmental Lender, the Governmental Lender Servicer or the Fiscal Agent shall also be entitled to make a claim under this Guaranty to fund any Guaranteed Obligation during the Guaranty Period (excluding amounts which may be due solely by acceleration of the Project Note) by submission of a written demand notice to the Guarantors. After termination of this Guaranty as provided herein, neither the Fiscal Agent, the Governmental Lender, the Governmental Lender Servicer nor any other party shall be entitled to make a claim under this Guaranty.



This is a guaranty of payment and not of collection only, and the obligations hereunder shall be absolute, independent and unconditional under any and all circumstances, without regard to the validity or enforceability of the Project Loan Documents (as defined in the Funding Loan Agreement) against the Borrower. After the termination of the Guaranty Period, upon request of the Guarantors and provision of written evidence that the Guaranty Period has ended, this Guaranty shall be returned to the Guarantors marked "cancelled."

**Section 3.2. Third Party Beneficiary.** No person or entity shall be a third party beneficiary of this Guaranty.

**Section 3.3. Further Assurances.** Each Guarantor will, at its expense, execute, acknowledge and deliver all such further documentation, instruments and assurances and the like and take all such further action as the Governmental Lender or the Fiscal Agent shall reasonably require in order to carry out the intentions or facilitate the provisions of this Guaranty.

**Section 3.4. Obligations Absolute.** The Guaranteed Obligations shall remain in full force and effect without regard to, and shall not be affected or impaired by the following, any of which may be taken without the consent of, or notice to, the Guarantors, nor shall any of the following give any Guarantor any recourse or right of action against the Governmental Lender or the Fiscal Agent:

(a) Any delay, exercise or non-exercise by the Governmental Lender or the Fiscal Agent of any right or privilege under this Guaranty;

(b) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to any Guarantor, any partner or member or any other guarantor (which term shall include any other party at any time directly or contingently liable for any of the Guarantors' obligations under this Guaranty, including without limitation, any partner or member or property manager) or any affiliate of any Guarantor, or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not any Guarantor shall have had notice or knowledge of any of the foregoing;

(c) Any assignment or other transfer of this Guaranty in whole or in part;

(d) Any acceptance of partial funding of the Guaranteed Obligations; and

(e) Any subordination, compromise or release of any or all of the property or other collateral, if any, securing any Guarantor's obligations under this Guaranty, or any substitution with respect thereto.

Actions taken without the consent of, or notice to San Marcos Heights, LLC, as set forth in this Section 3.4 are intended to apply to San Marcos Heights, LLC in its capacity as a Guarantor and nothing in this Section 3.4 is intended to constitute a waiver of any notice or consent rights afforded to San Marcos Heights, LLC in its capacity as the Borrower under the Project Loan Documents or any other document entered into in connection with the Project Loan.

**Section 3.5. Waivers.** Each Guarantor unconditionally waives the following defenses to the enforcement of this Guaranty, including, without limitation:

(a) All presentments, notices of nonperformance, protests, notices of protest, notices of dishonor, and notices of acceptance of this Guaranty;

(b) Any right to require the Governmental Lender or the Fiscal Agent to proceed against the Borrower or any other guarantor at any time, or to proceed against or exhaust any security held by the Governmental Lender or the Fiscal Agent at any time, or to pursue any other remedy whatsoever at any time;

(c) Any bankruptcy, insolvency, reorganization, composition, adjustment, dissolution, liquidation or other like proceeding relating to the Borrower, or any Guarantor or any affiliate of the Borrower or the Guarantors or any action taken with respect to this Guaranty by any trustee or receiver, or by any court, in any such proceeding, whether or not any Guarantor shall have had notice or knowledge of any of the foregoing;

(d) Any right any Guarantor might have under the laws of the State to revoke this Guaranty, it being the intention of each Guarantor that this Guaranty remain in full force and effect until termination, as provided herein;

