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**INDENTURE OF TRUST**

BY AND BETWEEN

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
AS ISSUER**

and

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

Dated as of [June] 1, 2019

Securing

\$19,000,000  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village),  
Series 2019

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## INDENTURE OF TRUST

THIS INDENTURE OF TRUST, made and entered into as of [June] 1, 2019, by and between the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Issuer”), a public and official agency of the State of Texas, 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 authorized to accept and execute trusts of the character herein set forth, including such entity’s successors or any other corporation or association resulting from or surviving any consolidation or merger to which it or its successors may be a party and any successor trustee at any time serving as successor trustee hereunder (the “Trustee”);

### W I T N E S S E T H:

WHEREAS, the Issuer is authorized under the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”) for the purpose, among others, of providing construction and mortgage loans to finance the acquisition, equipping and rehabilitation of sanitary and safe residential housing at prices or rentals which persons and families of low, very low and extremely low income and families of moderate income and persons with special needs can afford; and

WHEREAS, the Act authorizes the Issuer (i) to provide construction and mortgage loans to finance the purchase, construction, remodeling or improvement of residential housing designed and planned for persons and families of low, very low and extremely low income and families of moderate income, as determined by the Issuer; (ii) to issue its revenue bonds for the purposes of providing money with which to (a) make such loans, (b) pay the costs and expenses of issuing such bonds, (c) pay the operation and maintenance expenses of the Issuer in connection with such bonds, and (d) fund, increase or restore necessary reserve funds; (iii) to pledge all or any part of the revenues, income or other resources of the Issuer, including, without limitation, the repayments of mortgage loans, the earnings from investment or deposit of the reserve funds and other funds of the Issuer and any other amounts or payments received by the Issuer pursuant to the Act in order to secure the payment of the principal, interest and redemption premium, if any, on such bonds; and (iv) to issue its refunding bonds for the purpose of refunding any bonds issued by the Issuer for the purposes described above; and

WHEREAS, in order to provide the funds necessary for the acquisition and rehabilitation of the Project (as hereinafter defined, along with any other capitalized term used but not defined in the Recitals or Granting Clauses of this Indenture, in Section 1.01), the Issuer has, pursuant to the Act, Chapter 1371, Texas Government Code, as amended and this Indenture authorized the issuance of its revenue bonds designated as Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019, in the principal amount of \$19,000,000 (the “Bonds”); and

WHEREAS, the Issuer, Northgate Preservation, L.P., a New York limited partnership (the “Borrower”), Regions Bank, an Alabama banking corporation (the “Lender”), and the Trustee have entered into a Financing Agreement, dated as of the date hereof, as it may from time to time be amended pursuant to which the Issuer has agreed to use the proceeds of the Bonds to make a

mortgage loan (the “Mortgage Loan”) to the Borrower to assist in financing the Project (the “Financing Agreement”); and

WHEREAS, the Borrower has agreed to use the proceeds of the Mortgage Loan to finance the acquisition, equipping and rehabilitation of the Project with disbursements of the proceeds of the Mortgage Loan to be made pursuant to the provisions of this Indenture and the Financing Agreement; and

WHEREAS, the Borrower’s repayment obligations in respect of the Mortgage Loan will be evidenced by (i) a Multifamily Note dated the Closing Date (the “Mortgage Note”) delivered to the Issuer, which Mortgage Note will be endorsed by the Issuer to the Lender and (ii) a Multifamily Loan and Security Agreement (Non-Recourse) dated the Closing Date (the “Loan Agreement”) by and between the Borrower and the Issuer, which will be assigned by the Issuer to the Lender; and

WHEREAS, to secure the Borrower’s obligations under the Mortgage Note, the Borrower will execute and deliver to the Issuer a mortgage on the Project (the “Mortgage”), which will be assigned to the Lender and recorded in the Official Public Records of Real Property of Dallas County, Texas; and

WHEREAS, pursuant to the terms hereof, Fannie Mae, as trustee under the Fannie Mae Trust Indenture, shall provide to the Lender the Pass-Through Certificate for sale to the Trustee at the Pass-Through Certificate Purchase Price; and

WHEREAS, the Pass-Through Certificate is to be held in trust by the Trustee and pledged under the terms of this Indenture to secure payment of the Bonds; and

WHEREAS, the Issuer has authorized the execution of this Indenture in order to secure the payment of the principal of, premium, if any, and interest on the Bonds and the observance of the covenants and conditions herein contained; and

WHEREAS, the Issuer has determined that all things necessary to make the Bonds, when executed by the Issuer and authenticated by the Trustee and issued as provided in this Indenture, the valid, binding and legal obligations of the Issuer according to the import thereof, and to constitute this Indenture a valid assignment and pledge of the Revenues and other amounts pledged to the payment of the principal of and interest on the Bonds and a valid and binding agreement for the uses and purposes herein set forth, have been duly taken, and the creation, execution and delivery of this Indenture and the creation, execution and delivery of the Bonds, subject to the terms hereof, have in all respects been duly authorized;

NOW, THEREFORE, THIS INDENTURE OF TRUST WITNESSETH:

The Issuer, in order to secure the payment of the principal of, the premium, if any, and the interest on all Bonds at any time issued and outstanding under this Indenture, according to their tenor, and to secure the performance and observance of all the covenants and conditions therein and herein set forth, and to declare the terms and conditions upon and subject to which the Bonds are to be issued and received, and in consideration of the premises and of the purchase and acceptance of the Bonds by the owners thereof, and for other valuable consideration, the receipt

whereof is hereby acknowledged, does hereby grant, bargain, sell, warrant, convey, confirm, assign, transfer in trust, grant a security interest in, pledge and set over unto the Trustee, the property of the Issuer, real and personal, hereinafter described, for the benefit of the Bondholders, subject only to the provisions hereof permitting the application thereof for or to the purposes and on the terms and conditions set forth herein (said property being herein sometimes referred to as the "Trust Estate"):

## GRANTING CLAUSES

### I.

All right, title and interest of the Issuer in and to amounts on deposit in the Collateral Security Fund to be funded at closing in an amount equal to the principal amount of the Bonds and premium, if any;

### II.

The Pass-Through Certificate, if issued by Fannie Mae and acquired by the Trustee in exchange for amounts on deposit in the Collateral Security Fund;

### III.

All right, title and interest of the Issuer now owned or hereafter acquired in, to and under the Financing Agreement (except Reserved Rights, as hereinafter defined) and the Regulatory Agreement;

### IV.

All Revenues; and

### V.

All other property which by the express provisions of this Indenture is required to be subject to the lien hereof, and any additional property that, from time to time, by delivery or by writing of any kind, may be subjected to the lien hereof, by the Issuer or by anyone on its behalf, and the Trustee is hereby authorized to receive the same at any time as additional security hereunder;

TO HAVE AND TO HOLD all and singular with all privileges and appurtenances hereby given, granted, bargained, sold, conveyed, assigned, pledged, mortgaged and transferred or agreed or intended so to be, whether now owned or hereafter acquired, including any and all additional property that by virtue of any provision hereof or of any indenture supplemental hereto shall hereafter become subject to this Indenture and to the trusts hereby created, unto the Trustee and its successors in trust and assigns forever;

IN TRUST, NEVERTHELESS, upon the terms and trusts herein set forth for the equal and proportionate benefit, security and protection of the registered owners from time to time of any of the Bonds authenticated and delivered under this Indenture and issued by the Issuer and



Outstanding, without preference, priority or distinction as to lien, or otherwise of any one Bond over any other Bond by reason of priority in the issue, sale or negotiation thereof, or of any other cause, and for the benefit of Fannie Mae as herein provided;

PROVIDED, HOWEVER, that if the Issuer, its successors or assigns, shall well and truly pay, or cause to be paid, the principal of, premium, if any, and interest on the Bonds due or to become due thereon, at the times and in the manner mentioned in the Bonds according to the true intent and meaning thereof, or shall provide, as permitted hereby, for the payment thereof by depositing with the Trustee the entire amount due or to become due thereon, and shall well and truly keep, perform and observe all the covenants and conditions pursuant to the terms of this Indenture to be kept, performed and observed by it, and shall pay, cause to be paid or make provision for payment to the Trustee of all sums of money due or to become due in accordance with the terms and provisions hereof, then upon such final payment this Indenture and the rights hereby granted shall cease, determine and be void; otherwise this Indenture shall remain in full force and effect;

AND IT IS HEREBY COVENANTED that all of the Bonds shall be issued, authenticated and delivered, and that the Trust Estate shall be held by the Trustee, subject to the further covenants, conditions, uses and trusts hereinafter set forth, and the Issuer agrees and covenants with the Trustee and with the registered owners from time to time of the Bonds, as follows:

## **ARTICLE I DEFINITIONS AND INTERPRETATION**

Section 1.01. Definitions. Unless the context otherwise requires, the terms defined in this Section shall, for all purposes of this Indenture and of any indenture supplemental hereto, have the following meanings:

“Act” has the meaning given to such term in the Recitals hereto.

“Actual/360” means a computation of interest accrual on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Bonds by the Pass-Through Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month.

“Assigned Loan” means the Mortgage Loan assigned to the Lender by the Issuer on the Closing Date.

“Attesting Officer” means such officer or official of the Issuer who in accordance with the Bond Resolution, the laws of the State, the bylaws or other governing documents of the Issuer or practice or custom, regularly certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“Authorized Officer” means the Chair or Vice Chair of the Governing Body, the Executive Director or Acting Director of the Issuer, the Director of Administration of the Issuer, the Director of Bond Finance and Chief Investment Officer of the Issuer, the Director of Texas Homeownership of the Issuer, and the Secretary or Assistant Secretary to the Governing Body.

“Bankruptcy Code” means the Federal Bankruptcy Code, Title 11 of the United States Code.

“Beneficial Owner” means the purchaser of a beneficial interest in the Bonds.

“Bonds” means the Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019, in the principal amount of \$19,000,000, including any bond or bonds, as the case may be, authorized under and secured by this Indenture and issued pursuant to this Indenture.

“Bond Counsel” means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes and appointed by the Issuer, and initially means Bracewell LLP.

“Bond Documents” means the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Indenture, the Subordinate Mortgage and the Bond Purchase Agreement.

“Bond Fund” means the Fund created and so designated in Section 5.02 hereof.

“Bondholder” or “holder” or “owner” of any Bond or any similar term shall mean the person in whose name any Bond is registered.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated \_\_\_\_\_, 2019, among the Underwriter, the Issuer and the Borrower.

“Bond Register” means the registration books of the Issuer maintained by the Trustee as provided in this Indenture on which registration and transfer of the Bonds is to be recorded.

“Bond Registrar” has the meaning given to such term in Section 2.08 hereof.

“Bond Resolution” means the resolution of the Issuer adopted on May 23, 2019, authorizing the issuance and sale of the Bonds.

“Book Entry Bonds” means the Bonds for which a Depository or its Nominee is the Bondholder.

“Borrower” has the meaning given to such term in the Recitals hereto.

“Business Day” means, with respect to the Pass-Through Certificate and the Bonds, any day other than a Saturday or Sunday, a day when the fiscal agent or paying agent is closed, a day when the Federal Reserve Bank of New York is closed, or a day when the Federal Reserve Bank is closed in a district where a certificate account is located if the related withdrawal is being made from that certificate account, and, with respect to the Bonds, any such day that is also a day on which the Trustee is open for business.

“Closing Date” means the date the Bonds are initially issued and delivered to the original purchaser or purchasers thereof.

“Code” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“Collateral Security Fund” means the Fund of that name created and so designated in Section 5.02 hereof.

“Collateral Security Interest Account” means the Account of that name created and so designated in Section 5.13(a) hereof.

“Collateral Security Principal Account” means the Account of that name created and so designated in Section 5.13(a) hereof.

“Completion Certificate” means the certificate attached as Exhibit B to the Financing Agreement.

“Completion Date” means the date the Project is substantially completed and available and suitable for use as multifamily housing, as set forth in the Completion Certificate.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement dated as of the date hereof between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms thereof.

“Costs of Issuance” has the meaning given to such term in the Tax Exemption Agreement.

“Costs of Issuance Fund” means the Fund created and so designated in Section 5.02 hereof.

“Counsel’s Opinion” means a written opinion, including opinions supplemental thereto, signed by an attorney or firm of attorneys (who may be counsel for the Issuer, the Borrower or Fannie Mae) acceptable to the Trustee.

“Depository” means, initially, DTC and any replacement securities depository appointed under this Indenture.

“Dissemination Agent” means the Trustee, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

“DTC” means The Depository Trust Company, New York, New York.

“Electronic Means” means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services hereunder and approved in writing by Fannie Mae.

“Event of Default” means any occurrence or event specified in Section 8.01 hereof.

“Extension Deposit” means the deposit of Preference Proof Moneys described in Section 5.13(f) hereof.

“Fannie Mae” means Fannie Mae, a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C., § 1716 et seq., and its successors.

“Fannie Mae Trust Indenture” means that certain Trust Indenture of Fannie Mae in its corporate capacity and Fannie Mae in its trustee capacity, dated as of December 1, 2017, (for fully fixed rate mortgage loans) as amended and supplemented, pursuant to which the Pass-Through Certificate is issued.

“Favorable Opinion of Bond Counsel” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

“Federal Tax Status” means, as to the Bonds, the status under existing law of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond for any period during which it is held by a “substantial user” of the Project or by a “related person” to such a “substantial user,” each within the meaning of Section 147(a) of the Code).

“Final Payment Date” means the Business Day after the receipt of the final payment on the Pass-Through Certificate scheduled for [July 25, 2036], or the following Business Day if such date is not a Business Day.

“Financing Agreement” has the meaning given to such term in the Recitals hereto.

“First Payment Date” means July 26, 2019.

“Fund” or “Account” means a fund or account created by or pursuant to this Indenture.

“Governing Body” means the members of the governing board of the Issuer, or any governing body that succeeds to the functions of the governing board of the Issuer.

“Government Obligations” means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

“Indenture” means this Indenture of Trust as it may from time to time be amended, modified or supplemented by Supplemental Indentures.

“Initial Bond” means the initial Bond registered by the Comptroller and subsequently canceled and replaced by a definitive Bond pursuant to this Indenture.

“Issuer” has the meaning given to such term in the Recitals hereto.

“Issuer Administration Fee” means the fee payable annually in advance to the Issuer on each [June] 1, in the amount of .10% per annum of the expected principal amount of Mortgage Loan at the inception of each payment period based on the original balance of the Mortgage Loan and projected amortization thereof, as set forth in Exhibit D. On the Closing Date, the Borrower will pay the Issuer Administration Fee in advance to the Issuer for the period from the Closing Date to [May] 31, 2021. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after June 1, 2021. A schedule of the Issuer Administration Fee is attached to this Indenture as Exhibit D.

“Issuer Compliance Fee” means the fee payable annually in advance to the Issuer on each [June] 1, in the amount of \$25 per low-income unit in the Project. The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after [June] 1, 2022. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“Issuer Fees” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee. The Issuer Fees shall be payable by the Borrower, and not from funds pledged to the benefit of the Trust Estate.

“Lender” has the meaning given to such term in the Recitals hereto.

“Loan Agreement” means the Multifamily Loan and Security Agreement between Borrower and Issuer, as assigned to Fannie Mae, with respect to the Development and dated the Closing Date, as the same may be supplemented, amended or modified from time to time.

“Mandatory Redemption Date” means August 27, 2019, as such date may be extended pursuant to Section 5.13(f).

“Maturity Date” means [July 1, 2036]. The final payment of principal with respect to the Pass-Through Certificate will be made on [July 25, 2036] or the next Business Day and will be passed through to the Bondholders on the Final Payment Date.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, that assigns credit ratings.

“Mortgage” means the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the Closing Date, together with all riders and exhibits, securing the Mortgage Note, executed by the Borrower with respect to the property described in the Mortgage, as it may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

“Mortgage Loan” or “Loan” means the mortgage loan made from the proceeds of the Bonds to the Borrower by the Issuer with respect to the Project on the Closing Date and assigned to the Lender.

“Mortgage Loan Documents” means, collectively, the Mortgage Note, the Mortgage and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Mortgage Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. None of the Financing Agreement, the Subordinate Mortgage or the Regulatory Agreement is a Mortgage Loan Document and neither document is secured by the Mortgage.

“Mortgage Note” means that certain Multifamily Note from the Borrower payable to the order of the Issuer and endorsed by the Issuer, without recourse, to the order of the Lender, evidencing the Borrower’s obligation to repay the Mortgage Loan.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant hereto.

“Officer’s Certificate” means a certificate signed by an Authorized Officer or, if such certificate pertains to official action taken by the Issuer or official records of the Issuer, by an Attesting Officer.

“Operating Fund” means the Fund created and so designated in Section 5.02 hereof.

“Operating Revenues” means all amounts deposited into the Operating Fund from amounts paid under the Financing Agreement.

“Original Issue Price” means the price of \$19,000,000 paid upon the issuance of the Bonds.

“Outstanding” means, when used with reference to the Bonds and as of any particular date, all Bonds theretofore and thereupon being delivered except (a) any Bond cancelled by the Trustee or delivered to the Trustee for cancellation; (b) any Bond for the payment or redemption of which either (i) moneys equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, or (ii) specified types of Permitted Investments or moneys in the amounts, of the maturities and otherwise as described and required under the provisions of Sections 3.01 and 3.03, shall have theretofore been deposited with the Trustee in trust (whether upon or prior to maturity or the redemption date of such Bond) and, except in the case of a Bond to be paid at maturity, as to which a redemption notice shall have been given or provided for in accordance with Section 3.02, and (c) any Bond in lieu of or in substitution for which another Bond shall have been delivered pursuant to this Indenture.

“Participant” means a member of, or a participant in, the Depository.

“Pass-Through Certificate” means the Guaranteed Mortgage Pass-Through Certificate with respect to the Mortgage Loan bearing interest at the Pass-Through Rate, to be issued to and registered in the name of the Trustee by Fannie Mae pursuant to Section 4.03 hereof, not including any portion thereof liquidated or exchanged pursuant to Section 3.05 hereof.

“Pass-Through Certificate Purchase Price” means the principal amount outstanding on the Mortgage Loan plus accrued interest on the Pass-Through Certificate at the Pass-Through Rate to but not including the date of purchase. Such amount shall equal the original principal amount of the Mortgage Loan (\$19,000,000) less any scheduled principal payments on or any prepayments of the Mortgage Loan prior to the Purchase Date.

“Pass-Through Certificate Revenues” means all payments made under and pursuant to the Pass-Through Certificate.

“Pass-Through Rate” means \_\_\_\_% per annum.

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to this Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date a principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month, or the next Business Day if the 25th is not a Business Day, after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of exchange of the Bonds for the Pass-Through Certificate pursuant to Section 3.01(d), the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable principal amount of the Pass-Through Certificate to or upon the order of the Issuer. The payment of interest on a Payment Date shall relate to the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the Final Payment Date.

“Permitted Investments” means, to the extent authorized by law for investment of moneys of the Issuer:

(a) Government Obligations;

(b) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated AAAM-G or AAAM by S&P or Aaa by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated AAAM-G or AAAM by S&P, if S&P is a Rating Agency, or Aaa by Moody’s, if Moody’s is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated AAAM-G or AAAM by S&P or Aaa by Moody’s; and

(c) Dreyfus Treasury Securities Cash Management.

“Preference Proof Moneys” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds, (iii) proceeds of the Mortgage Loan or (iv) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United

States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code.

“Proceeds Fund” means the Fund created and so designated in Section 4.02 hereof.

“Project” means the multifamily rental housing development, known as Northgate Village Apartments, located in Dallas, Texas, on the site described in the Mortgage.

“Purchase Date” means the date on which funds in the Collateral Security Fund are applied by the Trustee to the purchase of the Pass-Through Certificate.

“Qualified Financial Institution” means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by Fannie Mae the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to Fannie Mae.

“Rating Agency” means Moody’s or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns.

“Rebate Fund” means the Fund created and so designated in Section 5.02 hereof.

“Record Date” means the close of business on the last Business Day of the month immediately preceding each Payment Date.

“Redemption Price” when used with respect to a Bond or portion thereof redeemed pursuant to Section 3.01(b), means the principal amount of the Pass-Through Certificate or portion prepaid, plus premium, if any, and interest received pursuant to the Pass-Through Certificate as provided in Section 3.01(b), and with respect to a Bond or portion thereof redeemed on the Mandatory Redemption Date pursuant to Section 3.01(c), means the principal amount thereof to be redeemed plus interest thereon as provided in Section 3.01(c) to be paid from amounts in the Collateral Security Fund.

“Regulations” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Regulatory Agreement” means the Regulatory and Land Use Restriction Agreement relating to the Mortgaged Property, dated as of the date hereof, by and among the Issuer, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time.



“Rehabilitation Account” means the Account of that name created and so designated within the Proceeds Fund in Section 4.02 hereof.

“Rehabilitation Agreement” means the provisions relating to rehabilitation of the Project set forth in Section 18.01(a) of the Loan Agreement.

“Related Factor” means the applicable factor posted by Fannie Mae with respect to the Pass-Through Certificate from time to time as the Assigned Loan amortizes.

“Representation Letter” has the meaning given to such term in Section 2.12 hereof.

“Reserved Rights” of the Issuer means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to Section 4.02 of the Financing Agreement, including the Issuer Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent hereunder and under the Financing Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Financing Agreement, in the Tax Exemption Agreement and in the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in this Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, or the Subordinate Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, this Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, the Subordinate Mortgage or the Mortgage Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of this Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, Subordinate Mortgage and the Mortgage Note; (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in this Indenture, the Regulatory Agreement, the Tax Exemption Agreement or the Financing Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Financing Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

“Responsible Officer” means any Vice President or Assistant Vice President of the Trustee having regular responsibility for corporate trust matters and direct responsibility for the administration of this Indenture.