(e) Any defense based upon an election of remedies by the Governmental Lender or the Fiscal Agent, including, without limitation, any remedies which destroy or impair the subrogation rights of any Guarantor to proceed against the Borrower or any partner for reimbursement or both;

(f) Any duty of the Governmental Lender or the Fiscal Agent to advise any Guarantor of any information known to the Governmental Lender or the Fiscal Agent regarding the financial condition of the Borrower or any partner or member and all other circumstances affecting the ability of the Borrower or any partner or member to perform its obligations to the Governmental Lender or the Fiscal Agent, it being agreed that each Guarantor assumes the responsibility for being and keeping informed regarding such conditions or any such circumstances; and

(g) Any rights to enforce any remedy which the Governmental Lender or the Fiscal Agent now has or may hereafter have against the Borrower, or any partner or member and any benefit of, and any right to participate in, any security now or hereafter held by the Governmental Lender or the Fiscal Agent.

(h) Any defense based upon the unenforceability for any reason of the Project Loan Documents or the failure of such documents for any reason to be valid, binding and enforceable obligations of the Borrower, other than full performance by the Borrower of its obligations thereunder.

With respect to San Marcos Heights, LLC, the waivers set forth in this Section 3.5 are intended to apply to the San Marcos Heights, LLC, in its capacity as a Guarantor and nothing in this Section 3.5 is intended to constitute a waiver of any notice rights afforded to San Marcos Heights, LLC, in its capacity as Borrower under the Project Loan Documents or any other document entered into in connection with the Project Loan.

**Section 3.6. Subrogation.** Notwithstanding any other provision of this Guaranty to the contrary and until all outstanding obligations of the Guarantors hereunder have been paid in full or terminated in accordance with the terms hereof, each Guarantor hereby defers any claim or other rights which such Guarantors may now have or hereafter acquire against any other guarantor of all or any of the obligations of any Guarantor under this Guaranty, including, without limitation, any right of subrogation, reimbursement, exoneration, contribution or indemnification, any right to participate in any claim or remedy of the Governmental Lender or the Fiscal Agent against the Borrower, any partner or member or any Guarantor or any collateral which the Governmental Lender or the Fiscal Agent now has or hereafter acquires, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, by any payment made hereunder or otherwise, including, without limitation, the right to take or receive from the Borrower, any partner or member or any Guarantor, directly or indirectly, in cash or other property or by setoff or in any other manner, payment or security on account of such claim or other rights, except as otherwise provided in the last sentence of Section 3.10 hereof.

**Section 3.7. Additional Waivers.** No Guarantor shall be released or discharged, either in whole or in part, by the Governmental Lender's or the Fiscal Agent's failure or delay to (a) perfect or continue the perfection of any lien or security interest in any collateral which secures the obligations of any other guarantor, or (b) protect the property covered by such lien or security interest.

**Section 3.8. Dealings with Parties.** The Governmental Lender and the Fiscal Agent shall have complete discretion, without giving notice to or obtaining the consent of any Guarantor, the Borrower and each other person or entity who now is or after the date hereof becomes liable in any manner for any of the Guarantors' obligations under this Guaranty, in such manner as the Governmental Lender and the Fiscal Agent shall decide, and accordingly each Guarantor grants to the Governmental Lender and the Fiscal Agent full authority, in their sole discretion, whether before or after termination of this Guaranty, to do any and all of the following, without limiting the generality of the foregoing: extend credit, make loans and afford such financial accommodation to the Borrower or any partner or member at such times, in such amounts and on such terms as the Governmental Lender may approve; vary the terms or alter, compromise, accelerate and grant extensions or renewals of time or manner of payment of any present or future obligations under this Guaranty, assign or transfer this Guaranty or any other instrument evidencing or securing the obligations under this Guaranty in whole or in part; vary, exchange, release or discharge, wholly or partially, the Borrower or any partner or member or any other guarantor or obligor of the obligations under this Guaranty, and compromise or make any settlement or other arrangement with the Borrower, any partner or member and/or any other guarantor, and if the obligations under this Guaranty are now or hereafter secured, exchange, substitute or release in part or in full all of the security given for the payment and performance of any of the Guarantors' obligations under this Guaranty.