“Revenues” means the Pass-Through Certificate Revenues and the Operating Revenues.

“S&P” means S&P Global Ratings, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, as assigns credit ratings.

“Seller Loan” means the loan from Northgate Village Associates, LLC, a Texas limited liability company to the Borrower in an amount equal to approximately \$[\_\_\_\_\_], as evidenced and secured by a promissory note and a subordinate mortgage.

“State” means the State of Texas.

“Subordinate Mortgage” means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing dated as of \_\_\_\_\_, 2019 from the Borrower for the benefit of the Trustee and the Issuer as security for the Borrower’s obligations under the Financing Agreement other than repayment of principal and interest on the Mortgage Note.

“Subordination Agreement” means Subordination Agreement (Affordable) dated the Closing Date, by and among the Trustee, Issuer, Lender and Borrower, relating to the subordination of the Subordinate Mortgage to the Mortgage Loan Documents.

“Substitute Depository” means a securities depository appointed as successor to DTC hereunder.

“Supplemental Indenture” means any indenture hereafter duly authorized and entered into between the Issuer and the Trustee amending or supplementing this Indenture in accordance with the provisions hereof.

“Tax Credit Investor” means collectively RAH Investor 226 LLC, a Mississippi limited liability company, and Sterling Corporate Services LLC, a New York limited liability company and their permitted successors and assigns.

“Tax Exemption Agreement” means that certain Tax Exemption Certificate and Agreement of even date herewith, by and among the Issuer, the Trustee and the Borrower, as in effect on the Closing Date and as it may thereafter be amended or supplemented or restated in accordance with its terms.

“Term Sheet” means the Term Sheet relating to the terms of the Mortgage Loan, the Assigned Loan and, when and if issued, the Pass-Through Certificate, dated the Closing Date and attached as Exhibit A to the Financing Agreement.

“Trust Estate” means all the property, rights, moneys, securities and other amounts pledged and assigned to the Trustee pursuant to the Granting Clauses hereof.

“Trustee” has the meaning given to such term in the Recitals hereto.

“Underwriter” means RBC Capital Markets, LLC.

Section 1.02. Rules of Construction.

(a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include the correlative words of other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Indenture as originally executed; and the words “herein,” “hereof,” “hereunder,” and other words of similar import refer to this Indenture as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Indenture or describe the scope or intent of any provisions hereof.

(d) 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.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.

(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Indenture and the Financing Agreement. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Indenture or the Financing Agreement or any amendment or supplement or exhibit hereto or thereto.

(g) Whenever Fannie Mae is required to give its consent or approval to any matter, whether stated as “consent,” “written consent,” “prior written consent,” “approval,” “written approval,” “prior written approval” or otherwise, the giving of such consent or approval by Fannie Mae shall be in its sole and complete discretion.

(h) Whenever Fannie Mae shall have any right or option to exercise any discretion, to determine any matter, to accept any presentation or to approve or consent to any matter, such exercise, determination, acceptance, approval or consent shall, without exception, be in Fannie Mae’s sole and absolute discretion.

## **ARTICLE II THE BONDS**

Section 2.01. Authorization of Bonds. Bonds of the Issuer, to be entitled Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 are hereby authorized to be issued in an aggregate principal amount of \$19,000,000 and shall be issued subject to the terms, conditions and limitations established in this Indenture as hereinafter provided. The Bonds

may be executed by or on behalf of the Issuer, authenticated by the Trustee and delivered or caused to be delivered by the Trustee to the original purchasers thereof upon compliance with the requirements set forth in this Indenture.

Section 2.02. Terms of Bonds.

(a) The Bonds shall be dated as of [June] 1, 2019, and shall bear interest at the Pass-Through Rate in the amounts as accrued and for the periods interest is paid (except as described below in connection with a redemption of Bonds under Section 3.01(c)) pursuant to the terms of the Pass-Through Certificate, payable on each Payment Date, and shall mature (subject to prior redemption as herein set forth) on the Maturity Date. Interest shall be calculated on the basis of Actual/360. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest on the Bonds during the period from the Maturity Date to the Final Payment Date. Notwithstanding anything herein to the contrary, on and after the Purchase Date, the principal, interest and premium, if any, payable on the Bonds will be calculated, except with respect to interest payable on the Bonds if redeemed pursuant to Section 3.01(c) hereof, at the same rate and for the same periods as interest, principal and premium, if any, payable on the Pass-Through Certificate, and will be paid, except with respect to interest payable on the Bonds if redeemed pursuant to Section 3.01(c) hereof (which will be paid on the Mandatory Redemption Date), one Business Day following receipt by the Trustee pursuant to the Pass-Through Certificate.

(b) The Bonds shall be issued as registered bonds without coupons in the denominations of \$1,000.00 or any integral multiples of \$1.00 in excess thereof. The Bonds shall be lettered "R" and shall be numbered separately from "1" consecutively upwards except for the Initial Bond which shall be numbered I-1. The Bonds shall be issued initially as Book Entry Bonds.

(c) Payment of the principal of and interest or premium, if any, on any Bond shall be made on each Payment Date to the person appearing on the Bond Register as the registered owner thereof as of the applicable Record Date at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America. Unless the Bonds are Book Entry Bonds, the principal of the Bonds shall be payable to the registered owners thereof upon presentation (except in connection with a redemption of Bonds pursuant to Section 3.01(b) hereof) at the designated corporate trust office of the Trustee or its successors. Unless the Bonds are Book Entry Bonds, payments of interest on the Bonds and redemption of the Bonds pursuant to Section 3.01(b) hereof shall be paid by check mailed to the registered owner thereof at such owner's address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. The Trustee shall cause CUSIP number identification with appropriate dollar amounts for each CUSIP number to accompany all payments of interest, principal or Redemption Price made to such owners, whether such payment is made by check or wire transfer. All payments of principal of and interest on Book Entry

Bonds shall be made and given at the times and in the manner set out in the Representation Letter, as more fully specified in Sections 2.11 and 2.12 hereof.

(d) The Bonds shall be subject to redemption prior to maturity as provided in Article III.

(e) The date of authentication of each Bond shall be the date such Bond is registered.

(f) The Initial Bond, which shall be numbered I-1 and payable to Cede & Co as Nominee for the Depository and registered by the Comptroller, shall be identical to the form of Bond attached as Exhibit A, except that the second-to-last paragraph of the Initial Bond shall read as follows:

“This Bond shall not be valid or become obligatory for any purpose or be entitled to any benefit or security under the Indenture unless the Comptroller’s Registration Certificate hereon has been executed by an authorized representative of the Texas Comptroller of Public Accounts by manual signature.”

In lieu of the authentication certificate of the Trustee, the Initial Bond shall contain the following certificate:

**“REGISTRATION CERTIFICATE OF  
COMPTROLLER OF PUBLIC ACCOUNTS**

OFFICE OF THE COMPTROLLER           §  
OF PUBLIC ACCOUNTS                   §     REGISTER NO. \_\_\_\_\_  
THE STATE OF TEXAS                   §

I HEREBY CERTIFY that this Bond has been examined, certified as to validity and approved by the Attorney General of the State of Texas, and duly registered by the Texas Comptroller of Public Accounts.

Witness my signature and seal of office this \_\_\_\_\_.

\_\_\_\_\_  
Comptroller of Public Accounts of the  
State of Texas

(SEAL)”

The provisions of Exhibit A may be rearranged or re-ordered for purposes of the Initial Bond.

Section 2.03. Execution; Limited Obligation. The Bonds shall be signed by, or bear the facsimile signature of, the Chair or Vice Chair of the Issuer, with the corporate seal or a

facsimile of the corporate seal of the Issuer imprinted on the Bonds, and attested to by the manual or facsimile signature of the Secretary or Assistant Secretary of the Issuer. In case any one or more of the officers of the Issuer who shall have signed or sealed any of the Bonds or whose signature appears on any of the Bonds shall cease to be such officer before the Bonds so signed and sealed shall have been actually authenticated or delivered or caused to be delivered by the Trustee or issued by the Issuer, such Bonds may, nevertheless, be authenticated and issued and, upon such authentication, delivery and issue, shall be as binding upon the Issuer as if the persons who signed or sealed such Bonds or whose signatures appear on any of the Bonds had not ceased to hold such offices until such delivery. Any Bond may be signed and sealed on behalf of the Issuer by such persons as at the actual time of execution of the Bonds shall be duly authorized or hold the proper office in the Issuer, although at the date of issuance and delivery of the Bonds such persons may not have been so authorized or have held such office.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES. The foregoing statement of limitation shall appear on the face of each Bond.

Section 2.04. Authentication. The Bonds, other than the Initial Bond, shall bear thereon a certificate of authentication, substantially in the form set forth in Exhibit A hereto and executed by the Trustee. Only Bonds which bear thereon such executed certificates of authentication or registration by the Comptroller shall be entitled to any right or benefit under the Indenture, and no Bond shall be valid for any purpose under this Indenture until such certificate of authentication or registration by the Comptroller shall have been duly executed by the Trustee or

the Comptroller, or applicable. Such certificate of authentication upon any Bond shall be conclusive evidence that the Bond so authenticated or registered has been duly issued under this Indenture and that the holder thereof is entitled to the benefits of this Indenture. The Trustee's certificate of authentication on any Bond shall be deemed to have been executed by it if signed by an authorized officer or signatory of the Trustee, but it shall not be necessary that the same officer or signatory sign the certificate of authentication on all of the Bonds issued hereunder. The certificate of authentication on all Bonds delivered by the Trustee hereunder shall be dated the date of its authentication.

Section 2.05. Form of Bonds. The form of the Bonds issued pursuant to this Indenture shall be in substantially the form set forth in Exhibit A hereto, with such variations, omissions or insertions as are permitted by this Indenture.

Section 2.06. Delivery of Bonds. After the execution and delivery of this Indenture, the Issuer shall execute and deliver to the Trustee, and the Trustee shall authenticate, the Bonds and deliver them to the original purchaser or purchasers thereof as directed by the Issuer.

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

- (a) a copy of the Bond Resolution duly certified by an Authorized Officer;
- (b) executed counterparts of this Indenture, the Financing Agreement, the Regulatory Agreement, and the Tax Exemption Agreement;
- (c) an opinion of Bond Counsel or counsel to the Issuer stating that the Issuer has duly adopted the Bond Resolution and has duly authorized, executed and delivered this Indenture and that this Indenture and the Bonds each constitute a legal, valid and binding obligation of the Issuer, subject to any applicable bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors;
- (d) an opinion of Bond Counsel to the effect that interest on the Bonds is excludable from gross income for federal income tax purposes under existing law (except with respect to the interest on any Bond for any period during which such Bond is held by a "substantial user" of the Project or by a "related person" to such a "substantial user," each within the meaning of Section 147(a) of the Code);
- (e) a request and authorization to the Trustee by the Issuer and signed by an Authorized Officer to authenticate and deliver the Bonds to or at the direction of the purchasers thereof upon payment to the Trustee, but for the account of the Issuer, of a sum specified in such request and authorization, plus accrued interest thereon, if any, to the date of delivery. The proceeds of such payment shall be paid over to the Trustee and deposited in the various Funds and Accounts pursuant to, and as specified in, Article IV hereof; and
- (f) evidence the Bonds have been rated "Aaa" by the Rating Agency.

Upon receipt of these documents, the Trustee shall authenticate and deliver the Bonds to or upon the order of the purchaser thereof but only upon payment to the Trustee of the purchase price of the Bonds, together with accrued interest thereon, if any.

Section 2.07. Bonds Mutilated, Lost, Destroyed or Stolen. If any Bond shall become mutilated, the Issuer, at the expense of the owner of such Bond shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor in exchange and substitution for the Bond so mutilated, but only upon surrender to the Trustee of the Bond so mutilated. Every mutilated Bond so surrendered to the Trustee shall be cancelled by it and delivered to, or upon the order of, the Issuer. If any Bond shall be lost, destroyed or stolen, evidence of such loss, destruction or theft may be submitted to the Trustee and, if such evidence shall be satisfactory to it and indemnity satisfactory to the Trustee shall be given, the Issuer, at the expense of the owner of such Bond, shall execute, and the Trustee shall thereupon authenticate and deliver, a new Bond of like tenor. The Trustee may require payment of a sum not exceeding the actual cost of preparing each new Bond authenticated and delivered under this Section and of the expenses which may be incurred by the Issuer and the Trustee in the premises. Any Bond authenticated and delivered under the provisions of this Section in lieu of any Bond alleged to be lost, destroyed or stolen shall constitute an original additional contractual obligation on the part of the Issuer whether or not the Bond so alleged to be lost, destroyed or stolen shall be at any time enforceable by anyone, and shall be equally and proportionately entitled to the benefits of this Indenture with all other Bonds secured by this Indenture. If any such Bond shall have matured, or is about to mature, instead of issuing a new Bond the Trustee may pay the same without surrender thereof upon receipt of the aforementioned indemnity.

Section 2.08. Registration, Transfer and Exchange of Bonds; Persons Treated as Owners. The Issuer shall cause books for the registration, transfer and exchange of the Bonds as provided in this Indenture to be kept by the Trustee, which is hereby constituted and appointed the bond registrar with respect to the Bonds (the "Bond Registrar"). At reasonable times and under reasonable regulations established by the Trustee, said books may be inspected and copied by the Issuer or by owners (or a designated representative thereof) of a majority in aggregate principal amount of the Bonds then Outstanding.

The registration of each Bond is transferable by the registered owner thereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of any Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefor a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

All Bonds presented for registration of transfer, exchange or payment (if so required by the Issuer or the Trustee) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the registered owner or by its duly authorized attorney.

The Issuer, the Bond Registrar and the Trustee shall not be required (i) to issue, register the transfer of or exchange any Bonds during a period beginning at the Trustee's opening of business on the applicable Record Date and ending at the Trustee's close of business on the applicable Payment Date; or (ii) to register the transfer of or exchange any Bond selected, called or being called for redemption as provided herein. No charge shall be made to any Bondholder



for the privilege of registration of transfer as herein provided, but any Bondholder requesting any such registration of transfer shall pay any tax or governmental charge required to be paid therefor.

New Bonds delivered upon any registration of transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by this Indenture and shall be entitled to all of the security and benefits hereof to the same extent as the Bonds surrendered.

The person in whose name any Bond is registered shall be deemed the owner thereof by the Issuer and the Trustee, and any notice to the contrary shall not be binding upon the Issuer or the Trustee. Notwithstanding anything herein to the contrary, to the extent the Bonds are Book Entry Bonds, the provisions of Section 2.11 shall govern the exchange and registration of Bonds.

Section 2.09. Cancellation of Bonds. Whenever any Outstanding Bond shall be delivered to the Trustee for cancellation pursuant to this Indenture, upon payment of the principal amount and interest represented thereby, for replacement pursuant to Section 2.07 or for transfer or exchange pursuant to Section 2.08, such Bond shall be canceled and destroyed by the Trustee and, upon written request of the Issuer, counterparts of a certificate of destruction evidencing such destruction shall be furnished by the Trustee to the Issuer.

Section 2.10. Pledge Effected by Indenture. The Pass-Through Certificate held pursuant to the Indenture, all amounts that may be received under a Fannie Mae trust agreement, all rights of the Issuer or the Trustee under a Fannie Mae trust agreement, the Pass-Through Certificate Revenues and all amounts held in any Fund or Account under this Indenture are hereby ratably pledged to secure the payment of the principal of and the interest on the Bonds, subject only to the provisions of this Indenture permitting the application thereof for other purposes. Such pledge shall, pursuant to the Act, constitute a pledge, assignment, lien and security interest or grant made pursuant to the Act and shall be valid and binding and immediately effective, upon its being made or granted, without any physical delivery, filing, recording or further act, and shall be valid and binding as against, and superior to any claims of all others having claims of any kind against the Issuer or any other person, irrespective of whether such other parties have notice of the pledge.

Section 2.11. Book-Entry System; Limited Obligation. The Bonds shall be initially issued in the form of a separate single fully registered Bond (which may be typewritten). Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as provided in Section 2.13, all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole but not in part, only to the Depository, to a Substitute Depository or to another nominee of the Depository or of a Substitute Depository. Each global Bond shall bear a legend substantially to the following effect: “UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED

REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.”

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Issuer and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of which such a Participant holds a beneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Participant, Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any redemption notice with respect to the Bonds, including any redemption notice following a failure to purchase the Pass-Through Certificate, (c) the selection by the Depository and the Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Participant, Beneficial Owner or any other person, other than the Depository, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Issuer and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bond, for the purpose of giving redemption notices pursuant to Section 3.02 and other notices with respect to such Bond, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Bondholders, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid hereunder with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Bondholder, as shown in the Bond Register, shall receive a Bond evidencing the obligation to make payments of principal of, premium, if any, and interest pursuant to this Indenture. Upon delivery by the Depository to the Trustee and the Issuer of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions herein with respect to Record Dates, the word Nominee in this Indenture shall refer to such new nominee of the Depository.

The Issuer and the Trustee will recognize the Depository or its nominee as the Bondholder of Book Entry Bonds for all purposes, including receipt of payments, notices and voting, provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by the Bondholders of a related portion of the Bonds when such votes are received in compliance with an omnibus proxy of the Depository or otherwise pursuant to the rules of the Depository or the provisions of the Representation Letter or other comparable evidence delivered to the Trustee by the Bondholders.

SO LONG AS A BOOK ENTRY SYSTEM OF EVIDENCE OF TRANSFER OR OWNERSHIP OF ALL THE BONDS IS MAINTAINED IN ACCORDANCE HERewith, THE PROVISIONS OF THIS INDENTURE RELATING TO THE DELIVERY OF PHYSICAL

BOND CERTIFICATES SHALL BE DEEMED TO GIVE FULL EFFECT TO SUCH BOOK ENTRY SYSTEM AND ALL DELIVERIES OF ANY SUCH BONDS SHALL BE MADE PURSUANT TO THE DELIVERY ORDER PROCEDURES OF DTC, AS IN EFFECT FROM TIME TO TIME.

Section 2.12. Representation Letter. In order to qualify the Bonds for the Depository's book-entry system, if necessary, any Authorized Officer is hereby authorized to execute, seal, countersign and deliver on behalf of the Issuer to such Depository a letter from the Issuer in substantially the Depository's standard form representing such matters as shall be necessary to so qualify the Bonds (the "Representation Letter"). The Representation Letter includes such letter as it may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor. The execution by the Issuer and delivery of the Representation Letter shall not in any way limit the provisions of Section 2.11 or in any other way impose upon the Issuer any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the registered owners, as shown in the Bond Register kept by the Trustee. In the written acceptance by the Trustee of the Representation Letter, the Trustee shall agree, and hereby agrees, to take all actions necessary for all representations of the Issuer in the Representation Letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of the Representation Letter, any Authorized Officer is hereby authorized to take any other actions, not inconsistent with this Indenture, to qualify the Bonds for the Depository's book-entry program.

The terms and provisions of the Representation Letter shall govern in the event of any inconsistency between the provisions of this Indenture and the Representation Letter. The Representation Letter may be amended without Bondholder consent.

Section 2.13. Transfers Outside Book-Entry System. If at any time the Depository notifies the Issuer and the Trustee that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation and a Substitute Depository is not appointed by the Issuer within 90 days after the Issuer and the Trustee receive notice or become aware of such condition, as the case may be, Section 2.11 shall no longer be applicable and the Issuer shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as provided below. Bonds issued in exchange for global bonds pursuant to this Section shall be registered in such names and delivered in such authorized denominations as the Depository, pursuant to instructions from the Participants or otherwise, shall instruct the Issuer and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered. To the extent that the holder of the Bonds under this Indenture is not an exempt recipient under Treas. Reg. § 1.6045-1(c)(3), such holder shall provide or cause to be provided to the Trustee information regarding the amount paid for the Bonds, any brokers' fees or commissions, and any other capitalized costs relating to the Bonds, in each case to the extent necessary for 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 ensure the accuracy of such information.

Section 2.14. Payments and Notices to the Nominee. Notwithstanding any other provision of this Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository.

Section 2.15. Initial Depository and Nominee. The initial Depository under this Indenture shall be DTC. The initial Nominee shall be Cede & Co., as nominee of DTC.

Section 2.16. Payment Information. The Trustee shall on the 10th day of each month request information from the Lender as to the payments received from the Borrower on the Mortgage Loan during the prior month. Unless otherwise instructed the request shall be sent to:

Regions Bank

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

Attention: \_\_\_\_\_

Phone: \_\_\_\_\_

Facsimile: \_\_\_\_\_

Any information received by the Trustee pursuant to this request shall be transmitted by the Trustee to the Issuer. Failure to provide this information shall not be a default under the Indenture or any other Bond Document.

### **ARTICLE III REDEMPTION OF BONDS**

Section 3.01. Terms of Redemption.

(a) General. The Bonds shall be subject to redemption prior to the stated maturity thereof only as set forth in this Section.

(b) Mandatory Redemption from Principal Payments or Prepayments. The Bonds are subject to mandatory redemption, in whole or in part, in the amounts and one Business Day after the dates (i) scheduled principal payments are received pursuant to the Pass-Through Certificate at a price equal to 100% of the principal amount received pursuant to the Pass-Through Certificate, plus interest received pursuant to the Pass-Through Certificate, (ii) prepayments are received with respect to the Pass-Through Certificate, at a price equal to 100% of the principal amount received pursuant to the Pass-Through Certificate, plus interest and premium, if any, received pursuant to the Pass-Through Certificate, or (iii) prior to the Purchase Date, on which redemption is otherwise required under the provisions of Section 5.13(h) hereof.

(c) Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate. The Bonds are subject to mandatory redemption in whole on the Mandatory Redemption Date (as such date may be extended hereunder) at a Redemption Price equal

to the Original Issue Price plus interest accrued to but not including the Mandatory Redemption Date (as such date may be extended hereunder) upon five (5) Business Days' notice if (i) a Purchase Date has not occurred by the last date on which timely notice of such redemption may be given preceding such Mandatory Redemption Date (as such date may be extended hereunder) and (ii) an Extension Deposit has not been made pursuant to Section 5.13(f), at the Original Issue Price plus interest accrued on the Bonds to but not including the Mandatory Redemption Date (as such date may be extended hereunder).

(d) Mandatory Redemption in Lieu of Exchange. The Bonds are subject to mandatory redemption in part in the event the Issuer elects pursuant to Section 3.05 hereof to redeem a Beneficial Owner's Bonds for an amount equal to the Cash Value in lieu of delivering to the Beneficial Owner of the Bonds its proportional interest in the Pass-Through Certificate based upon its proportional interest in the Bonds. Any such redemption shall be made in accordance with the provisions of Section 3.05 hereof. The Cash Value (as hereinafter defined) shall be calculated by the Issuer, or by a financial advisor selected by the Issuer, and shall be verified by an independent verification agent in writing confirming the mathematical accuracy of the calculations.

Section 3.02. Notice of Redemption.

(a) When the Trustee shall receive notice of (i) a prepayment under Section 3.01(b)(ii) that the Pass-Through Certificate will be prepaid, or (ii) an unscheduled principal prepayment pursuant to the last sentence of Section 5.13(h), the Trustee, in accordance with the provisions of this Indenture, shall use its best efforts to give not less than 20 nor more than 30 days' notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee's name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. The notice for Bonds other than Book Entry Bonds shall be sent to the holders of the Bonds by first-class mail, postage prepaid, at their respective addresses appearing on the Bond Register. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

(b) The Trustee shall give the Bondholders not less than five (5) Business Days' notice of the redemption of the Bonds pursuant to Section 3.01(c) hereof, which notice shall specify the following: (i) the maturity dates and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption (which may include a condition to the effect that if the Purchase Date occurs not later than the close of business on the second Business Day preceding such Mandatory Redemption Date (as such date may be extended hereunder), the noticed mandatory

redemption shall not occur); (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee's name and address with a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. For Bonds other than Book-Entry Bonds such notice shall be sent to the holders of the Bonds by first class mail, postage prepaid, at their respective addresses appearing on the Bond Register. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

(c) The Bonds to be redeemed pursuant to Section 3.01 will be selected in accordance with the operational arrangements of DTC or any successor Substitute Depository, and any partial redemption pursuant thereto shall be made in accordance with the "Pro Rata Pass-Through Distributions of Principal" procedures of DTC or comparable procedures of any successor Substitute Depository. A notice of redemption given pursuant to the provisions described under this subsection (c) will be given in accordance with the operational arrangements of DTC or any successor Substitute Depository.

(d) In the event that the Pass-Through Certificate has not been purchased by the Trustee ten (10) Business Days prior to any Mandatory Redemption Date, the Trustee shall provide written notice to the Borrower, the Issuer and the Tax Credit Investor of such non-purchase.

Notwithstanding this Section 3.02, no prior notice shall be a prerequisite to the effectiveness of any redemption under Section 3.01 which redemption shall occur and be effective irrespective of whether the Trustee fulfills its obligation to provide the notice with respect to certain redemptions required by Section 3.01 pursuant to this Section 3.02.

Section 3.03. Payment of Redemption Price. With respect to any redemption pursuant to Section 3.01 hereof, notice having been given in the manner provided in Section 3.02 hereof (or not required to be given as a result of a redemption pursuant to Section 3.01(b)(i) or (b)(iii)), and all conditions to the redemption contained in such notice, if applicable, having been met, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the applicable Redemption Price, and (except as provided in Section 2.02(c) in connection with a redemption of Bonds pursuant to Section 3.01(b)) upon presentation and surrender thereof at the offices specified in such notice, together with, in the case of Bonds presented by other than the registered owner, a written instrument of transfer duly executed by the registered owner or its duly authorized attorney; provided, however, that so long as the Bonds are registered in the name of the Depository, payment for such redeemed Bonds shall be made in accordance with the Representation Letter of the Issuer. If, on the redemption date, moneys for the redemption of the Bonds to be redeemed, together with all accrued interest on such Bonds, which shall equal all interest accrued on the Pass-Through Certificate to the redemption date, shall be held by the Trustee so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds so called for redemption shall cease to accrue.

Section 3.04. Cancellation. All Bonds which have been redeemed, paid or retired or received by the Trustee for exchange shall not be reissued but shall be canceled and held by the Trustee in accordance with Section 2.09 hereof.

Section 3.05. Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds. A Beneficial Owner of Bonds may file with the Trustee a written request, in the form attached hereto as “Exhibit C – NOTICE OF REQUEST TO EXCHANGE” (the “Request Notice”), to exchange Bonds for a like principal amount of the Pass-Through Certificate, provided, that (i) the principal amount of Bonds and Pass-Through Certificate exchanged will be no less than \$500,000, (ii) the Pass-Through Certificate will be, when delivered pursuant to any Exchange (as defined in the second paragraph of this Section 3.05), in a face amount equal to \$1,000.00 or any integral multiples of \$1.00 in excess thereof, and (iii) the Project is complete and placed in service by the Borrower as evidenced by a certificate of occupancy for the Project delivered by the Borrower to the Trustee accompanied by a letter from the Borrower confirming that the Project is placed in service for purposes of Section 42 of the Code. The Request Notice must be delivered to the Trustee at least ten (10) Business Days prior to the Exchange Date (as defined in the Request Notice).

Upon receipt of a Request Notice, the Trustee shall promptly provide a copy to the Issuer and the Lender. The Issuer shall then have up to six (6) Business Days, in its sole discretion, to provide written direction to the Trustee to either (i) deliver to the Beneficial Owner its proportional interest in the Pass-Through Certificate based upon such Beneficial Owner’s proportional interest in the Bond (the “Exchange”) or (ii) redeem the Beneficial Owner’s Bonds under Section 3.01(d) hereof for an amount equal to the Cash Value (as defined in this section) as of the Exchange Date (as defined in the Request Notice). The Issuer shall have no obligation to exercise either option, and failure by the Issuer to exercise either option is not an Event of Default; provided, however, that any failure of the Issuer to provide written direction to the Trustee within the six (6) Business Day period set forth above shall be deemed a direction to deliver the proportionate interest in the Pass-Through Certificate in lieu of redeeming the Bonds. The Trustee shall notify such Beneficial Owner of the Issuer’s direction within four (4) Business Days of receipt or a deemed direction from the Issuer. Upon receipt of the Bonds in the principal amount set forth in the Request Notice from the requesting Beneficial Owner and compliance with the requirements of this Section, the Trustee will promptly cancel the Bonds being exchanged or redeemed. Any Bonds so exchanged or redeemed will not be reissued.

Cash Value = original face amount of the Pass-Through Certificate x Related Factor x (1 + Redemption Premium (R) + (Initial Offering Premium (I) x Related Factor)) – an amount equal to the principal to be received by such Beneficial Owner on the next Payment Date (if the date of redemption occurs between the Record Date and such Payment Date)

Where R = 5% if the exchange occurs during the first five years from the Closing Date;

= 4% during the sixth year;

= 3% during the seventh year;

= 2% during the eighth year;

= 1% during the ninth year; and

= 0% thereafter

and I = initial offering price of the Bonds - 100%

In the event that the Issuer elects to deliver the Beneficial Owner's proportional interest in the Pass-Through Certificate in lieu of redeeming the Bonds, after validating the exchange request, the Trustee shall transfer and deliver to such requesting Beneficial Owner the Trustee's beneficial ownership interest in the Beneficial Owner's proportional interest in the Pass-Through Certificate as of the date specified in the Request Notice promptly following (i) delivery to the Trustee (via DTC withdrawal or Deposit/Withdrawal At Custodian ("DWAC")) of the Bonds being exchanged and (ii) payment by the requesting Beneficial Owner of the Trustee's exchange fee (\$1,000 as of the date of this Indenture) and the Issuer's exchange fee (\$1,000 as of the date of this Indenture). Such Pass-Through Certificate will be (1) in book-entry form and (2) transferred in accordance with (a) the operational arrangements of DTC or any successor Substitute Depository and (b) current market practices, including the applicable provisions of the SIFMA's *Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities*. If the Exchange Date is subsequent to a Record Date and prior to a corresponding Payment Date for the Bonds, the Trustee shall wire the applicable principal and interest payments on the exchanged Bonds to the Beneficial Owner using the wire transfer instructions set forth on the Request Notice.

In the event that the Issuer elects to redeem Bonds in lieu of an Exchange, the Trustee shall transfer a like principal amount of its interest in the Pass-Through Certificate to or upon the order of the Issuer in exchange for an amount equal to the Cash Value plus accrued interest to the date of redemption (less any interest to be received by the Beneficial Owner on the next Payment Date if the redemption occurs between the Record Date and such Payment Date) and apply the proceeds of such transfer to the payment of the Redemption Price of the Bonds on the Payment Date by wiring such amount to the Beneficial Owner at its wire transfer instructions set forth on the Request Notice. The Issuer reserves the right to sell all or a portion of its interest in the Pass-Through Certificate in order to pay the Cash Value.

None of Fannie Mae, the Trustee or the Issuer shall have any liability to the Beneficial Owner arising from (i) any Exchange or redemption of Bonds effected hereby or (ii) any of the costs or expenses thereof. Interest on such Pass-Through Certificate is not excludable from gross income for federal income tax purposes.

#### **ARTICLE IV APPLICATION OF BOND PROCEEDS**

Section 4.01. Initial Deposits. On the Closing Date, the Trustee shall make the following deposits:

(a) \$[\_\_\_\_], representing accrued interest on the Bonds, shall be deposited to the Collateral Security Interest Account as provided in Section 5.13(b)(ii); and

(b) \$[\_\_\_\_], representing a portion of the Bond proceeds loaned to the Borrower pursuant to the Mortgage Loan made by the Issuer in the amounts set forth in



Section 5.13(b)(ii) and (iii) shall be deposited to the Collateral Security Interest Account; and

(c) [Reserved]

(d) \$[\_\_\_\_], representing a portion of the Bond proceeds loaned to the Borrower by the Issuer pursuant to the Mortgage Loan shall be deposited to the Proceeds Fund and \$[\_\_\_\_], representing the remaining portion of the Bond proceeds loaned to the Borrower pursuant to the Mortgage Loan shall be deposited to the Costs of Issuance Fund; and

(e) \$[\_\_\_\_], representing funds received by or on behalf of the Borrower shall be deposited to the Costs of Issuance Fund; and

(f) \$19,000,000, representing payment for the Assigned Loan in consideration of the assignment by the Issuer to the Lender of the Mortgage Loan in an amount set forth in Section 5.13(b)(i) shall be deposited to the Collateral Security Principal Account pending application to purchase the Pass-Through Certificate by the Trustee.

Section 4.02. Proceeds Fund. The Trustee shall establish, create and maintain a Proceeds Fund under this Indenture, and within the Proceeds Fund, there shall be established the Rehabilitation Account, and amounts on deposit in the Proceeds Fund shall be disbursed by the Trustee to fund the Project Costs (as defined in the Tax Exemption Agreement) pursuant to requisitions in the form of Exhibit B attached to this Indenture. The Proceeds Fund shall not be a part of the Trust Estate upon the funding of the Collateral Security Fund. After the initial disbursement from the Proceeds Fund and payment of Costs of Issuance and other disbursements pursuant to the terms of this Indenture on the Closing Date, the balance left in the Proceeds Fund for rehabilitation purposes shall be deposited in the Rehabilitation Account. Moneys in the Rehabilitation Account shall be held by the Trustee under said Account for reasons of convenience and tax accounting only. Such balance shall, pending disbursement to the Borrower at the written direction of the Lender, pursuant to the terms of the Rehabilitation Agreement, be pledged by the Borrower to the Lender until the Purchase Date, and thereafter to Fannie Mae. The Trustee shall hold such funds as custodian for Lender as the pledgee and not for the Bondholders.

Section 4.03. Delivery of Pass-Through Certificate. The obligation of the Trustee to purchase the Pass-Through Certificate on the Purchase Date shall be subject to satisfaction of the following conditions:

The Trustee shall have received written notification from the Lender upon which the Trustee may conclusively rely and act without further investigation certifying that the Pass-Through Certificate duly executed by Fannie Mae is available for purchase by the Trustee at the Pass-Through Certificate Purchase Price, has terms consistent with the Term Sheet, and meets the following requirements:

(a) has a Stated Principal Balance (as defined in the Fannie Mae Trust Indenture) which is equal to the outstanding Mortgage Loan balance shown in the amortization schedule on the Purchase Date as included in the Term Sheet;

(b) bears interest at the Pass-Through Rate payable on the 25th day of each month, commencing on the 25th day of the month following the month in which the Trustee purchases the Pass-Through Certificate, or if any such 25th day is not a Business Day, the next succeeding Business Day, and have a final maturity date, which is the same as the Maturity Date of the Bonds;

(c) provides that timely payment of principal (whether on any scheduled Payment Date or prior thereto upon any mandatory prepayment of the Mortgage Note or upon any optional prepayment of the Mortgage Note or upon declaration of acceleration following a default thereunder upon Fannie Mae's determination that the Mortgage Loan is or is to be deemed a Fully Prepaid Mortgage Loan (as defined in the Fannie Mae Trust Indenture)) and interest on the Pass-Through Certificate is guaranteed to the record owner of the Pass-Through Certificate, regardless of whether corresponding payments of principal and interest on the Mortgage Loan are paid when due; and

(d) otherwise reflects Assigned Loan terms consistent with the Term Sheet attached as Exhibit A to the Financing Agreement, taking into account any changes in such terms as may be reflected in any written notice delivered to the Issuer and the Trustee by the Lender pursuant to Section 4.04 of the Financing Agreement; provided, however, that such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

Upon purchase of the Pass-Through Certificate on the Purchase Date, the Trustee shall post a notification to this effect on the Electronic Municipal Market Access website of the Municipal Securities Rulemaking Board, substantially in the form of Exhibit E.

## **ARTICLE V REVENUES AND FUNDS**

Section 5.01. Pledge of Revenues and Assets. The pledge and assignment of and the security interest granted in the Trust Estate pursuant to the Granting Clauses hereof for the payment of the principal of, premium, if any, and interest on the Bonds, in accordance with their terms and provisions, and for the payment of all other amounts due hereunder, shall attach, be perfected and be valid and binding from and after the time of the delivery of the Bonds by the Trustee or by any person authorized by the Trustee to deliver the Bonds. The Trust Estate so pledged and then or thereafter received by the Trustee 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 Issuer irrespective of whether such parties have notice thereof.

Section 5.02. Establishment of Funds. In addition to the Proceeds Fund established under Section 4.02, the Trustee shall establish, maintain and hold in trust the following funds, each of which shall be disbursed and applied only as herein authorized:

- (a) Bond Fund;
- (b) Operating Fund;

- (c) Costs of Issuance Fund;
- (d) Collateral Security Fund; and
- (e) Rebate Fund.

Section 5.03. Application of Revenues. All Pass-Through Certificate Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Bond Fund.

Section 5.04. Application of Operating Fund. All Operating Revenues shall be deposited into the Operating Fund. Amounts in the Operating Fund shall be withdrawn by the Trustee and used solely to pay first, any amount required to be deposited in the Rebate Fund in accordance with the provisions of the Tax Exemption Agreement to the extent sufficient funds are not otherwise made available to the Trustee for such purposes; second, the Issuer Administration Fee on the dates specified in the definition of such term in this Indenture; third, the Issuer Compliance Fee on the dates specified in the definition of such term in this Indenture; fourth, on each Payment Date the fees and expenses of the Trustee; and fifth, the fees and expenses incurred in connection with the determination of rebatable arbitrage in accordance with the provisions of the Tax Exemption Agreement. In the event the amounts in the Operating Fund are not equal to the amounts payable from the Operating Fund on any date on which such amounts are due and payable to fund such deficiency, the Trustee shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within five Business Days to the Trustee of the amount of such deficiency. No amount shall be charged against the Operating Fund except as expressly provided in this Section.

Section 5.05. Application of Bond Fund. The Trustee shall disburse from the Bond Fund, on each Payment Date an amount equal to the amount of the principal, including prepayments, interest and premium, if any, received on the Pass-Through Certificate on or immediately prior to such Payment Date.

Section 5.06. Investment of Funds. The moneys held by the Trustee shall constitute trust funds for the purposes hereof, which moneys shall be managed, invested, disbursed and administered as provided in this Indenture and in the Tax Exemption Agreement. Any moneys attributable to each of the Funds hereunder shall be invested by the Trustee at the written direction of the Borrower in Permitted Investments which mature or are redeemable at par on the date on which such funds are expected to be needed for the purposes for which they are held, subject in all cases to the restrictions of the Tax Exemption Agreement. Notwithstanding anything herein to the contrary, (i) all amounts in the Bond Fund shall be invested in Permitted Investments, (ii) the Proceeds Fund shall be held uninvested, and (iii) all amounts in the Collateral Security Fund shall be invested solely in Permitted Investments. If the Trustee does not receive written direction from the Borrower regarding the investment of funds, the Trustee shall invest in the investment described in subparagraph (c) of the definition of Permitted Investments or, if such investment is not available or no longer qualifies as a Permitted Investment, solely in Permitted Investments described in subparagraph (b) of the definition of Permitted Investments, which shall mature or be redeemable at par at the times set forth in the preceding sentence. The Trustee may conclusively rely upon the Borrower's written instructions as to the suitability of the directed investments. In no event shall the Trustee be liable for the selection of investments made in accordance with the

terms of this Section 5.06 or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Borrower to provide timely written investment direction. Ratings of Permitted Investments shall be determined at the time of purchase of such Permitted Investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including account maintenance fees.] Notwithstanding any provision of this Indenture to the contrary, at no time shall the Borrower direct that any funds constituting Gross Proceeds of the Bonds (as defined in the Tax Exemption Agreement) be used in any manner as would constitute failure of compliance with Section 148 of the Code. Notwithstanding the foregoing, in no event shall the Trustee be released from liability for its own negligence or willful misconduct.

Permitted Investments representing an investment of moneys attributable to any Fund shall be deemed at all times to be a part of such Fund. Such investments shall be sold at the best price obtainable whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal, payment or disbursement from such Fund. In the case of any required transfer of moneys to another such Fund, such investments may be transferred to that Fund in lieu of the required moneys if permitted hereby as an investment of moneys in that Fund.

All Permitted Investments acquired by the Trustee pursuant hereto shall be purchased in the name of the Trustee and shall be held for the benefit of the holders of the Bonds pursuant to the terms of this Indenture. The Trustee shall take such actions as shall be necessary to assure that such Permitted Investments are held pursuant to the terms of this Indenture and are subject to the trust and security interest herein created.

The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance herewith. The Trustee or its affiliates may act as sponsor, principal or agent in the acquisition or disposition of investments. The Trustee may commingle investments made under the Funds and Accounts established hereunder, but shall account for each separately.

In computing for any purpose hereunder the amount in any Fund on any date, obligations so purchased shall be valued at the lower of cost or par exclusive of accrued interest, and may be so valued as of any time within four days prior to such date.

The Issuer acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur. The Borrower specifically waives such notification to the extent permitted by law and will receive periodic cash transaction statements that will detail all investment transactions.

Section 5.07. Moneys Held for Particular Bonds. The amounts held by the Trustee for the payment of the interest, principal or premium, if any, due on any date with respect to particular Bonds shall, pending such payment, be set aside and held in trust by it for the holders of the Bonds entitled thereto, and for the purposes hereof such interest, principal or premium, if any, after the due date thereof, shall no longer be considered to be unpaid.

Section 5.08. Funds Held in Trust. All moneys held by the Trustee, as such, at any time pursuant to the terms of this Indenture shall be and hereby are assigned, transferred and set over unto the Trustee in trust for the purposes and under the terms and conditions of this Indenture and the Tax Exemption Agreement.

Section 5.09. Accounting Records. The Trustee shall maintain accurate books and records for all Funds and Accounts established hereunder. Pursuant to the Tax Exemption Agreement, the Trustee shall cause to be kept and maintained adequate records pertaining to the investment of all proceeds of the Bonds sufficient to permit the Borrower, on behalf of the Issuer, to determine the Rebate Amount (as defined in the Tax Exemption Agreement), if any, with respect to the Bonds required to be paid to the United States of America pursuant to Section 148 of the Code. The Trustee shall have no responsibility to make such determination.

Section 5.10. Amounts Remaining in Funds. After full payment of the Bonds (or provision for payment thereof having been made in accordance with Section 7.01) and full payment of the fees and expenses of the Trustee and other amounts required to be paid hereunder and under the Financing Agreement including fees payable to the Issuer and Fannie Mae, any amounts remaining in any Fund hereunder other than the Rebate Fund shall be paid to the Lender for the payment of any amounts due and payable to the Lender and/or Fannie Mae and thereafter, to the Borrower; provided, however, that after the Purchase Date if a default shall have occurred and remain uncured under the Mortgage Loan of which the Trustee shall have received written notice from Fannie Mae or the Lender, then any such amounts remaining in any Fund or Account hereunder shall be paid to Fannie Mae.

Section 5.11. Rebate Fund. The Rebate Fund is for the sole benefit of the United States of America and shall not be subject to the claim of any other person, including without limitation, the Issuer. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, is held in trust and applied solely as provided in the Tax Exemption Agreement. Moneys and securities held by the Trustee in the Rebate Fund are not pledged or otherwise subject to any security interest in favor of the Trustee to secure the Bonds or any other payments required to be made hereunder or any other document executed and delivered in connection with the issuance of the Bonds. The Trustee will make deposits to and disbursements from the Rebate Fund, as well as investments of the amounts therein, in accordance with the written directions received from the Borrower, all in accordance with the provisions of the Tax Exemption Agreement. Notwithstanding the foregoing, the Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it hereunder.