With respect to San Marcos Heights, LLC, the provisions of this Section 3.8 are intended to apply to San Marcos Heights, LLC in its capacity as a Guarantor and nothing in this Section 3.8 is intended to constitute a waiver of any notice rights afforded to San Marcos Heights, LLC in its capacity as Borrower under the Project Loan Documents or any other document entered into in connection with the Project Loan.

**Section 3.9. Bankruptcy No Discharge; Repayments.** So long as any of the Guaranteed Obligations shall be owing, no Guarantor shall, without the prior written consent of the Governmental Lender and the Fiscal Agent, as applicable, commence or join with any other party in commencing any bankruptcy, reorganization or insolvency proceedings of or against the Borrower or any partner or member. Each Guarantor understands and acknowledges that by virtue of this Guaranty, each Guarantor has specifically assumed any and all risks of a bankruptcy or reorganization case or proceeding with respect to the Borrower and any partner or member. As an example and not in any way of limitation, a subsequent modification of the Guaranteed Obligations in any reorganization case concerning the Borrower or any partner or member shall not affect the obligation of any Guarantor to pay and perform the Guaranteed Obligations in accordance with their respective original terms. If claim is ever made upon the Governmental Lender or the Fiscal Agent for repayment of any amount or amounts received by the Governmental Lender or the Fiscal Agent in payment of the obligations under this Guaranty (whether or not all or any part of such payment is subsequently invalidated, declared to be fraudulent or preferential, set aside or required to be repaid by the Governmental Lender or the Fiscal Agent) and the Governmental Lender or the Fiscal Agent repays all or any part of said amount, then, notwithstanding any revocation or termination of this Guaranty or any other instrument evidencing the Guaranteed Obligations, each Guarantor shall be and remain liable to the Governmental Lender or the Fiscal Agent for the amount so repaid by the Governmental Lender or the Fiscal Agent, to the same extent as if such amount had never originally been received by the Governmental Lender or the Fiscal Agent.

**Section 3.10. Subordination.** So long as any of the obligations of any Guarantor hereunder remain unpaid or undischarged, each Guarantor agrees that any and all claims it may have against the Borrower or any partner or member shall be and hereby are subordinated to the Guaranteed Obligations and all other claims of the Governmental Lender or the Fiscal Agent against the Borrower or any partner or member. Any indebtedness of the Borrower or any partner or member to any Guarantor shall be collected and received by the Guarantors as trustee for the Governmental Lender and the Fiscal Agent and be paid over to the Governmental Lender or the Fiscal Agent on account of the indebtedness of the Guarantors to the Governmental Lender and the Fiscal Agent, upon demand by the Governmental Lender or the Fiscal Agent; provided that so long as there is no default existing hereunder or under any of the Project Loan Documents, the Guarantors shall be entitled to receive and retain payments and distributions described in or paid pursuant to the Borrower's partnership agreement.

**Section 3.11. Independent and Separate Obligations.** The obligations of each Guarantor hereunder are independent of any obligation of the Borrower or any partner or member and, in the event of any default hereunder, a separate action or actions may be brought and prosecuted against any or all of the Guarantors whether or not such Guarantors are the alter ego of the Borrower, any member, or any other guarantor. The Governmental Lender's and the Fiscal Agent's rights hereunder shall not be exhausted until the conditions to termination in Section 4.6 below have been satisfied.