Section 5.12. Costs of Issuance Fund. On or before the Closing Date, the Borrower shall deliver to the Trustee for deposit in the Costs of Issuance Fund, amounts to pay Costs of Issuance. The Trustee shall use amounts in the Costs of Issuance Fund to pay the Costs of Issuance on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Issuer, upon delivery to the Trustee of appropriate invoices for such expenses. Any unexpended amounts attributable to deposits made by the Borrower remaining on deposit in the Costs of Issuance Fund three months after the Closing Date shall be returned to the Borrower.

Section 5.13. Collateral Security Fund. (a) There shall be established within the Collateral Security Fund two Accounts: (i) a Collateral Security Principal Account, and (ii) a Collateral Security Interest Account.

(b) On the Closing Date, (i) the payment received by the Trustee from the Lender for the Assigned Loan in an amount equal to the principal amount of the Bonds shall be deposited to the Collateral Security Principal Account, (ii) the amount received under the Bond Purchase Agreement representing accrued interest on the Bonds from June 1, 2019 to but not including the Closing Date shall be deposited to the Collateral Security Interest Account, and (iii) Bond proceeds in an amount equal to the interest on the Bonds from the Closing Date to but not including the initial Mandatory Redemption Date shall be deposited to the Collateral Security Interest Account (for a total deposit to the Collateral Security Interest Account equal to 87 days' interest on the Bonds).

(c) Moneys on deposit in the Collateral Security Fund (derived from the amount on deposit in the Collateral Security Principal Account and an amount on deposit in the Collateral Security Interest Account equal to the accrued interest on the Pass-Through Certificate) shall be applied by the Trustee to purchase the Pass-Through Certificate on the Purchase Date.

(d) If the Purchase Date occurs in the same month as the Closing Date (i.e., [June] 2019) or in a subsequent month following the Payment Date for such month then following the Purchase Date the Trustee shall, in the case of Bond proceeds, transfer the remaining balance in the Collateral Security Interest Account to the Rehabilitation Account of the Proceeds Fund, or otherwise disburse such funds to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(e) If the Purchase Date (i) occurs in a month following the Closing Date (e.g., [July] 2019) and (ii) on or prior to the Payment Date for such month, then the Trustee shall retain the amount on deposit in the Collateral Security Interest Account and apply moneys from such Account to pay the interest on the Bonds on the next Payment Date. So long as payment has already been made or provided for with respect to the Payment Date in the month in which the Purchase Date occurs, any balance in the Collateral Security Interest Account following such Payment Date shall be, in the case of Bond proceeds, transferred to the Rehabilitation Account of the Proceeds Fund, or otherwise disbursed to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(f) The Borrower or the Tax Credit Investor may at any time (not later than the last day for which notice of redemption must be given pursuant to Section 3.01(c)) extend the Mandatory Redemption Date by depositing Preference Proof Moneys (excluding proceeds of the Assigned Loan, which shall remain on deposit in the Collateral Security Fund) to the credit of the Collateral Security Interest Account in an amount sufficient to pay the interest on the Bonds from the last Payment Date to the extended Mandatory Redemption Date (an "Extension Deposit").

(g) Extension Deposits shall continue to be made by the Borrower or the Tax Credit Investor until the Purchase Date occurs or the Borrower or the Tax Credit Investor declines to make an Extension Deposit resulting in the mandatory prepayment of the Bonds pursuant to Section 3.01(c) hereof.

(h) If a Purchase Date has not yet occurred and the Borrower or the Tax Credit Investor has extended the Mandatory Redemption Date by making an Extension Deposit, the Trustee shall apply amounts on deposit in the Collateral Security Interest Account to pay the preceding month's accrual of interest on the Bonds on the next Payment Date. Whether or not the Mandatory Redemption Date has been extended, on any Payment Date, the Trustee shall also apply amounts on deposit in the Collateral Security Principal Account equal to the amount set forth in the Mortgage Loan amortization schedule on the first day of the month in which such Payment Date occurs as included in the Term Sheet to redeem principal of the Bonds on such Payment Date; such redemption shall be in an amount equal to the preceding month's principal amortization on the Mortgage Loan as set forth in the Mortgage Loan amortization schedule included in the Term Sheet. Notwithstanding the foregoing in the event of any unscheduled principal prepayment prior to or on the Purchase Date, the Trustee shall redeem the Bonds in an amount equal to such unscheduled principal prepayment.

(i) After the Purchase Date, and after making the transfers set forth in Sections 5.13(d) and (e), the Trustee shall remit to the Borrower any moneys on deposit in the Bond Fund deriving from the Mortgage Loan that are not needed to pay debt service on or the Redemption Price of the Bonds due to the operation of the Collateral Security Interest Account.

(j) Moneys on deposit in the Collateral Security Fund shall be invested as provided for in Section 5.06 of this Indenture and the Tax Exemption Agreement.

Section 5.14. Reports From the Trustee. The Trustee shall furnish to the Borrower (and to Fannie Mae and the Lender upon written request) quarterly and to the Issuer monthly statements of the activity and assets held in each of the Funds and Accounts maintained by the Trustee hereunder.

## **ARTICLE VI COVENANTS OF ISSUER**

Section 6.01. Payment of Bonds. Subject to the other provisions of this Indenture, the Issuer shall duly and punctually pay or cause to be paid from the Revenues the principal of, premium, if any, and interest on the Bonds, at the dates and places and in the manner described in the Bonds, according to the true intent and meaning thereof solely from amounts available in the Trust Estate. The Bonds are not a general obligation of the Issuer, but are payable solely from the Trust Estate.

The payment and other obligations of the Issuer with respect to the Bonds are intended to be, and shall be, independent of the payment and other obligations of the issuer or maker of the Mortgage Note and the Pass-Through Certificate, even though the principal amount of all three

instruments is expected to be identical, except in the case of a default with respect to one or more of the instruments.

Section 6.02. Performance of Covenants by Issuer.

(a) In General. The Issuer covenants that it will faithfully perform on its part at all times any and all covenants, undertakings, stipulations and provisions contained in this Indenture, in any and every Bond executed, authenticated and delivered hereunder and in all of its proceedings pertaining thereto; provided, however, that, except for the matters set forth in Section 6.01 hereof relating to payment of the Bonds, the Issuer will not be obligated to take any action or execute any instrument pursuant to any provision hereof until it has been requested to do so by the Borrower or by the Trustee, or has received the instrument to be executed and, at the option of the Issuer, has received from the party requesting such execution assurance satisfactory to the Issuer that the Issuer will be reimbursed for its reasonable expenses incurred or to be incurred in connection with taking such action or executing such instrument. The Issuer covenants that it is duly authorized under the Constitution and the laws of the State, including particularly the Act and the Bond Resolution, to issue the Bonds authorized hereby and to execute this Indenture, to grant the security interest herein provided, to assign and pledge the Trust Estate (except as otherwise provided herein) and to assign and pledge the amounts hereby assigned and pledged in the manner and to the extent herein set forth, that all action on its part for the issuance of the Bonds and the execution and delivery of this Indenture has been duly and effectively taken and that the Bonds in the hands of the owners thereof are and will be valid and enforceable special, limited obligations of the Issuer according to the terms thereof and hereof. Anything contained in this Indenture to the contrary notwithstanding, it is hereby understood that none of the covenants of the Issuer contained in this Indenture are intended to create a general or primary obligation of the Issuer.

(b) Rights Under Financing Agreement. The Financing Agreement sets forth covenants and obligations of the Issuer and the Borrower, and reference is hereby made to the same for a detailed statement of said covenants and obligations. The Issuer agrees to cooperate in the enforcement of all covenants and obligations of the Borrower under the Financing Agreement and agrees that the Trustee, in its name, may enforce all rights of the Issuer (other than the Reserved Rights) and all obligations of the Borrower under and pursuant to the Financing Agreement and on behalf of the holders, whether or not the Issuer has undertaken to enforce such rights and obligations.

(c) Issuer's Further Assurance. The Issuer covenants that it will do, execute, acknowledge, and deliver or cause to be done, executed, acknowledged, and delivered by the parties within its control, such instruments supplemental hereto and such further acts, instruments, and transfers as the Trustee may reasonably require for the better assuring, transferring, mortgaging, conveying, pledging, assigning, and confirming unto the Trustee, the Issuer's interest in and to all interests, revenues, proceeds, and receipts pledged hereby to the payment of the principal of, premium, if any, and interest on the Bonds in the manner and to the extent contemplated herein. The Issuer shall be under no obligation to prepare, record, or file any such instruments or transfers.



(d) Unrelated Bond Issues. The Issuer, prior to the issuance of the Bonds, has issued, and subsequent to the issuance of the Bonds, the Issuer expects to issue various series of bonds in connection with the financing of other projects (said bonds together with any bonds issued by the Issuer between the date hereof and issuance of the Bonds shall be referred to herein as the “Other Bonds”). Any pledge, mortgage, or assignment made in connection with any Other Bonds shall be protected, and any funds pledged or assigned for the payment of principal, premium, if any, or interest on the Other Bonds shall not be used for the payment of principal, premium, if any, or interest on the Bonds. Correspondingly, any pledge, mortgage, or assignment made in connection with the Bonds shall be protected, and any funds pledged or assigned for the payment of the Bonds shall not be used for the payment of principal, premium, if any, or interest on the Other Bonds.

Section 6.03. Tax Covenants. The Issuer represents, covenants and agrees that:

(a) the Issuer will comply with all applicable requirements of the Code that are necessary to preserve the Federal Tax Status of the Bonds, as further set forth in the Tax Exemption Agreement; and

(b) the Issuer will not take any action inconsistent with its expectations stated in the Tax Exemption Agreement and will comply with the covenants and requirements stated therein and incorporated by reference herein.

Section 6.04. Compliance with Conditions Precedent. Upon the Closing Date, all conditions, acts and things required by law regarding the Issuer to exist, to have happened or to have been performed precedent to or in the issuance of such Bonds shall exist, shall have happened and shall have been performed, and such Bonds, together with all other indebtedness of the Issuer, shall be within every debt and other limit prescribed by law.

Section 6.05. Extension of Payment of Bonds. The Issuer shall not directly or indirectly extend or assent to the extension of the maturity of the principal due on any of the Bonds or the time of payment of interest due on the Bonds, and if the time for payment of any such claims for interest shall be extended through any other means, such Bonds or claims for interest shall not be entitled in case of any default hereunder to any payment out of the Trust Estate or the funds (except funds held in trust for the payment of particular Bonds pursuant hereto) held by the Trustee, except subject to the provisions of Section 7.02 and subject to the prior payment of the principal of all Bonds issued and Outstanding the maturity of which has occurred and has not been extended and of such portion of the accrued interest on the Bonds which is not represented by such extended claims for interest.

Section 6.06. Further Assurances. At any time and at all times the Issuer shall, so far as it may be authorized by law, pass, make, do, execute, acknowledge and deliver, all and every such further resolutions, acts, deeds, conveyances, assignments, transfers and assurances and enter into such further agreements as may be necessary or desirable for the better assuring, conveying, granting, assigning or confirming all and singular the rights in, pledge and grant of a security interest in the Trust Estate hereby pledged or assigned in trust, or intended so to be, or which the Issuer may hereafter become bound to pledge or assign in trust.

Section 6.07. Powers as to Bonds and Pledge. The Issuer is duly authorized pursuant to law to authorize and issue the Bonds, to enter into this Indenture and to pledge, assign, transfer and set over unto the Trustee in trust the Trust Estate herein purported to be so pledged, assigned, transferred and set over unto the Trustee in trust hereby in the manner and to the extent provided herein. The Trust Estate so pledged, assigned, transferred and set over in trust is and will be free and clear of any pledge, lien, charge or encumbrance thereon with respect thereto prior to, or of equal rank with, the pledge and assignment in trust created hereby, and all action on the part of the Issuer to that end has been duly and validly taken. The Bonds and the provisions hereof are and will be the valid and binding limited obligations of the Issuer in accordance with their terms and the terms hereof. The Bonds shall not be deemed to constitute a debt or liability of the State or any political subdivision thereof, other than the Issuer to the limited extent herein provided, or a pledge of the faith and credit or the taxing power of the State or of any such political subdivision, but shall be payable solely from funds provided therefor pursuant hereto. The Issuer has no taxing power.

Section 6.08. Preservation of Revenues; Amendment of Agreements. The Issuer shall not take any action to interfere with or impair the pledge and assignment hereunder of the Trust Estate, or the Trustee's enforcement of any rights hereunder or under the Financing Agreement or the Regulatory Agreement without the prior written consent of the Trustee. The Trustee may give such written consent, and may itself take any such action or consent to an amendment or modification to the Financing Agreement, the Regulatory Agreement or the Pass-Through Certificate, only with the written consent of Fannie Mae and following receipt by the Trustee of written confirmation from the Rating Agency that the taking of such action or the execution and delivery of such amendment or modification will not adversely affect the rating then assigned to the Bonds by the Rating Agency, and if the Trustee shall have received a Favorable Opinion of Bond Counsel. Notwithstanding the foregoing, Fannie Mae and the Borrower may amend the Mortgage Note and the Mortgage without the consent of the Issuer, the Trustee or the holders of the Bonds so long as any such amendment does not reduce or modify the payments due under the Pass-Through Certificate.

Section 6.09. Assignment. Any assignment of the Issuer's rights in favor of the Trustee shall not include Reserved Rights.

Section 6.10. Request and Indemnification. Where the consent of or other action on the part of the Issuer is required in this or any other document, the Issuer shall have no obligation to act unless first requested to do so, and the Issuer shall have no obligation to expend time or money or to otherwise incur any liability unless indemnity satisfactory to the Issuer has been furnished to it.

Section 6.11. Limitations on Liability. Notwithstanding anything in this Indenture or in the Bonds, the Issuer shall not be required to advance any money derived from any source other than the Revenues and other assets pledged under this Indenture for any of the purposes of this Indenture.

No agreements or provisions contained in this Indenture, nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall give rise to any pecuniary liability

of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way except from the application of Revenues or proceeds pledged to the payment of the Bonds and the proceeds of the Bonds. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other financial and pecuniary charge except to the extent that the same can be paid or recovered from the Financing Agreement or the Revenues or other assets pledged to the payment of the Bonds or the proceeds of the Bonds.

## **ARTICLE VII DISCHARGE OF INDENTURE**

Section 7.01. Defeasance. (a) If all Bonds shall be paid and discharged as provided in this Section, then all obligations of the Trustee and the Issuer under this Indenture with respect to all Bonds shall cease and terminate, except only (i) the obligation of the Trustee to pay or cause to be paid to the owners thereof all sums due with respect to the Bonds and to register, transfer and exchange Bonds pursuant to Section 2.08, (ii) the obligation of the Issuer to pay the amounts owing to the Trustee under Section 9.02 from the Trust Estate, and (iii) the obligation of the Issuer to comply with Section 6.03 hereof and with the Tax Exemption Agreement. Any funds held by the Trustee at the time of such termination which are not required for payment to Bondholders or for payment to be made by the Issuer, shall be paid as provided in Section 5.10.

Any Bond or portion thereof in an authorized denomination shall be deemed no longer Outstanding under this Indenture if paid or discharged in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest on such Bond which have become due and payable; or

(ii) by depositing with the Trustee, in trust, cash which, together with the amounts then on deposit in the Bond Fund and dedicated to this purpose, is fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof; or

(iii) by depositing with the Trustee, in trust, any investments listed in subparagraph (a) under the definition of Permitted Investments in Section 1.01 in such amount as in the written opinion of a certified public accountant will, together with the interest to accrue on such Permitted Investments without the need for reinvestment, be fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof, notwithstanding that such Bond shall not have been surrendered for payment.

(b) Notwithstanding the foregoing, no deposit under clauses (ii) and (iii) of subsection (a) above shall be deemed a payment of such Bond until the earlier to occur of:

(i) if such Bond is by its terms subject to redemption within 45 days, proper notice of redemption of such Bond shall have been previously given in accordance with Section 3.02 to the holder thereof or, in the event such Bond is not by its terms subject to redemption within 45 days of making the deposit under

clauses (ii) and (iii) of subsection (a) above, the Issuer shall have given the Trustee irrevocable written instructions to mail by first-class mail, postage prepaid, notice to the holder of such Bond as soon as practicable stating that the deposit required by clauses (ii) or (iii) of subsection (a) above, as applicable, has been made with the Trustee and that such Bond is deemed to have been paid and further stating such redemption date or dates upon which money will be available for the payment of the principal and accrued interest thereon; or

(ii) the maturity of such Bond.

(c) The Trustee shall be entitled to receive a report from a nationally recognized accounting firm to provide for the payment of all Bonds to be defeased pursuant to this Section.

Section 7.02. Unclaimed Moneys. Anything herein to the contrary notwithstanding, and subject to applicable escheatment laws of the State, any moneys held by the Trustee in trust for the payment and discharge of any of the Bonds which remain unclaimed for two years after the date when such Bonds have become due and payable, either at maturity or by call for redemption, if such moneys are held by the Trustee at said date, or for two years after the date of deposit of such moneys if deposited with the Trustee after the date when such Bonds became due and payable, shall be paid by the Trustee to the Issuer as its absolute property and free from trust, and the Trustee shall thereupon be released and discharged with respect thereto and the holders of such Bonds shall look only to the Issuer for the payment thereof; provided, however, that before being required to make any such payment to the Issuer, the Trustee shall cause to be mailed to the holders of such Bonds, at their addresses shown on the Bond Register, notice that said moneys remain unclaimed and that, after a date named in said notice, which date shall be not less than 30 nor more than 60 days after the date of mailing such notice, the balance of such moneys then unclaimed will be paid to the Issuer; and provided further, that the provisions of this Section shall not apply to the extent disposition of any moneys so held by the Trustee shall be governed by any laws applicable to the Trustee or the Issuer dealing with the disposition of such unclaimed property.

Section 7.03. No Release of Pass-Through Certificate. Except as provided in this Section, Section 3.05 and in Section 7.04, the Trustee shall not release and discharge the Pass-Through Certificate from the lien of this Indenture until the principal of, premium, if any, and interest on the Bonds shall have been paid or duly provided for under this Indenture. The Trustee shall not release or assign its beneficial interest in the Pass-Through Certificate other than as provided in Section 3.05 hereof to any person other than a successor Trustee so long as Fannie Mae shall not be in default thereunder.

Section 7.04. Transfer of Pass-Through Certificate. The Trustee shall maintain the Pass-Through Certificate in book entry form, in the book entry system maintained by the United States Federal Reserve Banks, in the name of the Trustee and may not sell, assign, transfer or otherwise dispose of its beneficial interest in the Pass-Through Certificate except as provided in Section 7.03 and in accordance with Section 3.05.

Section 7.05. Issuance of Additional Obligations. The Issuer shall not hereafter create or permit the creation of or issue any obligations or create any additional indebtedness secured by

a charge and lien on the Pass-Through Certificate Revenues or other moneys, securities, funds and property pledged by this Indenture, other than the Bonds authorized under Section 2.01 hereof.

Section 7.06. Modification of Mortgage Terms. To the extent allowed by applicable State law, the Issuer shall consent to the modification of, or modify, the amount of time or payment of any installment of principal or interest on the Mortgage Loan or the security for or any terms or provisions of the Mortgage Loan or Mortgage or the security for the same or the rate or rates of interest on the Mortgage Loan, solely to the extent required by federal or State law or regulations.

## **ARTICLE VIII DEFAULT PROVISIONS AND REMEDIES OF TRUSTEE AND BONDHOLDERS**

Section 8.01. Events of Default. Each of the following shall constitute an Event of Default under this Indenture:

- (a) Failure by Fannie Mae to pay principal, interest or premium, if any, due under the Pass-Through Certificate;
- (b) Failure to pay the principal, interest or premium, if any, on the Bonds when the same shall become due; or
- (c) Default in the observance or performance of any other covenant, agreement or condition on the part of the Issuer in this Indenture or the Tax Exemption Agreement and the continuation of such default for a period of 90 days after written notice to the Issuer from the Trustee or the registered owners of at least 75% in aggregate principal amount of the Bonds Outstanding at such time specifying such default and requiring the same to be remedied.

The Trustee, upon any failure by Fannie Mae to distribute to the Trustee any payment required to be made under the terms of the Pass-Through Certificate, shall notify Fannie Mae not later than the next Business Day (all such notices to be promptly confirmed in writing) requiring the failure to be remedied.

The Trustee will immediately notify the Issuer, the Bondholders, the Lender and Fannie Mae after a Responsible Officer obtains knowledge or receives notice of the occurrence of an Event of Default or an event which would become an Event of Default with the passage of time or the giving of notice, or both.

Section 8.02. Acceleration; Rescission of Acceleration. Upon the occurrence of an Event of Default under Section 8.01(a), the Trustee may, and upon the written request of the holders of not less than 75% in aggregate principal amount of the Bonds then Outstanding, which written request shall acknowledge that the amounts due on the Pass-Through Certificate cannot be accelerated solely by virtue of acceleration of the Bonds, and upon receipt of indemnity satisfactory to it, shall, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Subject to Section 8.13, upon the occurrence of an Event of Default under Section 8.01(b) no action shall be taken by the Trustee, unless an Event of Default has occurred pursuant to Section 8.01(a), in which

event the Trustee shall proceed as provided above. An Event of Default under Section 8.01(c) hereof shall not give rise to an acceleration pursuant to this Section, provided, however, that following such an Event of Default, the holders of 100% of the Bonds then Outstanding may direct the Trustee in writing to transfer the Pass-Through Certificate to it or its designee, in which case, the Trustee shall cancel the Bonds upon such release and transfer of the Pass-Through Certificate, and upon such transfer, the Bonds will no longer be Outstanding. In the event any payments are received by the Trustee after the transfer of the Pass-Through Certificate and cancellation of the Bonds, all such payments shall belong to and be transferred to the owner of the Pass-Through Certificate.

The acceleration of the Bonds will not constitute a default under, or by itself cause the acceleration of, the Pass-Through Certificate.

If at any time after the Bonds 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 Issuer, the Borrower or Fannie Mae, as applicable, shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on all the Bonds then due with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provisions shall have been made therefor, and all other defaults hereunder have been made good or cured or waived in writing by the holders of a majority in principal amount of the Bonds then Outstanding, then and in every case, the Trustee on behalf of the holders of all the Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, nor shall it impair or exhaust any right or power consequent thereon.

Section 8.03. Other Remedies; Rights of Bondholders. Subject to Section 8.13, upon the happening and continuance of an Event of Default the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under this Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights:

(a) By pursuing any available remedies under the Financing Agreement, the Regulatory Agreement or the Pass-Through Certificate, and prior to the Purchase Date, the Mortgage;

(b) Upon an Event of Default under 8.01(a) only, by realizing or causing to be realized through sale or otherwise upon the security pledged hereunder (including the sale or disposition of the Pass-Through Certificate); and

(c) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the Bonds and to 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 Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

If an Event of Default shall have occurred, and if requested by the holders of not less than 75% in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by this Article as the Trustee, being advised by counsel, shall deem to be in the best interests of the Bondholders subject to the limitations set forth above and in this Indenture.

No right or remedy by the terms of this Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders hereunder or under the Financing Agreement, the Regulatory Agreement or the Pass-Through Certificate or now or hereafter existing at law or in equity.

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

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

Section 8.04. Representation of Bondholders by Trustee. The Trustee is hereby irrevocably appointed (and the Bondholders, by accepting and holding their Bonds, shall be conclusively deemed to have so appointed the Trustee and to have mutually covenanted and agreed, each with the other, not to revoke such appointment) the true and lawful attorney in fact of the Bondholders with power and authority, in addition to any other powers and rights heretofore granted the Trustee, at any time in its discretion to make and file, in any proceeding in bankruptcy or judicial proceedings for reorganization or liquidation of the affairs of the Issuer, either in the respective names of the Bondholders or on behalf of all the Bondholders as a class, any proof of debt, amendment of proof of debt, petition or other document, to receive payment of any sums becoming distributable to the Bondholders, and to 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 Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

In the enforcement of any rights and remedies hereunder, the Trustee in its own name and as trustee of an express trust on behalf of and for the benefit of the holders of all Bonds, shall be entitled to sue for, enforce payment on and receive any and all amounts then or during any Event of Default becoming, and at any time remaining, due from the Issuer for principal, premium, if any, interest or other moneys, under any provision hereof or of the Bonds, and unpaid, with interest on overdue payments at the rate or rates of interest specified in such Bonds, together with any and all costs and expenses of collection and of all proceedings hereunder and under such Bonds, without prejudice to any other right or remedy of the Trustee or of the Bondholders.

Section 8.05. Action by Trustee. All rights of action hereunder or upon any of the Bonds enforceable by the Trustee may be enforced by the Trustee without the possession of any of the Bonds, or the production thereof at the trial or other proceedings relative thereto, and any such suit, action or proceeding instituted by the Trustee may be brought in its name for the ratable benefit of the holders of such Bonds subject to the provisions hereof.

In any action, suit or other proceeding by the Trustee, the Trustee shall be paid fees, counsel fees and expenses in accordance with Section 9.02.

Section 8.06. Accounting and Examination of Records After Default. The Issuer covenants with the Trustee and the Bondholders that, if an Event of Default shall have happened and shall not have been remedied, the books of record and account of the Issuer relating to the Bonds and the Project shall at all times during normal business hours be subject to the inspection and use of the Trustee and of its agents and attorneys.

Section 8.07. Restriction on Bondholder Action. No holder of any Bond shall have any right to institute any suit, action or proceeding in equity or at law for the enforcement of any provision hereof or for the execution of any trust hereunder or for any other remedy hereunder, unless (a)(i) such holder previously shall have given to the Issuer and the Trustee written notice of the Event of Default on account of which such suit, action or proceeding is to be instituted, and (ii) after the occurrence of such Event of Default, a written request shall have been made of the Trustee to institute such suit, action or proceeding by the holders of not less than 75% in aggregate principal amount of the Bonds then Outstanding and there shall have been offered to the Trustee security and indemnity satisfactory to it against the costs and liabilities to be incurred therein or thereby, and (iii) the Trustee shall have been enjoined or restrained from complying or shall have refused or neglected or otherwise failed to comply with such request within a reasonable time; or (b)(i) such holder previously shall have obtained the written consent of the Trustee to the institution of such suit, action or proceeding, and (ii) such suit, action or proceeding is brought for the ratable benefit of the holders of all Bonds subject to the provisions hereof.

Nothing in this Article contained shall affect or impair the right of any Bondholder to enforce the payment of the principal of, premium, if any, and interest on his or her Bonds or the obligation of the Issuer to pay the principal of, premium, if any, and interest on each Bond to the holder thereof, at the time and place and from the source expressed in such Bonds and pursuant to the terms of the Bonds and this Indenture.

No holder of any Bond shall have any right in any manner whatever by his or her action to affect, disturb or prejudice the pledge of Revenues or of any other moneys, funds or securities hereunder, or, except in the manner and on the conditions in this Section provided, to enforce any right or duty hereunder.

Section 8.08. Application of Moneys After Default. All moneys collected by the Trustee 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 Trustee to the Bond Fund. Such moneys so credited to the Bond Fund and all other moneys from time to time credited to the Bond Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of Article V and this Section.



Subject in all instances to the provisions of Section 8.11, in the event that at any time the moneys credited to the Bond Fund, or any other funds held by the Issuer or the Trustee available for the payment of interest or principal then due with respect to the Bonds, shall be insufficient for such payment, such moneys and funds (other than funds held for the payment or redemption of particular Bonds as provided in Section 5.07) shall be applied as follows:

(a) Only in the event that there has been an Event of Default hereunder pursuant to Section 8.01(a) as a result of a failure by Fannie Mae to make payments under the Pass-Through Certificate, for payment of all amounts due to the Trustee incurred in performance of its duties under this Indenture and the other documents executed in connection therewith, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under this Indenture and the other documents executed in connection herewith;

(b) Unless the principal of all of the Bonds shall have become or have been declared due and payable:

*First:* To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

*Second:* To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and premium, if any, on the Bonds so due on any date, then to the payment of principal ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference and then to the payment of any premium due on the Bonds, ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference; and

(c) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal of, premium, if any, and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

Section 8.09. Control of Proceedings. In the case of an Event of Default pursuant to Section 8.01(a), the holders of 75% in aggregate principal amount of the Bonds then Outstanding shall have the right, subject to the provisions of Section 8.07, by an instrument in writing executed and delivered to the Trustee, to direct the time, method and place of conducting any proceeding

for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not be taken lawfully, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or otherwise adversely affect the Trustee or be unjustly prejudicial to Bondholders not parties to such direction.

Section 8.10. Waivers of Events of Default. The Trustee shall waive any Event of Default hereunder and its consequences and rescind any declaration of maturity of principal of, premium, if any, and interest on the Bonds upon the written request of the holders of a majority in aggregate principal amount of all Bonds then Outstanding with respect to which there is an Event of Default; provided, however, that there shall not be waived (a) any default in the payment of the principal amount of any Bonds at the date of maturity specified therein or upon proceedings for mandatory redemption, or (b) any default in the payment when due of the interest or premium, if any, on any such Bonds, unless prior to such waiver or rescission all arrears of interest, with interest (to the extent permitted by law) at the rate borne by the Bonds in respect of which such Event of Default shall have occurred on overdue installments of interest or all arrears of payments of principal or premium, if any, when due (whether at the stated maturity thereof or upon proceedings for mandatory redemption) as the case may be, and all expenses of the Trustee in connection with such monetary default, shall have been paid or provided for, and in case of any such waiver or rescission, the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder respectively.

No such waiver or rescission shall extend to any subsequent or other default, or impair any right consequent thereto; and no delay or omission of the Trustee or of any Bondholders to exercise any right or power accruing upon any Event of Default shall impair any right or power or shall be construed to be a waiver of any such Event of Default, or acquiescence therein.

Section 8.11. Subordination. No claim for interest on any of the Bonds which claim in any way at or after maturity shall have been transferred or pledged by the holder thereof separate and apart from the Bond to which it relates, unless accompanied by such Bond, shall be entitled in case of an Event of Default hereunder to any benefit by or from this Indenture except after the prior payment in full of the principal of and premium, if any, on all of the Bonds then due and of all claims for interest then due not so transferred or pledged.

Section 8.12. Termination of Proceedings. In case any proceeding taken by the Trustee on account of any Event of Default shall have been discontinued or abandoned for any reason or determined adversely to the Trustee, then in every such case the Issuer, the Borrower, the Trustee and the Bondholders shall be restored to their former positions and rights hereunder, respectively, and all rights, remedies, powers and duties of the Trustee shall continue as though no such proceeding had been taken.

Section 8.13. No Interference or Impairment of Pass-Through Certificate. Notwithstanding any other provision of this Indenture to the contrary, so long as the Pass-Through Certificate remains outstanding and Fannie Mae is not in default in its payment obligations thereunder, neither the Issuer, the Trustee nor any person under their control shall, without the prior written consent of Fannie Mae, exercise any remedies or direct any proceedings under the

Indenture other than to (a) enforce rights under the Pass-Through Certificate, (b) enforce the tax covenants in this Indenture, the Tax Exemption Agreement and the Financing Agreement, or (c) enforce rights of specific performance under the Regulatory Agreement; provided, however, that any enforcement under (b) or (c) above shall not include seeking monetary damages other than actions for Issuer Fees or the Trustee's fees and expenses.

Nothing contained in this Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Trustee to pay the principal of, premium, if any, and interest on the Bonds issued hereunder to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed herein and in said Bonds.

## **ARTICLE IX THE TRUSTEE**

Section 9.01. Acceptance of the Trusts. The Trustee hereby accepts the trusts imposed upon it by this Indenture, and agrees to perform said trusts, but only upon and subject to the following express terms and conditions and no implied covenants or conditions shall be read into this Indenture against the Trustee:

(a) The Trustee, prior to the occurrence of an Event of Default and after the curing of all Events of Default which may have occurred, undertakes to perform such duties and only such duties as are specifically set forth in this Indenture. In case an Event of Default has occurred (which has not been cured or waived) the Trustee shall exercise such of the rights and powers vested in it by this Indenture, and use the same degree of care and skill in their exercise, as a reasonable person would exercise or use under the circumstances in the conduct of his or her own affairs.

(b) The Trustee may execute any of the trusts or powers hereof and perform any of its duties by or through attorneys, agents, receivers or employees but shall not be answerable for the conduct of the same if appointed with reasonable care, and shall be entitled to advice of counsel concerning all matters of the trusts hereof and the duties hereunder, and may in all cases pay such reasonable compensation to all such attorneys, agents, receivers and employees as may reasonably be employed in connection with the trusts hereof. The Trustee may act upon the opinion or advice of any attorneys (who may be the attorney or attorneys for the Issuer, the Borrower or Fannie Mae) approved by the Trustee in the exercise of reasonable care. The Trustee shall not be responsible for any loss or damage resulting from any action or non-action taken in good faith in reliance upon such opinion or advice.

(c) The Trustee shall not be responsible for any recital herein, or in the Bonds (except in respect to the certificate of the Trustee endorsed on the Bonds), or for insuring the Project or collecting any insurance moneys, or for the registration, filing or recording or re-registration, re-filing or re-recording of this Indenture or the Mortgage or any financing statements relating hereto or thereto or for the validity of the execution by the Issuer of this Indenture or of any supplements hereto or instruments of further assurance, or for the sufficiency of the security for the Bonds issued hereunder or intended to be

secured hereby, or for the value or title of the Project or otherwise as to the maintenance of the security hereof. The Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Bonds 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 Trustee by the Issuer) were made. The Borrower shall be responsible for the reasonable costs incurred by the Trustee in the preparation and filing of all such continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Trustee 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 Trustee shall have been notified by the Issuer or the Borrower that any such initial filing or description of collateral was or has become defective, the Trustee shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 9.01 and in filing any continuation statements in the same filing offices as the initial filings were made. The Trustee shall not be bound to ascertain or inquire as to the performance or observance of any covenants, conditions or agreements on the part of the Issuer or on the part of the Borrower under the Financing Agreement, except as hereinafter set forth; but the Trustee may require of the Issuer or the Borrower full information and advice as to their performance of the covenants, conditions and agreements aforesaid. The Trustee acknowledges it has assumed certain duties of the Issuer under the Financing Agreement, the Tax Exemption Agreement and the Regulatory Agreement.

(d) The Trustee shall not be accountable for the use of any Bonds authenticated or delivered hereunder and shall have no responsibility for the use of any Bond proceeds paid out in accordance with the Indenture provisions. The Trustee may become the owner of Bonds secured hereby with the same rights which it would have if it were not Trustee hereunder. To the extent permitted by law, the Trustee may act as depository for, and permit any of its officers or directors to act as a member of, or in any other capacity with respect to, any committee formed to protect the rights of Bondholders or to effect or aid in any reorganization growing out of the enforcement of the Bonds or this Indenture, whether or not any such committee shall represent the holders of a majority in aggregate principal amount of the Bonds Outstanding.

(e) The Trustee shall be fully protected in acting under any notice, request, consent, certificate, order, affidavit, letter, facsimile transmission, telegram or other paper or document believed to be genuine and correct and to have been signed or sent by the proper person or persons. Any action taken by the Trustee pursuant to this Indenture upon the request, authority or consent of any person who at the time of making such request or giving such authority or consent is the owner of any Bond, shall be conclusive and binding upon all future owners of the same Bond and upon Bonds issued in exchange therefor or in place thereof.

(f) As to the existence or nonexistence of any fact or as to the sufficiency or validity of any instrument, paper or proceeding, the Trustee shall be entitled to rely (unless other evidence in respect thereof is herein specifically prescribed) upon an Officer's Certificate as sufficient evidence of the facts therein contained and prior to the occurrence of an Event of Default of which the Trustee has been notified as provided in subsection (h) of this Section, or of which by said subsection it is deemed to have notice, shall also be at liberty to accept an Officer's Certificate to the effect that any particular dealing, transaction or action is necessary or expedient, but may at its discretion secure such further evidence deemed necessary or advisable, but shall in no case be bound to secure the same. The Trustee may accept a certificate signed by an Attesting Officer of the Issuer as conclusive evidence that a resolution of the governing body of the Issuer has been duly adopted and is in full force and effect.

(g) The permissive right of the Trustee to do things enumerated in this Indenture shall not be construed as a duty and it shall not be answerable for other than its own negligence or willful misconduct.

(h) The Trustee shall not be required to take notice or be deemed to have notice of any default or Event of Default hereunder except a default in payment when due of the principal of, premium, if any, or interest on any Bond or the failure of the Issuer or the Borrower to file with the Trustee any documents required by this Indenture, the Financing Agreement, the Tax Exemption Agreement or the Regulatory Agreement to be so filed subsequent to the issuance of the Bonds unless the Trustee shall be specifically notified in writing of such default or Event of Default by the Issuer or by the holders of at least 75% in aggregate principal amount of Bonds then Outstanding and all notices or other instruments required by this Indenture to be delivered to the Trustee must, in order to be effective, be delivered at the designated office of the Trustee, and in the absence of such notice so delivered the Trustee may conclusively assume there is no default or Event of Default except as aforesaid.

(i) At any and all reasonable times the Trustee and its duly authorized agents, attorneys, experts, engineers, accountants and representatives shall have the right fully to inspect any and all of the property herein conveyed, including the Project and all books, papers and records of the Issuer pertaining to the Project and the Bonds, and to take such memoranda from and in regard thereto as may be desired, provided that such inspection be made and any such memoranda be taken and used on a basis that will insure the confidentiality thereof and of any results thereof.

(j) The Trustee shall not be required to give any bond or surety in respect of the execution of the trusts and powers or otherwise in respect of the premises granted in this Indenture.

(k) Notwithstanding anything elsewhere in this Indenture contained, the Trustee shall have the right, but shall not be required, to demand, in respect of the authentication of any Bonds, the withdrawal of any cash, the release of any property or any action whatsoever within the purview of this Indenture (other than enforcement of the Regulatory Agreement), any showings, certificates, opinions, appraisals or other

information, or corporate action or evidence thereof, in addition to that by the terms hereof required as a condition of such action by the Trustee, deemed desirable for the purpose of establishing the right of the Issuer to the authentication of any Bonds, the withdrawal of any cash, the release of any property or the taking of any other action by the Trustee, but the resolutions, opinions, certificates and other instruments provided for in this Indenture may be accepted by the Trustee as conclusive evidence of the facts and conclusions stated therein and shall be full warranty, protection and authority to the Trustee for the release of property and the withdrawal of cash hereunder.

(l) Before taking any action under Article VIII of this Indenture the Trustee may require that a satisfactory indemnity bond or other indemnity satisfactory to the Trustee be furnished for the reimbursement of all expenses to which it may be put and to protect it against all liability, except liability which is adjudicated to have resulted from its negligence or willful misconduct in conjunction with any action so taken.

(m) All moneys received by the Trustee, until used, applied or invested as herein provided, shall be held in trust for the purposes for which they were received but need not be segregated from other funds except to the extent required by law.

(n) The immunities extended to the Trustee also extend to its directors, officers, employees and agents.

(o) The Trustee's rights to immunities and protection from liability hereunder and its rights to payment of its fees and expenses shall survive its resignation or removal and the final payment or the defeasance of the Bonds (or the discharge of the Bonds or the defeasance of the lien of this Indenture).

(p) None of the provisions contained in this Indenture shall require the Trustee to expend or risk its own funds or otherwise incur individual financial liability in the performance of any of its duties or in the exercise of any of its rights or powers.

(q) The Trustee 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 issuance of the Bonds.

(r) The Trustee will not be required to foreclose on 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.

(s) The Trustee shall have no duty to review any financial statements and is not considered to have notice of the content of such statements, a default or Event of Default based on such content and does not have a duty to verify the accuracy of such statements.

Section 9.02. Fees, Charges and Expenses of Trustee. Notwithstanding any provision to the contrary herein, the Trustee shall be entitled to payment for reasonable fees for its services rendered hereunder and under the Regulatory Agreement, the Tax Exemption Agreement and the Financing Agreement and reimbursement for all advances, counsel fees and other expenses

reasonably made or incurred by the Trustee (including any co-Trustee) in connection with such services which shall be paid from time to time as provided in Section 5.04 from moneys available therefor and as provided in the Financing Agreement; provided that no such amounts shall be paid to the Trustee from the proceeds of the Pass-Through Certificate. Upon an Event of Default under Section 8.01(a) as a result of a failure by Fannie Mae to make payment under the Pass-Through Certificate, but only upon such an Event of Default, the Trustee shall have a lien upon the Trust Estate for extraordinary fees, charges and expenses incurred by it. The Issuer shall require the Borrower to indemnify and save harmless the Trustee against any liabilities which the Trustee may incur in the exercise and performance of its powers and duties hereunder, under the Financing Agreement, the Regulatory Agreement and the Tax Exemption Agreement that are not due to its own negligence or willful misconduct, and to reimburse the Trustee for any fees and expenses of the Trustee to the extent they exceed funds available under this Indenture for the payment thereof, subject only to the right of the Borrower to contest the reasonableness of any such fees or the necessity for any such expenses. The Trustee shall continue to perform its duties and obligations hereunder until such time as its resignation or removal is effective pursuant to Section 9.05 or Section 9.06, respectively.

Section 9.03. Intervention By Trustee. In any judicial proceeding to which the Issuer is a party and which in the opinion of the Trustee and its counsel has a substantial bearing on the interests of owners of the Bonds, the Trustee may intervene on behalf of the Bondholders and shall do so if requested in writing by the owners of at least 75% in aggregate principal amount of Bonds then Outstanding, subject to receipt of indemnity as provided in Section 9.01(l). The rights and obligations of the Trustee under this Section are subject to receipt of any approval of a court of competent jurisdiction which may be required by law as a condition to such intervention.

Section 9.04. Merger or Consolidation of Trustee. Any corporation or association into which the Trustee may be converted or merged, or with which it may be consolidated, or to which it may sell or transfer its trust business and assets as a whole or substantially as a whole, or any corporation or association resulting from any such conversion, sale, merger, consolidation or transfer to which it is a party, ipso facto shall be and become successor Trustee hereunder and vested with all of the title to the Trust Estate and all the trusts, powers, discretions, immunities, privileges and all other matters as was its predecessor, without the execution or filing of any instrument or any further act, deed or conveyance on the part of any of the parties hereto, anything herein to the contrary notwithstanding.

Section 9.05. Resignation by Trustee. The Trustee and any successor Trustee may at any time resign from the trusts hereby created by giving 60 days' written notice to the Issuer and Fannie Mae, and such resignation shall only take effect upon the appointment, pursuant to Section 9.07, of, and acceptance by, a successor Trustee. The successor Trustee shall give notice of such succession by first class mail, postage prepaid, to each Bondholder at the address of such Bondholder shown on the Bond Register.

Section 9.06. Removal of Trustee. The Trustee may be removed at any time by an instrument or concurrent instruments in writing delivered to the Trustee and to Fannie Mae, and signed by the Issuer (or if an Event of Default shall have occurred and be continuing, by the owners of a majority in aggregate principal amount of the Bonds then Outstanding, in which event such instrument or instruments in writing shall also be delivered to the Issuer) provided that such

removal shall not take effect until the appointment of a successor Trustee by the Issuer (or by the Bondholders).