**Section 3.12. Setoff.** The Governmental Lender and the Fiscal Agent shall have a right of setoff against, and each Guarantor hereby grants a security interest in, all moneys, securities and other property of such Guarantor now or hereafter in the possession of, or on deposit with the Governmental Lender or the Fiscal Agent in connection with the Project Loan, whether held in a general or special account or deposit, or for safekeeping or otherwise. Such right is in addition to

any right of setoff the Governmental Lender or the Fiscal Agent may have by law. After an event of default hereunder which has not been cured within any applicable grace or cure period, all rights of setoff may be exercised without any further notice or demand to any Guarantor. No right of setoff shall be deemed to have been waived by any act or conduct on the part of the Governmental Lender or the Fiscal Agent, or by any neglect to exercise such right of setoff, or by any delay in doing so. Every right of setoff shall continue in full force and effect until the expiration of this Guaranty.

**Section 3.13. Payments.** No Guarantor shall be credited for the funding of any of the Guaranteed Obligations unless and until the Borrower has delivered either (i) to the Governmental Lender and the Fiscal Agent written acknowledgment of receipt of the required payment in immediately available funds from such Guarantor after a demand has been made by the Governmental Lender or the Fiscal Agent pursuant to this Guaranty or (ii) the required payment to the Fiscal Agent in immediately available funds. Each Guarantor agrees that whenever a Guarantor shall pay any amount to the Governmental Lender or the Fiscal Agent hereunder on account of the liability hereunder, such Guarantor will deliver such payment to the Borrower with a copy of such evidence of payment and notice to the Governmental Lender and the Fiscal Agent at the addresses provided in Section 4.1 below. Each Guarantor agrees that whenever a Guarantor shall pay any amount to the Fiscal Agent hereunder upon a request by the Governmental Lender or the Fiscal Agent of a payment with respect to a Guaranteed Obligation, such Guarantor will deliver such payment to the Fiscal Agent with a copy of such evidence of payment and notice to the Governmental Lender and Borrower at the address provided in Section 4.1 below. Each Guarantor understands that the Borrower and/or each member may have obligations to the Governmental Lender with respect to the Project, and that those obligations are in addition to the Guarantor's obligations under this Guaranty.

**Section 3.14. Financial Statements.** During the term of this Guaranty, each Guarantor covenants and agrees to provide the Governmental Lender and, until the Completion Date, the Governmental Lender Servicer, on or before December 31 of each year, beginning December 31, 2021, with unaudited financial statements (or such other documents accepted by the Governmental Lender Servicer in lieu of financial statements), including a balance sheet, an income statement, a statement of changes in financial position and such other statements as may be reasonably required by the Governmental Lender or the Governmental Lender Servicer, prepared in accordance with generally accepted accounting practices (or other accepted accounting standards) consistently applied and certified as true and complete without qualification by the Guarantors, or with respect to any Guarantor other than individuals, an officer of such Guarantor or, if required by the Governmental Lender after an Event of Default, a certified public accountant acceptable to the Governmental Lender. Each Guarantor further covenants and agrees to immediately notify the Governmental Lender of any material adverse change in such Guarantor's financial condition.

**Section 3.15. Governing Law/Consent to Jurisdiction.** This Guaranty shall be governed by and construed in accordance with the laws of the State of Florida applicable to contracts entered into and entirely to be performed therein. Each Guarantor hereby irrevocably submits and consents to the jurisdiction of the courts of St. Johns County, Florida, the State of Florida and of the United States District Court for the district in which the Project is located in connection with any action, suit or other proceeding arising out of or relating to this Guaranty or any action taken or omitted hereunder. If any Guarantor served in accordance with applicable law

should fail to appear or answer within the time prescribed by law, then such Guarantor shall be deemed in default and judgment may be entered against such Guarantor for the amount or other relief as demanded in any summons, complaint or other process so served. Each Guarantor agrees that a final judgment in any such action, suit or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law.