Section 9.07. Appointment of Successor Trustee. In case at any time the Trustee or any successor thereto shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of such Trustee or of its property shall be appointed, or if any public officer shall take charge or control of such Trustee or of its property or affairs, a successor may be appointed by the Issuer with the approval of Fannie Mae (if it is not in default in its obligations under the Pass-Through Certificate), or if Fannie Mae does not approve a successor the Issuer proposes to appoint, or if the Issuer is in default hereunder, by the holders of a majority in aggregate principal amount of the Bonds then Outstanding, excluding any Bonds held by or for the account of the Issuer, by an instrument or concurrent instruments in writing signed by such Bondholders, or their attorneys duly authorized in writing, and delivered to such successor Trustee, notification thereof being given to the Issuer, Fannie Mae, the Borrower and the predecessor Trustee. If in a proper case no appointment of a successor Trustee shall have been made pursuant to the foregoing provisions of this Section within 60 days after the Trustee shall have given to the Issuer written notice as provided in Section 9.05 or after the occurrence of any other event requiring or authorizing such appointment, the Trustee or any Bondholder may apply to any court of competent jurisdiction to appoint a successor. The court may thereupon, after such notice, if any, as such court may deem proper and prescribe, appoint a successor Trustee.

Any Trustee appointed under the provisions of this Section shall be a bank, trust company or national banking association, having a designated office within the State, having trust powers, with prior experience as trustee under indentures under which multifamily housing revenue bonds of public agencies or authorities are issued, and having a capital and surplus acceptable to the Issuer and Fannie Mae, willing and able to accept the office on reasonable and customary terms in light of the circumstances under which the appointment is tendered and authorized by law to perform all the duties imposed upon it hereby, if there be such an institution meeting such qualifications willing to accept such appointment.

Section 9.08. Transfer of Rights and Property to Successor Trustee. Any successor Trustee appointed hereunder shall execute, acknowledge and deliver to its predecessor Trustee, and also to the Issuer and Fannie Mae, an instrument accepting such appointment, and thereupon such successor Trustee, without any further act, deed or conveyance, shall become fully vested with all moneys, estates, properties, rights, powers, duties and obligations of such predecessor Trustee, with like effect as if named herein as such Trustee, but the Trustee ceasing to act shall nevertheless, on the written request of the Issuer, Fannie Mae or the successor Trustee, execute, acknowledge and deliver such instruments of conveyance and further assurance and do such other things as reasonably may be required for more fully and certainly vesting and confirming in such successor Trustee all the right, title and interest of the predecessor Trustee in and to any properties held by it under this Indenture, and shall pay over, assign and deliver to the successor Trustee any money or other property subject to the trusts and conditions herein set forth. Should any deed, conveyance or instrument in writing from the Issuer be required by such successor Trustee for more fully and certainly vesting in and confirming to such successor Trustee any such moneys, estates, properties, rights, powers and duties, any and all such deeds, conveyances and instruments



in writing, on request, and so far as may be authorized by law, shall be executed, acknowledged and delivered by the Issuer.

Section 9.09. Successor Trustee as Bond Registrar, Custodian of Funds and Paying Agent. In the event of a change in the Trustee, the Trustee which has resigned or been removed shall cease to be bond registrar, custodian of the Funds and Accounts created under this Indenture and paying agent for the Bonds, and the successor Trustee shall become such registrar, custodian and paying agent.

Section 9.10. Collection of Pass-Through Certificate Payments. The Trustee shall cause the Pass-Through Certificate to be registered in the name of the Trustee or in the name of the nominee of the Trustee with such additional recitals as appropriate to indicate that the Pass-Through Certificate is to be held by the Trustee in its capacity as Trustee hereunder subject to the provisions of Section 7.03 and Section 7.04. In the event that any amount payable to the Trustee under the Pass-Through Certificate is not received by the Trustee within one Business Day of the date such payment is due, the Trustee shall notify Fannie Mae or (if directed by Fannie Mae) the paying agent for the Pass-Through Certificate by telephone (such notification to be immediately confirmed by telegram, teletype, Electronic Means or other means of instantaneous written communication) that such payment has not been received in a timely manner and request that such payment be made by wire transfer of immediately available funds to the account of the Trustee or such custodian, as the case may be.

Section 9.11. Requests from Rating Agency. The Trustee shall promptly respond in writing, or in such other manner as may be reasonably requested, to requests from the Rating Agency for information deemed necessary by the Rating Agency in order to maintain the rating assigned thereby to the Bonds. The Trustee shall promptly furnish any such requested information in its possession to the Rating Agency and shall, as may be reasonably requested by the Rating Agency, assist in efforts to obtain any necessary information from the Issuer or the Borrower or Fannie Mae as applicable.

Section 9.12. Tax Covenants.

(a) The Trustee will invest funds held under this Indenture in accordance with the terms of this Indenture, the Tax Exemption Agreement (to the extent it applies to the Trustee) and the written instructions of the Borrower.

(b) The Trustee will not take any action inconsistent with its obligations expressly stated in the Tax Exemption Agreement and will comply with the covenants and requirements of the Trustee stated therein and incorporated by reference herein.

Section 9.13. Compliance of Borrower Under Regulatory Agreement. The Trustee shall give written notice to the Issuer, the Lender and Fannie Mae of any failure by the Borrower to comply with the terms of the Regulatory Agreement. The Trustee shall not be responsible for providing such notice, except as such notice is provided to the Trustee pursuant to the terms of this Indenture.

Section 9.14. Compliance with Texas Government Code. The Trustee hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any,

do not boycott Israel and will not boycott Israel during the term of this Indenture, the Financing Agreement, the Regulatory Agreement, the Subordination Agreement and the Tax Exemption Agreement, and such representation is hereby incorporated by reference into each of the documents referenced herein. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Trustee understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

The Trustee represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Trustee and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Trustee understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Trustee and exists to make a profit.

## **ARTICLE X SUPPLEMENTAL INDENTURES**

Section 10.01. Supplemental Indentures Effective Upon Acceptance. For any one or more of the following purposes and at any time or from time to time, the Issuer and the Trustee may enter into a Supplemental Indenture which, upon the execution and delivery thereof by an Authorized Officer and by the Trustee, and with the prior written consent of Fannie Mae, but without the necessity of consent of the Bondholders, shall be fully effective in accordance with its terms:

(a) To add to the covenants or agreements of the Issuer herein contained other covenants or agreements to be observed by the Issuer or to otherwise revise or amend this Indenture in a manner which are/is not materially adverse to the interests of the Bondholders;

(b) To add to the limitations or restrictions herein contained other limitations or restrictions to be observed by the Issuer which are not contrary to or inconsistent with the provisions hereof as theretofore in effect;

(c) To surrender any right, power or privilege reserved to or conferred upon the Issuer herein, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Issuer contained herein and is not materially adverse to the interests of the Bondholders;

(d) To confirm, as further assurance, any pledge of the Trust Estate hereunder and the subjection to any lien on or pledge of the Trust Estate created or to be created hereby;

(e) To appoint a co-trustee or successor Trustee or successor co-trustee;

(f) To cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision herein;

(g) To insert such provisions clarifying matters or questions arising hereunder as are necessary or desirable and are not materially adverse to the interests of the Bondholders; and

(h) To make such changes and modifications that are necessary or desirable to provide for all interest, principal and premium paid with respect to the Bonds are in the exact respective amounts of the payments of interest, principal and premium paid under and pursuant to the Pass-Through Certificate.

Section 10.02. Supplemental Indentures Requiring Consent of Bondholders. In addition to those amendments to the Indenture which are authorized by Section 10.01, any modification or amendment of the Indenture, may be made by a Supplemental Indenture with the written consent, given as hereinafter provided in Section 10.03, of Fannie Mae and the holders of at least two thirds in aggregate principal amount of the Bonds Outstanding at the time such consent is given; provided, however, that no such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under this Indenture prior to or on a parity with the lien of this Indenture, (d) deprive the holders of the Bonds of the lien created by this Indenture upon the Trust Estate (except as expressly provided in this Indenture), without (with respect to (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

Section 10.03. Consent of Bondholders. The Issuer and the Trustee may, at any time, execute and deliver a Supplemental Indenture making a modification or amendment permitted by the provisions of Section 10.02, to take effect when and as provided in this Section. A copy of

such Supplemental Indenture, together with a request to Bondholders for their consent thereto in form satisfactory to the Trustee, shall be mailed by the Trustee to the Bondholders. Such Supplemental Indenture shall not be effective unless there shall have been filed with the Trustee (a) the written consents of Fannie Mae and the holders of the proportion of Outstanding Bonds specified in Section 10.02, and (b) an opinion of Bond Counsel stating that such Supplemental Indenture has been duly and lawfully entered into by the Issuer in accordance with the provisions of this Indenture, is authorized or permitted by the provisions of this Indenture, and, when effective, will be valid and binding upon the Issuer. Each such consent of the Bondholders shall be effective only if accompanied by proof of the holding, at the date of such consent, of the Bonds with respect to which such consent is given, which proof shall be such as is permitted by Section 11.01. A certificate or certificates by the Trustee that it has examined such proof and that such proof is sufficient under the provisions of Section 11.01 shall be conclusive that the consents have been given by the holders of the Bonds described in such certificate or certificates. Any such consent shall be binding upon the holder of the Bonds giving such consent and upon any subsequent holder of such Bonds and of any Bonds issued in exchange therefor (whether or not such subsequent holder thereof has notice thereof). At any time after the holders of the required proportion of Bonds shall have filed their consents to such Supplemental Indenture, the Trustee shall make and file with the Issuer a written statement that the holders of such required proportion of Bonds have filed and given such consents. Such written statement shall be conclusive that such consents have been so filed and have been given. Within 90 days after filing such statement, the Trustee shall mail to the Bondholders a notice stating in substance that such Supplemental Indenture (which may be referred to as a Supplemental Indenture executed by the Issuer on a stated date, a copy of which is on file with the Trustee) has been consented to by the holders of the required proportion of Bonds and will be effective as provided in this Section, but failure to mail such notice shall not prevent such Supplemental Indenture from becoming effective and binding as in this Section 10.03 provided. The Trustee shall file with the Issuer proof of the mailing of such notice to the Bondholders. A record, consisting of the papers required or permitted by this Section to be filed with the Trustee, shall be proof of the matters therein stated. Such Supplemental Indenture making such modification or amendment shall be deemed conclusively binding upon the Issuer, the Trustee and the holders of all Bonds upon the execution thereof and the filing by the Trustee with the Issuer of the statement that the required proportion of Bondholders have consented thereto.

The Issuer may conclusively rely upon the Trustee's determination that the requirements of this Section have been satisfied.

Section 10.04. Modification By Unanimous Consent. Notwithstanding anything contained in the foregoing provisions of this Article, the terms and provisions hereof and the rights and obligations of the Issuer and the holders of the Bonds hereunder, in any particular, may be modified or amended in any respect upon execution and delivery of a Supplemental Indenture by the Issuer and the Trustee making such modification or amendment and the consent to such Supplemental Indenture of Fannie Mae and the holders of all of the Bonds then Outstanding, such consent to be given and proved as provided in Section 10.03 except that no notice to Bondholders shall be required; provided, however, that no such modification or amendment shall change or modify any of the rights or obligations of the Trustee without the written assent thereto of the Trustee, in addition to the consent of the Bondholders.

Section 10.05. Exclusion of Bonds. Bonds owned or held by or for the account of the Issuer or the Borrower shall be excluded and shall not be deemed Outstanding for the purpose of consent or other action or any calculation of Outstanding Bonds provided for in this Article, unless all of the Bonds are owned or held by or for the account of the Issuer or the Borrower. In the event that not all of the Bonds are owned or held by or for the account of the Issuer or the Borrower, then neither the Issuer nor the Borrower, as the case may be, shall be entitled with respect to such Bonds to give any consent or take any other action provided for in this Article. At the time of any consent or other action under this Article, in the event that any Bonds (but not all of the Bonds) are then owned by or for the account of the Issuer, the Issuer shall furnish to the Trustee an Officer's Certificate, upon which the Trustee may rely, describing all Bonds so to be excluded. The Trustee shall be obligated to exclude as aforesaid only such Bonds as are shown by the Bond Register or are otherwise known by the Trustee to be so owned or held.

Section 10.06. Notation on Bonds. Bonds delivered after the effective date of any action taken as provided in this Article may, and if the Trustee so determines shall, bear a notation by endorsement or otherwise in form approved by the Issuer and the Trustee as to such action, and in that case upon demand of the holder of any Bond Outstanding at such effective date and presentation of such Bond for such purpose at the principal office of the Trustee, suitable notation shall be made on such Bond by the Trustee as to any such action. If the Issuer or the Trustee shall so determine, new Bonds notated as in the opinion of the Trustee and the Issuer may be required to conform to such action shall be prepared and delivered, and upon demand of the holder of any Bond then Outstanding, shall be exchanged, without cost to such Bondholder, for Bonds of the same series, designation, maturity and interest rate then Outstanding upon surrender of such Bonds.

Section 10.07. Additional Contracts or Indentures. The Issuer, so far as it may be authorized by law, may enter, and if requested by the Trustee, shall enter into additional contracts or indentures with the Trustee giving effect to any modification or amendment of this Indenture as provided in this Article.

Section 10.08. Favorable Opinion of Bond Counsel Concerning Supplemental Indentures. The Trustee shall not execute or consent to any Supplemental Indenture unless prior to the execution and delivery thereof the Trustee shall have received a Favorable Opinion of Bond Counsel and a written opinion of Bond Counsel to the effect that the modification or amendments are authorized and permitted under the provisions of this Indenture.

Section 10.09. Modification to Mortgage Loan Documents. Notwithstanding anything herein to the contrary each and every Mortgage Loan Document may be amended, modified or restated, without the consent of the Bondholders, but subject to and only in the manner and to the extent such modification, amendment or restatement is permitted and made pursuant to the terms of the Fannie Mae Trust Indenture pursuant to which the Pass-Through Certificate was issued.

## **ARTICLE XI MISCELLANEOUS**

Section 11.01. Evidence of Signatures of Bondholders and Ownership of Bonds. Any request, consent, revocation of consent or other instrument which this Indenture may require or

permit to be signed and executed by Bondholders may be in one or more instruments of similar tenor, and shall be signed or executed by such Bondholders in person or by their attorneys duly authorized in writing. Proof of the execution of any such instrument, or of an instrument appointing or authorizing any such attorney, or the holding by any person of any Bonds, shall be sufficient for any purpose hereof if made in the following manner or in any other manner satisfactory to the Trustee which may nevertheless in its discretion require further or other proof in cases where it deems the same desirable:

(a) The fact and date of the execution by any Bondholder or his or her attorney of any such instrument (other than the Bond) may be proved (i) by the certificate of a notary public or other officer authorized to take acknowledgments of deeds to be recorded in the state in which he or she purports to act that the person signing such instrument acknowledged to him or her the execution thereof, or by the affidavit of a witness of such execution, duly sworn to before such a notary public or other officer, or (ii) by the certificate, which need not be acknowledged or verified, of an officer of a bank, trust company or duly licensed securities broker or dealer satisfactory to the Trustee that the person signing such instrument acknowledged to such bank, trust company, broker or dealer the execution thereof;

(b) The authority of a person or persons to execute any such instrument on behalf of a corporate Bondholder may be established without further proof if such instrument is authorized by a corporate resolution (a copy of which shall be delivered to the Trustee) and signed by a person purporting to be the president or a vice president of such corporation; and

(c) The holding of Bonds, the amount, numbers and other identification thereof, and the date of holding the same, shall be proved by the Bond Register.

Any request, consent or other instrument executed by the registered owner of any Bond shall bind all future owners of such Bond in respect of anything done or suffered to be done hereunder by the Issuer or the Trustee in accordance herewith in reliance on such request, consent or other instrument.

Section 11.02. Details of Documents Delivered to Trustee. Matters required to be stated in any document signed by any Authorized Officer or in any accountant's certificate, Counsel's Opinion or Officer's Certificate may be stated in separate documents of the required description or may be included in one or more thereof.

Section 11.03. Preservation and Inspection of Documents. All reports, certificates, statements and other documents received by the Trustee under the provisions hereof shall be retained in its possession and shall be available at all reasonable times for the inspection of the Issuer, Fannie Mae or any Bondholder and their agents and representatives, any of whom may make copies thereof, but any such reports, certificates, statements or other documents may, at the election of the Trustee, be destroyed or otherwise disposed of at any time six years after such date as the pledge of the Trust Estate created hereby shall be discharged as provided in Section 7.01.

Section 11.04. No Recourse on Bonds. All covenants, stipulations, promises, agreements and obligations of the Issuer contained in this Indenture shall be deemed to be the covenants, stipulations, promises, agreements and obligations of the Issuer and not of any of its officers or employees or members of its governing body, past, present or future, in his or her individual capacity, and no recourse shall be had for the payment of the principal of, premium, if any, or interest on the Bonds or for any claim based thereon or hereunder against any such officer or employee of the Issuer or member of its governing body or any natural person executing the Bonds.

Section 11.05. Severability. If any one or more of the provisions, covenants or agreements in this Indenture on the part of the Issuer or the Trustee to be performed should be illegal, inoperative, unenforceable or contrary to law, then such provision or provisions, covenant or covenants, agreement or agreements, shall be deemed severable from the remaining provisions, covenants and agreements, and shall in no way affect the validity of the other provisions hereof or of the Bonds.

Section 11.06. Notices. Unless otherwise specified in this Indenture, it shall be sufficient service or giving of any notice, request certificate, demand or other communication if the same is sent by (and all notices required to be given by mail will be given by) first-class registered or certified mail, postage prepaid, return receipt requested, or by private courier service which provides evidence of delivery, or sent by Electronic Means which produces evidence of transmission, and in each case will be deemed to have been given on the date evidenced by the postal or courier receipt or other written evidence of delivery or electronic transmission. Unless a different address is given by any party as provided in this Section, all such communications will be addressed as follows:

To the Issuer:

Texas Department of Housing and Community  
Affairs  
P.O. Box 13941  
Austin, TX 78711  
Attention: Manager of Multifamily Bonds  
Telephone: (512) 475-3344  
Facsimile: (512) 475-1895

To the Trustee:

The Bank of New York Mellon Trust Company,  
N.A.  
2001 Bryan Street  
Dallas, Texas 75201  
Attention: Marcus Wilson  
Telephone: (214) 468-5550

To the Borrower: Northgate Preservation, L.P.  
c/o Related Companies  
60 Columbus Circle, 18th Floor  
New York, NY 10023  
Attention: Matthew Finkle

with a copy to: Levitt & Boccio, LLP  
423 West 55th Street, 8th Floor  
New York, NY 10019  
Attention: David S. Boccio, Esq.  
Telephone: (212) 801-3769

To the Tax Credit Investor: RAH Investor 226 LLC  
1900 5th Avenue North, 15th Floor  
Birmingham, AL 35203  
Attention: Community Investment Capital  
Telephone: (205) 264-5613  
Facsimile: (205) 801-0138

with a copy to: Jones Walker LLP  
420 20th Street North, Suite 1100  
Birmingham, AL 35203  
Attention: Kelly Rushin Lewis  
Telephone: (205) 244-5314  
Facsimile: (205) 244-5400

To the Lender: Regions Bank  
1180 West Peachtree Street, 14th Floor  
Atlanta, GA 30309  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_

with a copy to: Krooth & Altman LLP  
1850 M St. NW, Suite 400  
Washington, DC 20036  
Attention: \_\_\_\_\_  
Telephone: \_\_\_\_\_  
Facsimile: \_\_\_\_\_



To the Rating Agency: S&P Global Ratings  
38th Floor  
55 Water Street  
San Francisco, CA 94111  
Attention: Public Finance  
Electronic notices shall be delivered to:  
pubfin\_housing@spglobal.com

To Fannie Mae: Fannie Mae  
1100 15th Street, N.W.  
Drawer AM  
Washington, DC 20005  
Attention: Director, Multifamily Asset  
Management  
Telephone: (202) 752-6634  
Facsimile: (240) 699-3880  
RE: TDHCA Pass-Through Bonds; Northgate  
Village; Regions Bank

with a copy to: DLA Piper LLP (US)  
2000 Avenue of the Stars  
Suite 400 North Tower  
Los Angeles, CA 90067-4704  
Attention: Masood Sohaili  
Telephone: (310) 595-3040  
Facsimile: (310) 595-3340

Copies of all notices given to Fannie Mae must be given concurrently to the Lender. By notice given under this Indenture, any entity whose address is listed in this Section may designate any different address to which subsequent notices, certificates, requests, demands or other communications shall be sent, but no notice directed to any one such entity (except for Fannie Mae) will be required to be sent to more than two addresses. All approvals required under this Indenture will be given in writing.

Section 11.07. Certain Notices to be Provided to the Rating Agency and Issuer. In addition, the Trustee shall provide notice to the Rating Agency and the Issuer under the following circumstances: (i) any change in the account or accounts representing the Proceeds Fund from the account or accounts established on or about Closing Date; (ii) any mandatory tender of the Bonds; (iii) redemption of the Bonds in whole; (iv) following the Purchase Date, prepayments with respect to the Pass-Through Certificate, in whole; (v) defeasance of the Bonds or discharge of the Indenture; (vi) release from the Trust Estate of (A) the pledge of the Pass-Through Certificate or (B) the assignment of the Pass-Through Certificate Revenues received; (vii) supplements or amendments to the Bond Documents (or, following the Purchase Date, the Mortgage Note); (ix) extension of the Mandatory Redemption Date; and (x) appointment of a successor Trustee.