**ARTICLE 4  
MISCELLANEOUS**

**Section 4.1. Notices.** All notices, requests, demands, consents, and other communications required or permitted to be given or made hereunder shall be in writing and shall be deemed to have been duly given if telecopied or mailed, certified first class mail, allowing 3 days for mail, postage prepaid, return receipt requested, to the party to whom the same is so given or made, at the telecopy number or address of such party as set forth below, which telecopy number or address may be changed by notice to the other parties hereto duly given pursuant hereto:

To the Governmental Lender:           Housing Finance Authority of St. Johns County, Florida  
200 San Sebastian View, Suite 2300  
St. Augustine, Florida 32084  
Attention: Executive Director  
Email: [ \_\_\_\_\_ ]  
Telephone: ( ) [ \_\_\_\_-\_\_\_\_ ]  
Facsimile: ( ) [ \_\_\_\_-\_\_\_\_ ]

To the Fiscal Agent:                   The Bank of New York Mellon Trust Company, N.A.  
4655 Salisbury Road, Suite 300  
Jacksonville, Florida 32256  
Attention: Corporate Trust Department  
Email: [ \_\_\_\_\_ ]  
Telephone: (904) 645-19[ ]  
Facsimile: (904) 645-19[ ]

To the Governmental Lender  
Servicer:                               First Housing Development Corporation of Florida  
107 S. Willow Avenue  
Tampa, FL 32202  
Attention: Ed Busansky  
Email: ebusansky@firsthousinfl.com  
Telephone: (813) 283-1043  
Facsimile: (813) 289-5580

To the Guarantors:                   San Marcos Heights, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520

San Marcos Heights MM, LLC  
1100 NW 4<sup>th</sup> Avenue  
Delray Beach, FL 33444  
Attention: Darren Smith  
Email: dsmith@smithhenzy.com  
Telephone: (561) 859-8520

[ ]  
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[ ]

Attention: [ ]  
Email: [ ]  
Telephone: ( ) [ ]-[ ]

with a copy to:

Shutts & Bowen LLP  
200 South Biscayne Boulevard, Suite 4100  
Miami, FL 33131  
Attention: Robert Cheng, Esq.

To the Funding Lender:

Bank of America, N.A.  
101 E. Kennedy Blvd., 6th Floor  
Mail Code: FL1-400-06-13  
Tampa, FL 33602  
Attn: Community Development Lending  
Fax Number: (813) 719-8659

with a copy to:

Walker & Dunlop, LLC  
7501 Wisconsin Avenue  
Suite 1200E  
Bethesda, MD 20814  
Attention: Loan Servicing

To Funding Lender Representative  
(as of Freddie Mac Purchase Date):

Federal Home Loan Mortgage Corporation  
8100 Jones Branch Drive, MS B4P  
McLean, Virginia 22102  
Attention: Multifamily Operations - Loan Accounting  
Email: mfla@freddiemac.com  
Telephone: (703) 714-4177

with a copy to

Federal Home Loan Mortgage Corporation  
8200 Jones Branch Drive, MS 210  
McLean, Virginia 22102  
Attention: Managing Associate General Counsel –  
Multifamily Legal Division  
Email: guy\_nelson@freddiemac.com  
Telephone: (703) 903-2000

**Section 4.2. Expenses.** Each Guarantor agrees to pay all reasonable costs and expenses, including reasonable legal fees, which may be incurred by the Governmental Lender and the Fiscal Agent in any effort to collect or enforce any of the obligations of the Guarantors hereunder, whether or not any lawsuit is filed, including, without limitation, all costs and legal fees incurred by the Governmental Lender and the Fiscal Agent in any bankruptcy proceeding (including, without limitation, any action for relief from the automatic stay of any bankruptcy proceeding) and in any judicial or nonjudicial foreclosure action.

**Section 4.3. Amendments; Successors; Remedies.** Neither this Guaranty nor any term hereof may be changed, waived, discharged or terminated orally, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought, subject to the prior written consent of the Governmental Lender. All of the terms of this Guaranty shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns, except that no Guarantor shall have the right to assign any of such Guarantors' rights or obligations under this Guaranty. All remedies of the Governmental Lender and the Fiscal Agent are cumulative. When the context in which the words are used in this Guaranty indicates that such is the intent, words in the singular number shall include the plural and vice-versa. If any one or more of the provisions of this Guaranty should be determined to be illegal or unenforceable, all other provisions shall remain effective. No delay or failure by the Governmental Lender or the Fiscal Agent to exercise any remedy against any Guarantor will be construed as a waiver of that right or remedy. If any Guarantor hereof consists of more than one person or entity, the obligations hereunder shall be joint and several.

**Section 4.4. Assignability by the Governmental Lender.** The Governmental Lender or the Fiscal Agent may, at any time and from time to time, assign, conditionally or otherwise, all of their respective rights under this Guaranty, whereupon such assignee shall succeed to all rights of the Governmental Lender or the Fiscal Agent, as applicable, hereunder to the extent that such rights may be assigned to it. The Governmental Lender or the Fiscal Agent may give written notice to the Guarantors of any such assignment, but any failure to give, or delay in giving, such notice shall not affect the validity or enforceability of any such assignment.

**Section 4.5. Demands.** Each demand by the Governmental Lender or the Fiscal Agent for performance or payment hereunder shall be in writing and shall be made in the manner set forth in Section 4.1 hereof. Interest shall accrue at the Default Rate on all sums not paid by any Guarantor to the Governmental Lender or the Fiscal Agent or the Borrower within ten (10) days after demand.

**Section 4.6. Term.** Subject to Section 3.9 hereof, the obligations of each Guarantor under this Guaranty and any instrument which grants collateral to secure such obligations shall continue in full force and effect until the expiration of the Guaranty Period and the Guarantors have fully performed all of the Guaranteed Obligations and paid all other amounts payable hereunder in accordance with the terms of this Guaranty.

**Section 4.7. Complete Agreement.** This Guaranty supersedes any prior negotiations, discussions or communications between the Guarantors and the Governmental Lender and constitutes the entire agreement between the Governmental Lender, the Fiscal Agent and the Guarantors with respect to the Guaranteed Obligations.



**Section 4.8. Counterparts.** This Guaranty may be executed in one or more counterparts, each of which taken together shall constitute one and the same instrument.

**Section 4.9. Advice of Counsel.** Each Guarantor represents and acknowledges to the Governmental Lender that each Guarantor has consulted with its attorneys regarding the terms and conditions and waivers set forth in this Guaranty. Each Guarantor's attorneys has advised such Guarantor of the true legal consequences of each waiver set forth in this Guaranty, including the rights each Guarantor would have in the absence of such waivers.

**Section 4.10. Waiver of Jury Trial.** THE GOVERNMENTAL LENDER, THE FISCAL AGENT AND THE GUARANTORS HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVE THE RIGHT EITHER MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED HEREON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY AND ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONJUNCTION HERewith, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF EITHER PARTY. THIS PROVISION IS A MATERIAL INDUCEMENT FOR THE GOVERNMENTAL LENDER ENTERING INTO THE PROJECT LOAN AND ACCEPTING THIS GUARANTY.

[Remainder of Page Intentionally Left Blank]

**IN WITNESS WHEREOF**, the Guarantors have caused this Guaranty to be duly executed and delivered as of the date set forth above.

**BORROWER/GUARANTORS:**

**SAN MARCOS HEIGHTS, LLC,**  
a Florida limited liability company

By: San Marcos Heights MM, LLC,  
a Florida limited liability company,  
its Manager

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

**SAN MARCOS HEIGHTS MM, LLC, a**  
Florida limited liability company

By: \_\_\_\_\_  
Name: Darren Smith  
Title: Manager

[\_\_\_\_\_] , a [\_\_\_\_\_]

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

Name: [\_\_\_\_\_]

Title: [\_\_\_\_\_]

\_\_\_\_\_  
[\_\_\_\_\_] , individually

**EXHIBIT "A"**  
**LEGAL DESCRIPTION**

**EXHIBIT "B"**

**LITIGATION**

NONE