Section 11.08. Action Required to be Taken on a Non Business Day. In any case where any Payment Date, any other date fixed for the payment of interest on or principal of the Bonds, any maturity date or any date fixed for redemption of any Bonds, shall be a day other than a Business Day, then any payment of interest or principal (and premium, if any) required to be made on such date need not be taken or made on such date but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date herein otherwise provided and, in the case of any Payment Date, no interest shall accrue for the period from and after such date.

Section 11.09. Parties Interested Herein. Nothing in this Indenture expressed or implied is intended or shall be construed to confer upon, or to give to, any person, other than the Issuer, the Trustee, Fannie Mae and the holders of the Bonds, any right, remedy or claim under or by reason hereof, and any covenants, stipulations, obligations, promises and agreements in this Indenture contained by and on behalf of the Issuer shall be for the sole and exclusive benefit of the Issuer, the Trustee, Fannie Mae and the holders of the Bonds.

Section 11.10. Counterparts. This Indenture may be simultaneously executed in several counterparts, each of which shall be an original and all of which shall constitute but one and the same instrument.

Section 11.11. Applicable Provisions of Law; Venue. This Indenture shall be construed in accordance with and governed by the laws of the State applicable to contracts made and performed in the State, without regard to conflict of laws principles.

Section 11.12. Notification of Issuer of Amount of Outstanding Bonds. On or before each June 1, beginning June 1, 2020, the Trustee shall notify the Issuer, via mutually acceptable Electronic Means or by mail, of the aggregate principal amount of Outstanding Bonds as of such June 1 or that no Bonds remain Outstanding.

Section 11.13. Tax Exemption Agreement. In the event of any conflict between this Indenture and the Tax Exemption Agreement, the requirements of the Tax Exemption Agreement shall control.

IN WITNESS WHEREOF, the Issuer has caused this Indenture to be executed on its behalf by its Authorized Officers and the Trustee, to evidence its acceptance of the trusts created hereunder, has caused this Indenture to be executed in its name by its duly authorized signatories, all as of the day and year first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer**

By: \_\_\_\_\_  
Name: J. B. Goodwin  
Title: Chair

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: James B. Eccles  
Title: Secretary

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

By: \_\_\_\_\_  
Authorized Officer

**EXHIBIT A**

**FORM OF BOND**

**UNITED STATES OF AMERICA  
STATE OF TEXAS**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS  
MULTIFAMILY HOUSING REVENUE BOND  
(PASS-THROUGH – NORTHGATE VILLAGE),  
SERIES 2019**

UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE OF TRUST) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.

No. \_\_\_\_\_ \$ \_\_\_\_\_

<u>Pass-Through Rate</u>	<u>Bond Maturity Date</u> <sup>1</sup>	<u>Dated Date</u>	<u>CUSIP</u>
<b>Bond Interest Rate</b>	<b>Bond Maturity Date</b>	<b>Bond Dated Date</b>	<b>Bond CUSIP Number</b>

REGISTERED OWNER: \_\_\_\_\_

PRINCIPAL AMOUNT: \_\_\_\_\_ DOLLARS

THE TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “Issuer”), a public and official agency of the State of Texas, organized and existing under Chapter 2306, Texas Government Code (the “Act”), for value received, hereby promises to pay (but only from the sources specified in the Indenture hereinafter referred to) to the Registered Owner named above or registered assigns, on the Maturity Date (unless this Bond shall have been previously called for redemption and payment of the Redemption Price shall have been made or duly provided for) the Principal Amount stated above, and to pay interest thereon at the Pass-Through Rate specified above in the amounts as accrued and for the periods interest is paid (except in connection with a redemption of Bonds upon failure to purchase the Pass-Through Certificate as described in the Indenture) pursuant to the terms of the Pass-Through Certificate, payable on each Payment

<sup>1</sup> Subject to final payment of principal with respect to the Pass-Through Certificate (as hereafter defined) which will be passed through to the Bondholders on the Final Payment Date.

Date. Interest shall be calculated on the basis of a year of Actual/360. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest on the Bonds during the period from the Maturity Date to the Final Payment Date. Notwithstanding anything herein to the contrary, on and after the Purchase Date, the principal, interest and premium, if any, payable on the Bonds will be calculated, except with respect to interest payable on the Bonds if redeemed upon failure to purchase the Pass-Through Certificate as described in the Indenture, at the same rate and for the same periods as interest, principal and premium, if any, payable on the Pass-Through Certificate, and will be paid, except with respect to interest payable on the Bonds if redeemed upon failure to purchase the Pass-Through Certificate as described in the Indenture (which will be paid on the Mandatory Redemption Date (as defined in the Indenture)), one Business Day following receipt by the Trustee pursuant to the Pass-Through Certificate.

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month (or the next Business Day if the 25th is not a Business Day) after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of exchange of the Bonds for the Pass-Through Certificate, the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable principal amount of the Pass-Through Certificate to or upon the order of the Issuer. “First Payment Date” means July 26, 2019 or the next Business Day if July 26, 2019 is not a Business Day. Interest hereon is payable by The Bank of New York Mellon Trust Company, N.A. (the “Trustee”). Payment of the principal of and interest or premium, if any, on any Bond shall be made to the person appearing on the Bond Register as the registered owner thereof, one Business Day following receipt by the Trustee of the interest, principal and premium, if any, paid on the Pass-Through Certificate at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America. Unless the Bonds are Book Entry Bonds, the principal of the Bonds shall be payable to the registered owners thereof upon presentation (except in connection with a redemption of Bonds from principal payments or prepayments on the Pass-Through Certificate) at the designated corporate trust office of the Trustee or its successors. Unless the Bonds are Book Entry Bonds, payments of interest on the Bonds and redemption of Bonds from principal payments or prepayments on the Pass-Through Certificate shall be paid by check mailed to the registered owner thereof at such owner’s address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. All payments of principal of and interest on Book Entry Bonds shall be made and given at the times and in the manner set out in the representation letter of The Depository Trust Company, New York, New York, or any replacement securities depository appointed under the Indenture.

The date of authentication of each Bond shall be the date such Bond is registered.

The Bonds shall be subject to redemption prior to maturity as provided in the Indenture.

When the Trustee receives notice of a prepayment on the Pass-Through Certificate or an unscheduled principal prepayment as provided in Section 3.02(a)(i) or Section 3.02(a)(ii) of the Indenture, respectively, the Trustee shall use its best efforts to give not less than 20 nor more than 30 days' notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee's name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. Such notice shall be sent to the holders of the Bonds by first-class mail, postage prepaid, at their respective addresses appearing on the Bond Register. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

This Bond is one of the duly authorized bonds of the Issuer designated as Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 (the “Bonds”), limited in aggregate principal amount to \$19,000,000 issued pursuant to the Act and pursuant to an Indenture of Trust, dated as of [June] 1, 2019, by and between the Issuer and the Trustee (the “Indenture”) and a resolution duly adopted by the governing body of the Issuer. The Bonds are limited obligations of the Issuer. The Bonds are issued for the benefit of Northgate Preservation, L.P., a New York limited partnership (the “Borrower”), to finance a multifamily rental housing development within the City of Dallas, Texas, known as Northgate Village Apartments (the “Project”). Capitalized terms used herein and not otherwise defined shall have the meanings assigned in the Indenture.

The payment and other obligations of the Issuer with respect to the Bonds are intended to be, and shall be, independent of the payment and other obligations of the issuer or maker of the Mortgage Note (as defined in the Indenture) and the Pass-Through Certificate (as hereafter defined), even though the principal amount of all three instruments is expected to be identical, except in the case of a default with respect to one or more of the instruments.

The Bonds are secured by certain funds held under the Indenture as described therein, and after the Purchase Date, if any, by (i) the pledge of a Guaranteed Mortgage Pass-Through Certificate (the “Pass-Through Certificate”) issued by the Federal National Mortgage Association (“Fannie Mae”) and delivered to the Trustee, under the terms of which timely payment of principal of and interest on the Pass-Through Certificate is guaranteed by Fannie Mae regardless of whether corresponding payments on the Mortgage Loan are paid when due, and by (ii) amounts payable under the Pass-Through Certificate. After the Purchase Date, the Pass-Through Certificate is held in trust and pledged under the Indenture to secure the payment of the Bonds.

Reference is hereby made to the Act and to the Indenture, a copy of which is on file at the principal office of the Trustee, and all indentures supplemental thereto for a description of the rights thereunder of the registered owners of the Bonds, of the payments and funds pledged and assigned as security for payment of the Bonds and the nature and extent thereof, of the terms on which the Bonds are issued and the terms and conditions on which the Bonds will be deemed to be paid at or prior to maturity or redemption upon provision for payment thereof in the manner set

forth in the Indenture, of the rights, duties and immunities of the Trustee and of the rights and obligations of the Issuer thereunder, to all of the provisions of which Indenture the registered owner of this Bond, by acceptance hereof, assents and agrees.

THE BONDS OF WHICH THIS BOND IS A PART, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THIS INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR, **THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OF TEXAS OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER.** THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

The registered owner of this Bond shall have no right to enforce the provisions of the Indenture or to institute actions to enforce the pledge, assignments in trust or covenants made therein or to take any action with respect to an Event of Default under the Indenture or to institute, appear in or defend any suit or other proceedings with respect thereto, except as provided in the Indenture.

If an Event of Default shall occur, the principal of all Bonds may be declared due and payable upon the conditions, in the manner and with the effect provided in the Indenture. The Indenture provides that in certain events such declaration and its consequences may be rescinded by the holders of at least a majority in aggregate principal amount of the Bonds then Outstanding.

The Bonds are issuable only as fully registered bonds without coupons in denominations of \$1,000.00 or any integral multiples of \$1.00 in excess thereof. Subject to the limitations and conditions and upon payment of the charges, if any, as provided in the Indenture, Bonds may be

exchanged at the designated corporate trust office of the Trustee for Bonds in the same aggregate principal amount.

The registration of this Bond is transferable by the registered owner hereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of this Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefore a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

In any case where any Payment Date, any other date fixed for the payment of interest on or principal of the Bonds, any maturity date or any date fixed for redemption of any Bonds, shall be a day other than a Business Day, then any payment of interest or principal (and premium, if any) required to be made on such date need not be taken or made on such date but may be taken or made on the next succeeding Business Day with the same force and effect as if made or taken on the date herein otherwise provided and, in the case of any Payment Date, no interest shall accrue for the period from and after such date.

The Issuer and the Trustee shall treat the registered owner of this Bond as the owner hereof for all purposes, and any notice to the contrary shall not be binding on the Issuer and the Trustee.

The Indenture contains provisions permitting the Issuer and the Trustee, with the written consent of Fannie Mae and the registered owners of not less than two thirds in aggregate principal amount of the Bonds Outstanding, as specified in the Indenture, and in certain instances without such consent, to execute supplemental indentures adding any provisions to, or changing in any manner, or eliminating any of the provisions of, the Indenture; provided, however, that no such supplemental indenture shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under the Indenture prior to or on a parity with the lien of the Indenture, (d) deprive the holders of the Bonds of the lien created by the Indenture upon such Trust Estate (except as expressly provided in the Indenture), without (with respect to clauses (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

Neither the members of the governing body of the Issuer nor any officer, agent, representative or employee of the Issuer nor any person executing this Bond shall be subject to any personal liability or accountability by reason of the issuance hereof, whether by virtue of any Constitution, statute or rule of law, or by the enforcement of any assessment or penalty, or otherwise, all such liability being expressly waived as a condition of and in consideration for the execution of the Indenture and the issuance of the Bonds.



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

It is hereby certified and recited by the Issuer that all conditions, acts and things required by the Indenture or by the laws of the State of Texas, including the Act, to exist, to have happened or to have been performed precedent to or in the issuance of this Bond do exist, have happened and have been performed in due time, form and manner as required by law, and that the issuance of this Bond and the issue of which it forms a part is within every debt and other limit prescribed by said Constitution or statutes.

IN WITNESS WHEREOF, the TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS has caused this Bond to be executed on its behalf by the facsimile signature of its Chair, and attested to by the facsimile signature of its Secretary, and its seal to be reproduced hereon, all as of the date shown above.

TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer

By: \_\_\_\_\_  
Title: Chair

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Title: Secretary

**[FORM OF TRUSTEE'S CERTIFICATE OF AUTHENTICATION]**

This Bond is one of the bonds described in the within mentioned Indenture.

Date of Authentication:

The Bank of New York Mellon Trust Company,  
N.A., as Trustee

By: \_\_\_\_\_  
Authorized Officer

**[FORM OF ASSIGNMENT]**

For value received, the undersigned do(es) hereby sell, assign and transfer unto

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

(Name, Address and Tax Identification or Social  
Security Number of Assignee)

the within registered Bond and do(es) hereby irrevocably constitute and appoint, attorney, to transfer the same on the registration books of the Trustee, with full power of substitution in the premises.

Dated: \_\_\_\_\_

Signature Guaranteed:

\_\_\_\_\_  
NOTICE: Signature(s) must be guaranteed  
by an eligible guarantor.

\_\_\_\_\_  
NOTICE: The signature on this assignment  
must correspond with the name(s) as written on  
the face of the within Bond in every particular  
without alteration or enlargement or any change  
whatsoever.

**EXHIBIT B**  
**FORM OF REQUISITION**  
**(Proceeds Fund)**

The Bank of New York Mellon Trust Company, N.A.

Re: Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019

Ladies and Gentlemen:

You are requested to disburse funds from the Proceeds Fund pursuant to Section 4.02 of the Indenture (defined below) in the amount(s), to the person(s) and for the purpose(s) set forth in this requisition (this “Requisition”). The terms used in this Requisition shall have the meaning given to those terms in the Indenture of Trust (the “Indenture”), dated as of [June] 1, 2019, by and between the Texas Department of Housing and Community Affairs and The Bank of New York Mellon Trust Company, N.A., as Trustee, securing the above referenced Bonds or in the Tax Exemption Agreement (as defined in the Indenture).

1. REQUISITION NO.:
2. PAYMENT DUE TO:
3. AMOUNT TO BE DISBURSED: \$ \_\_\_\_\_
4. The undersigned certifies that:
  - (i) the expenditures for which moneys are requisitioned by this Requisition represent proper charges against the Proceeds Fund, have not been included in any previous requisition, have been properly recorded on the Borrower’s books and are set forth in Schedule I attached to this Requisition, with paid invoices attached for any sums for which reimbursement is requested;
  - (ii) the moneys requisitioned are not greater than those necessary to meet obligations due and payable or to reimburse the Borrower for its funds actually advanced for the Project;
  - (iii) the Borrower is not in default under the Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement or the Mortgage Loan Documents and nothing has occurred to the knowledge of the Borrower that would prevent the performance of its obligations under the Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement or the Mortgage Loan Documents;
  - (iv) (A) If this Requisition is not the final Requisition from the Proceeds Fund, the Borrower reasonably expects that, upon achieving completion of

construction, not less than 95% of the Net Proceeds of the Bonds will have been used for Qualified Project Costs; or

(B) If this Requisition is the final Requisition from the Proceeds Fund, not less than 95% of the sum of (A) the amounts requisitioned by this Requisition to be paid from the Proceeds Fund and (B) all amounts previously requisitioned and paid from the Net Proceeds of the Bonds will have been used for Qualified Project Costs; and

(v) no amounts being requisitioned by this Requisition are to pay or reimburse Costs of Issuance.

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

**DATE OF REQUISITION:** \_\_\_\_\_

**NORTHGATE PRESERVATION, L.P.**, a New York limited partnership

By: Northgate Preservation GP, LLC, a New York limited liability company, its general partner

By: \_\_\_\_\_  
Name: Matthew Finkle  
Title: Vice President

APPROVED:

**REGIONS BANK,**  
as Lender

By: \_\_\_\_\_  
Authorized Officer

SCHEDULE I TO REQUISITION CERTIFICATE

	ITEM:	AMOUNT:
1.		
2.		
3.		
4.		
5.		
6.		
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8.		
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12.		
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15.		
16.		
17.		
18.		
19.		
20.		

## EXHIBIT C

### NOTICE OF REQUEST TO EXCHANGE [(M-TEMS in bold to be completed when preparing actual notice)]

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019

The undersigned Beneficial Owner of Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 (the “Bonds”), hereby requests The Bank of New York Mellon Trust Company, N.A. (the “Trustee”) to exchange Bonds in an original face amount and current principal amount equal to \$ \_\_\_\_\_ and \$ \_\_\_\_\_, respectively, for a like original face amount and current principal amount of the Pass-Through Certificate. The Bonds were issued pursuant to an Indenture of Trust dated as of [June] 1, 2019 (the “Indenture”), by and between Texas Department of Housing and Community Affairs (the “Issuer”) and the Trustee. The undersigned has arranged with its securities dealer (and/or DTC participant) to deliver such Bonds to the Trustee (via DTC withdrawal or Deposit/Withdrawal At Custodian (“DWAC”)) on or before the Business Day next succeeding the date hereof (such Business Day being the “Exchange Date”). Once the Issuer has validated the exchange requested hereby and the DTC DWAC has been verified and approved by the Trustee, the Trustee is hereby requested to deliver free the above-referenced original face and current principal amount of the Pass-Through Certificate using the automated book-entry system maintained by the Federal Reserve Banks acting as depositories for the issuer of the Pass-Through Certificate in accordance with the Beneficial Owner’s Fed delivery instructions. Such Pass-Through Certificate will be (1) in book-entry form and (2) transferred in accordance with current market practices, including the applicable provisions of the *SIFMA’s Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities*. The undersigned Beneficial Owner shall pay the Trustee’s exchange fee and the Issuer’s exchange fee by wire transfer on the Exchange Date. If the Exchange Date is subsequent to a Record Date and prior to a corresponding Payment Date for the Bonds, the Trustee shall wire the applicable principal and interest payments on the exchanged Bonds to the undersigned Beneficial Owner using the wire instructions set forth below. The undersigned acknowledges that the submission of this notice of request (the “Notice”) is subject to all of the terms and conditions of the Indenture.

Capitalized terms used in this Notice but not defined herein shall have the meanings assigned such terms in the Indenture.



Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

Beneficial Owner's Fed delivery instructions:

Beneficial Owner's wire instructions: \_\_\_\_\_

Trustee's wire instructions: \_\_\_\_\_

**EXHIBIT D**

**SCHEDULE OF ISSUER ADMINISTRATION FEE**

**(Northgate Village)**

<u>Date</u>	<u>Amount</u>	<b>Pass-Through Certificate/Loan <u>Balance</u></b>
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No adjustment to this schedule will be made upon optional exchange or redemption of Bonds in accordance with Section 3.05 of the Indenture; provided, however, that no Issuer Administration Fee will be due if no Bonds remain Outstanding as a result of 100% of the Bonds being redeemed or exchanged in accordance with Section 3.05. In the event that the principal amount of Bonds Outstanding is reduced pursuant to the Indenture other than pursuant to Section 3.05, the Issuer Administration Fee of .10% per annum shall be reduced proportionately upon receipt by the Issuer and the Trustee of the revised amortization schedule from the Lender as required by Section 4.03 of the Financing Agreement.

**EXHIBIT E**

**NOTIFICATION OF PURCHASE OF FANNIE MAE CERTIFICATE**

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village)  
Series 2019

CUSIP: \_\_\_\_\_

Pursuant to Section 4.03 of the Indenture of Trust between the Texas Department of Housing and Community Affairs and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”), dated as of [June] 1, 2019 (the “Indenture”), the undersigned Trustee hereby provides notice that on \_\_\_\_\_, 20\_\_ the Trustee purchased the Pass-Through Certificate in accordance with the terms of the Indenture. Capitalized terms used herein and not otherwise defined herein shall have the meanings set forth in the Indenture.

The Trustee makes no recommendations and gives no investment advice herein or as to the Bonds generally. CUSIP numbers appearing herein are included solely for the convenience of Bondholders. The Trustee is not responsible for the use or the selection of the CUSIP numbers, nor is any representation made as to the correctness of such CUSIP numbers on the Bonds.

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

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

Title:

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**FINANCING AGREEMENT**

by and among

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**  
as Issuer,

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

**REGIONS BANK,**  
as Lender

and

**NORTHGATE PRESERVATION, L.P.,**  
a New York limited partnership,  
as Borrower

relating to

\$19,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village),  
Series 2019

Dated as of [June] 1, 2019

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## FINANCING AGREEMENT

**THIS FINANCING AGREEMENT** (this “**Financing Agreement**”), is dated as of [June] 1, 2019, and entered into by and among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (the “**Issuer**”), **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, as trustee under the Indenture referred to below (together with its successors and assigns, the “**Trustee**”), **REGIONS BANK**, an Alabama banking corporation (the “**Lender**”), and **NORTHGATE PRESERVATION, L.P.**, a New York limited partnership (together with its successors and assigns, the “**Borrower**”).

### RECITALS:

A. Pursuant to the Act (as defined herein), the Issuer is authorized to issue revenue bonds for the purpose of, among other things, financing the acquisition, equipping and rehabilitation of multifamily rental housing and for the provision of capital improvements in connection therewith and determined to be necessary thereto.

B. As more fully set forth in the Indenture of Trust, of even date herewith, between the Issuer and the Trustee (the “**Indenture**”), the Issuer is issuing its Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 in the aggregate principal amount of **\$19,000,000** (herein, the “**Bonds**”).

C. The parties hereto acknowledge the matters set forth in the Recitals to the Indenture.

**NOW, THEREFORE**, the parties hereto, in consideration of the premises and the mutual covenants and commitments of the parties set forth herein, the receipt and sufficiency of which are hereby acknowledged by the parties hereto, hereby agree as follows:

### ARTICLE I DEFINITIONS AND INTERPRETATION

**Section 1.01. Definitions.** Capitalized terms used herein without definition shall have the respective meanings set forth in the Indenture or the Tax Exemption Agreement. In addition to the terms elsewhere defined in this Financing Agreement, the following terms used in this Financing Agreement (including the Recitals) shall have the following meanings unless the context indicates another or different meaning or intent, and such definitions shall be equally applicable to both the singular and plural forms of any of the terms herein defined:

“**Authorized Borrower Representative**” means any person who, at any time and from time to time, is designated as the Borrower’s authorized representative by written certificate furnished to the Issuer and the Trustee containing the specimen signature of such person and signed on behalf of the Borrower by or on behalf of any authorized general partner of the Borrower if the Borrower is a general or limited partnership, by any authorized managing member of the Borrower if the Borrower is a limited liability company, or by any authorized officer of the Borrower if the Borrower is a corporation, which certificate may designate an alternate or alternates. The Trustee may conclusively presume that a person designated in a written certificate filed with it as an Authorized Borrower Representative is an Authorized Borrower Representative until such time as

the Borrower files with it (with a copy to the Issuer) a written certificate revoking such person's authority to act in such capacity.

**“Event of Default”** means any event of default specified and defined in Section 8.01(a) of this Financing Agreement.

**“Mortgage Note Rate”** means a per annum rate of interest calculated in accordance with the Mortgage Note.

**“Permitted Liens”** shall mean any easements and restrictions listed in a schedule of exceptions to coverage in the title insurance policy delivered with respect to the Project as required by the Mortgage Loan Documents including without limitation the Subordinate Mortgage and the Seller Loan.

**“Person”** means any natural person, firm, partnership, association, limited liability company, corporation or public body.

**“Placed in Service Date”** means the date the Project is placed in service for purposes of Section 142 of the Code.

#### **Section 1.02. Rules of Construction.**

(a) The singular form of any word used herein, including the terms defined in Section 1.01, shall include the plural, and vice versa, unless the context otherwise requires. The use herein of a pronoun of any gender shall include correlative words of the other genders.

(b) All references herein to “Articles,” “Sections” and other subdivisions hereof are to the corresponding Articles, Sections or subdivisions of this Financing Agreement as originally executed; and the words “herein,” “hereof,” “hereunder” and other words of similar import refer to this Financing Agreement as a whole and not to any particular Article, Section or subdivision hereof.

(c) The headings or titles of the several Articles and Sections hereof, and any table of contents appended to copies hereof, shall be solely for convenience of reference and shall not limit or otherwise affect the meaning, construction or effect of this Financing Agreement or describe the scope or intent of any provisions hereof.

(d) All accounting terms not otherwise defined herein have the meanings assigned to them in accordance with applicable generally accepted accounting principles as in effect from time to time.

(e) Every “request,” “order,” “demand,” “application,” “appointment,” “notice,” “statement,” “certificate,” “consent,” or similar action hereunder by any party shall, unless the form thereof is specifically provided, be in writing signed by a duly authorized representative of such party with a duly authorized signature.



(f) The parties hereto acknowledge that each such party and their respective counsel have participated in the drafting and revision of this Financing Agreement and the Indenture. Accordingly, the parties agree that any rule of construction which disfavors the drafting party shall not apply in the interpretation of this Financing Agreement or the Indenture or any amendment or supplement or exhibit hereto or thereto.

**Section 1.03. Effective Date.** The provisions of this Financing Agreement shall be effective on and as of the Closing Date, immediately upon the effectiveness of the Indenture.

## **ARTICLE II REPRESENTATIONS, WARRANTIES AND COVENANTS**

**Section 2.01. Representations, Warranties and Covenants by the Borrower.** The Borrower represents, warrants and covenants as follows:

(a) The Borrower is a limited partnership and is qualified to do business in the State and in every other state in which the nature of its business requires such qualification. The Borrower has full power and authority to own its properties and to carry on its business as now being conducted and as contemplated to be conducted with respect to the Project, and to enter into, and to perform and carry out the transactions provided for in this Financing Agreement, all other Bond Documents contemplated hereby to be executed by the Borrower and the Mortgage Loan Documents executed by Borrower. This Financing Agreement, the other Bond Documents to which the Borrower is a party, the Mortgage Loan Documents to which Borrower is a party, and all other documents to which the Borrower is a party and contemplated hereby or thereby have been duly authorized, executed and delivered by the Borrower and constitute the legal, valid and binding obligations of the Borrower, enforceable against the Borrower in accordance with their respective terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting the rights of creditors generally and general equitable principles.

(b) Neither the execution and delivery of this Financing Agreement, all other Bond Documents to be executed by the Borrower, the Mortgage Loan Documents executed by Borrower or any other documents contemplated hereby or thereby executed by Borrower, the consummation of the transactions contemplated hereby or thereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, all other Bond Documents to be executed by the Borrower, the Mortgage Loan Documents executed by Borrower or any other documents contemplated hereby or thereby executed by Borrower, will violate any provision of law, any order of any court or other agency of government, or any of the organizational or other governing documents of the Borrower, or any indenture, agreement or other instrument to which the Borrower is now a party or by which it or any of its properties or assets is bound, or be in conflict with, result in a breach of or constitute a default (with due notice or the passage of time or both) under any such indenture, agreement or other instrument or any license, judgment, decree, law, statute, order, rule or regulation of any governmental agency or body having jurisdiction over the Borrower or any of its activities or properties, or, except as provided hereunder, 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 Permitted Liens.

(c) The Borrower has and will have fee simple title to the Project, subject to the Permitted Liens. The Borrower is the sole borrower under the Mortgage Loan.

(d) As of the Closing Date, no litigation or proceeding is pending or, to the knowledge of the Borrower or the general partner of the Borrower, threatened in writing against the Borrower or its general partner or with respect to the Project which has a reasonable probability of having a material adverse effect on its financial condition or business, or the transactions contemplated by this Financing Agreement, the Indenture, the other Bond Documents or the Mortgage Loan Documents, or which in any way would adversely affect the validity or enforceability of the Bonds, the Indenture, this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents, or the ability of the Borrower to perform its obligations under this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents executed by the Borrower.

(e) The Project conforms in all material respects with all applicable zoning (or a legal non-conforming use), planning, building and environmental laws, ordinances and regulations of governmental authorities having jurisdiction over the Project, all necessary utilities are available to the Project, and the Borrower will obtain all requisite zoning, planning, building and environmental and other permits which may become necessary with respect to the Project. The Borrower has obtained or will timely obtain all licenses, permits and approvals necessary for the ownership, operation and management of the Project, including all approvals essential to the transactions contemplated by this Financing Agreement, the Indenture, the other Bond Documents, the Mortgage Loan Documents and any other documents contemplated hereby or thereby.

(f) The financial statements which have been furnished to date by or on behalf of the Borrower to the Issuer, are complete and accurate in all material respects and present fairly the financial condition of the Borrower as of their respective dates in accordance with generally accepted accounting methods applied by the Borrower on a consistent basis, and since the date of the most recent of such financial statements there has not been any material adverse change, financial or otherwise, in the condition of the Borrower, and there has not been any material transaction entered into by the Borrower other than transactions in the ordinary course of business, and the Borrower does not have any material contingent obligations which are not otherwise disclosed in its financial statements. There (i) is no completed, pending or to its actual knowledge threatened bankruptcy, reorganization, receivership, insolvency or like proceeding, whether voluntary or involuntary, affecting the Project, the Borrower, or any general partner of the Borrower; and (ii) is no pending assertion or exercise of jurisdiction over the Project, the Borrower or any general partner of the Borrower by any court empowered to exercise bankruptcy powers.

(g) No event has occurred and no condition exists with respect to the Borrower or the Project that would constitute an Event of Default or to its actual knowledge which, with the lapse of time, if not cured, or with the giving of notice, or both, would become an Event of Default. The Borrower is not in default under the Regulatory Agreement.

(h) The Borrower has complied with all the terms and conditions of the Tax Exemption Agreement, including the terms and conditions of the exhibits thereto, and the

representations and warranties set forth in the Tax Exemption Agreement and the Regulatory Agreement pertaining to the Borrower and the Project are true and accurate in all material respects. The Borrower has furnished to the Issuer all information pertaining to the Borrower and the Project necessary for the Issuer to file an IRS Form 8038 with respect to the Bond, and all of such information is and will be on the date of filing, true, complete and correct in all material respects.

(i) The Project is, as of the Closing Date, in compliance with all requirements of the Regulatory Agreement and the Tax Exemption Agreement, including all applicable requirements of the Act and the Code. The Borrower intends to cause the residential units in the Project to be rented or available for rental on a basis which satisfies the requirements of the Regulatory Agreement and the Tax Exemption Agreement, including all applicable requirements of the Act and the Code. All leases will comply with all applicable laws and the Regulatory Agreement and the Tax Exemption Agreement. The Project meets, or will meet upon completion of the anticipated rehabilitation, the requirements of this Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Act and the Code with respect to multifamily rental housing.

(j) No information, statement or report furnished in writing to the Issuer, Fannie Mae, the Lender or the Trustee by the Borrower in connection with this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents or the consummation of the transactions contemplated hereby and thereby (including, without limitation, any information furnished by the Borrower in connection with the preparation of any materials related to the issuance, delivery or offering of the Bonds on the Closing Date) contains any material misstatement of fact or omits 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 Closing Date, are true, correct and complete, do not contain any untrue statement or misleading statement of a material fact, and do not omit to state a material fact required to be stated therein or necessary to make the certifications, representations, warranties, statements, information and descriptions contained therein, in the light of the circumstances under which they were made, not misleading; and the estimates and the assumptions provided by the Borrower contained herein and in any certificate of the Borrower delivered as of the Closing Date are reasonable and based on the best information available to the Borrower.

(k) To the best knowledge of the Borrower, no member, officer, agent or employee of the Issuer 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 Bonds, the Bond Documents, the Mortgage Loan 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 Bond Documents or the Mortgage Loan Documents.

(l) No authorization, consent, approval, order, registration, declaration or withholding of objection on the part of or filing of or with any governmental authority not

already obtained or made (or to the extent not yet obtained or made the Borrower has no reason to believe that such authorizations, consents, approvals, orders, registrations or declarations will not be obtained or made in a timely fashion) is required for the execution and delivery or approval, as the case may be, of this Financing Agreement, the other Bond Documents, the Mortgage Loan Documents or any other documents contemplated by this Financing Agreement, the other Bond Documents or the Mortgage Loan Documents, or for the performance of the terms and provisions hereof or thereof by the Borrower.

(m) The Borrower is not presently under any cease or desist order or other orders of a similar nature, temporary or permanent, of any federal or state authority which would have the effect of preventing or hindering performance of its duties hereunder, nor are there any proceedings presently in progress or to its knowledge contemplated which would, if successful, lead to the issuance of any such order.

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

(o) The Borrower has not received any notice that it is not in compliance with all provisions of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended (“**CERCLA**”); the Resource Conservation and Recovery Act; the Superfund Amendments and Reauthorization Act of 1986; the Toxic Substances Control Act and all environmental laws of the State (the “**Environmental Laws**”), or with any rules, regulations and administrative orders of any governmental agency, or with any judgments, decrees or orders of any court of competent jurisdiction with respect thereto; and the Borrower has not received any assessment, notice (primary or secondary) of liability or financial responsibility, and no notice of any action, claim or proceeding to determine such liability or responsibility, or the amount thereof, or to impose civil penalties with respect to a site listed on any federal or state listing of sites containing or believed to contain “hazardous materials” (as defined in the Environmental Laws), nor has the Borrower received notification that any hazardous substances (as defined under CERCLA) that it has disposed of have been found in any site at which any governmental agency is conducting an investigation or other proceeding under any Environmental Law.

(p) The Borrower has not received any notice that it is not in full compliance with the Employment Retirement Income Security Act of 1974, as amended, and the Department of Labor regulations thereunder, with the Code and Regulations thereunder and with terms of such plan or plans with respect to each pension or welfare benefit plan to which the Borrower is a party or makes any employer contributions with respect to its employees, for the current or prior plan years of such plans.

(q) 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.

(r) The Borrower shall notify the Issuer and the Trustee of the Completion Date by the delivery of a Completion Certificate signed by the Authorized Borrower Representative substantially in the form of Exhibit B attached hereto. The Completion Certificate shall be delivered as promptly as practicable, but no more than thirty (30) days after the occurrence of the events and conditions referred to in paragraphs (a), and (b) of the Completion Certificate.

**Section 2.02. Representations, Warranties and Covenants of the Issuer.** The Issuer represents, warrants and covenants as follows:

(a) The Issuer is a public and official agency of the State, is authorized and empowered by the provisions of the Act and the Bond Resolution to enter into the transactions contemplated by this Financing Agreement and the Indenture and to carry out its obligations hereunder and thereunder, and by proper action of its governing body has been duly authorized to execute and deliver this Financing Agreement, the Indenture and the Tax Exemption Agreement, and this Financing Agreement, the Indenture and the Tax Exemption Agreement have been duly executed and delivered by the Issuer and are valid and binding obligations of the Issuer enforceable in accordance with their terms.

(b) The Bonds are to be issued and secured by the Indenture, pursuant to which certain of the Issuer's interests in this Financing Agreement and the Indenture, and the revenues and income to be derived by the Issuer pursuant to this Financing Agreement and the Indenture, will be pledged and assigned to the Trustee as security for payment of the principal, premium, if any, and interest on the Bonds. The Issuer covenants that it has not and will not pledge or assign its interest in the Indenture or this Financing Agreement, or the revenues and income derived pursuant to this Financing Agreement or the Indenture, excepting the Issuer's Reserved Rights, other than to the Trustee under the Indenture to secure the Bonds. The Issuer will comply with all provisions of the Act (and the rules promulgated thereunder) applicable to the Bonds and the transactions contemplated by this Financing Agreement and the Indenture.

(c) The Issuer finds and determines that the financing of the Project is in compliance with the purposes and provision of the Act.

(d) To the best knowledge of the Issuer, neither the execution and delivery of this Financing Agreement, the Indenture and the Tax Exemption Agreement, and the consummation of the transactions contemplated hereby and thereby, nor the fulfillment of or compliance with the terms and conditions of this Financing Agreement, the Indenture or the Tax Exemption Agreement conflicts with or results in a breach of the terms, conditions or provisions of any material restriction, agreement or instrument to which the Issuer is a party, or by which it or any of its property is bound, or constitutes a default under any of the foregoing.

**Section 2.03. Representations, Warranties and Covenants of the Lender.** The Lender hereby represents, warrants and covenants as follows:

(a) The Lender is a [**national banking association duly organized and existing under and pursuant to the laws of the United States of America**]. The Lender has duly authorized the execution and delivery of this Financing Agreement.

(b) The Lender has complied with the provisions of the laws of the State which are prerequisite to the consummation of, and has all necessary power and authority to consummate, all transactions described in this Financing Agreement and all other agreements relating hereto.

**Section 2.04. Compliance with Texas Government Code.** The Borrower hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent any of the documents referenced in this paragraph is a contract for goods or services, will not boycott Israel during the term of this Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Subordination Agreement, the Bond Purchase Agreement dated \_\_\_\_\_, 2019 among RBC Capital Markets, LLC, as underwriter, the Issuer and the Borrower (the “Bond Purchase Agreement”), the Multifamily Loan and Security Agreement dated as of \_\_\_\_\_, 2019, between the Borrower and the Issuer (the “Multifamily Loan Agreement”), and the related assignments, and such representation is hereby incorporated by reference into each of the documents referenced herein. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Borrower understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the respective party and exists to make a profit.

The Borrower represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,  
<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Borrower and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Borrower understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the respective entity and exists to make a profit.

### **ARTICLE III THE BONDS AND THE PROCEEDS THEREOF**

The Issuer has authorized the issuance of the Bonds in the aggregate principal amount of \$19,000,000 and Bonds in such amount shall be issued and Outstanding as of the Closing Date. The obligations of the Issuer, the Trustee, the Lender and the Borrower under this Financing Agreement are expressly conditioned upon (i) the issuance, sale and delivery of the Bonds, (ii) receipt by the Trustee of the proceeds thereof, and (iii) the making of the Mortgage Loan by the Issuer and the assignment thereof to the Lender (i.e., the Assigned Loan) and the delivery of the payment therefor by the Lender to the Trustee. Neither the Issuer, the Lender, the Trustee nor Fannie Mae shall have any liability for any fees, costs or expenses, including, without limitation, issuance costs relating to the Bonds; all of such fees, costs and expenses shall be paid by the Borrower.

### **ARTICLE IV THE MORTGAGE LOAN**

**Section 4.01. Amount and Source of Mortgage Loan.** Upon the issuance and delivery of the Bonds, pursuant to Sections 2.01 and 2.06 of the Indenture, the Issuer will make the Mortgage Loan to the Borrower and the Borrower will apply the proceeds of the Bonds as provided in Section 4.02 of the Indenture to pay Project costs. The Trustee shall apply the proceeds of the Assigned Loan as provided in Section 5.13(b)(i) and (ii) of the Indenture to secure the Bonds until the Purchase Date and then to purchase the Pass-Through Certificate. The Borrower accepts the Mortgage Loan from the Issuer, upon the terms and conditions set forth herein, in the Mortgage Loan Documents and in the Indenture, and subject to the terms and conditions of the Tax Exemption Agreement and the Regulatory Agreement. The Issuer has caused the proceeds of the Assigned Loan to be provided to the Trustee for deposit to the Collateral Security Principal Account of the Collateral Security Fund. The Borrower acknowledges its obligation to pay all amounts necessary to pay principal and interest on the Bonds. The Borrower has made arrangements for the delivery to the Trustee of the Pass-Through Certificate and of certain other Preference Proof Moneys as contemplated herein and in the Indenture. Payments on the Pass-Through Certificate received by the Trustee shall be credited to amounts due from the Borrower for payment of principal and interest on the Bonds.

**Section 4.02. Payment of Fees and Expenses.** In addition to all fees, costs, expenses and other amounts required to be paid by the Borrower under the Mortgage Loan Documents, the Borrower shall pay, without duplication, the following fees and expenses:

(a) All amounts required to (i) pay the fees of the Trustee for its duties and services as Trustee in connection with the Bonds (as such duties and services are set out in the Indenture), and (ii) reimburse the Trustee for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and similar business taxes), reasonably and necessarily incurred by the Trustee in performing its duties as Trustee under the Indenture and the Tax Exemption Agreement. All payments for fees and expenses shall be made by the Borrower not later than ten (10) days after receipt of invoices or other statements rendered to the Borrower by the Trustee.

(b) The Issuer Fees, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with the Bond Documents, the Mortgage Loan Documents or the Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving the Bond Documents, the Mortgage Loan Documents or the Bonds or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing.

(c) [Reserved.]

(d) The fees of the Rebate Analyst (as defined in the Tax Exemption Agreement) and any other consultant as required by the Tax Exemption Agreement and, upon receipt of an appropriately completed invoice, all out-of-pocket expenses of the Rebate Analyst and any other consultant.

(e) The annual rating maintenance fee, if any, of any Rating Agency then rating the Bonds.

(f) All Costs of Issuance of the Bonds, including, but not limited to, Rating Agency fees, printing expenses, attorneys' fees and underwriters' fees, and all expenses of originating the Mortgage Loan by the Lender and assigning and delivering the Mortgage Loan to Fannie Mae, the Borrower acknowledging that all such fees, costs and expenses (excluding the portions of the ongoing trust administration fees of the Trustee, the Issuer Fees and the Rebate Analyst's fee to the extent included in the Mortgage Note Rate) must be paid by the Borrower separate and apart from payments due under the Mortgage Loan and will not be included in the Mortgage Note Rate.

(g) The Costs of Issuance deposit to be made to the Costs of Issuance Fund on the Closing Date pursuant to Section 4.01(e) of the Indenture.

The Borrower shall either pay the foregoing items directly or, to the extent such items are to be paid by the Trustee under the Indenture, shall pay as Operating Revenue to the Trustee for deposit to Operating Fund under the Indenture amounts sufficient to enable the Trustee to pay the foregoing items in a timely manner.

The Borrower shall pay through the Lender all fees and expenses not included within the Mortgage Note Rate. All fees and expenses not included in the Mortgage Note Rate shall not be



secured by the Mortgage, and shall be subordinate to the Borrower's obligations under the Mortgage Loan in all respects and shall be secured by the Subordinate Mortgage subject to the provisions of the Subordination Agreement. No such fees or expenses payable to the Issuer or the Trustee shall be paid from the proceeds of the Pass-Through Certificate, except with respect to the Trustee to the extent set forth in Section 9.02 of the Indenture.

**Section 4.03. Notification of Prepayment of Mortgage Note.** The Lender shall notify the Trustee promptly of the receipt of any prepayment of the Mortgage Note, whether upon acceleration, by reason of application of insurance or condemnation proceeds, optional prepayment or otherwise, unless the Lender has received written evidence that the Borrower has notified the Trustee of such prepayment. If such prepayment results in revisions to the amortization schedule included in the Term Sheet attached as Exhibit A hereto, Lender shall provide the revised amortization schedule to the Trustee and the Issuer.

**Section 4.04. Term Sheet.** The Lender has delivered on the Closing Date the Term Sheet in the form attached as Exhibit A hereto and certifies that the information set forth therein is accurate as of the Closing Date. The Lender agrees that it will promptly advise the Issuer, the Trustee and the Underwriter in writing of any changes which occur in the information set forth in the Term Sheet after the Closing Date and before the date on which the Pass-Through Certificate is acquired by the Trustee pursuant to the provisions of the Section 4.03 of the Indenture; provided, however, that such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

## **ARTICLE V COVENANTS, UNDERTAKINGS AND OBLIGATIONS OF THE BORROWER**

**Section 5.01. Taxes, Other Governmental Charges and Utility Charges.** The Borrower shall pay, or cause to be paid, prior to the same becoming past due, every lawful cost, expense and obligation of every kind and nature, foreseen or unforeseen, for the payment of which the Issuer, the Trustee, the Lender or Fannie Mae is or shall become liable by reason of its or their estate or interest in the Project or any portion thereof, by reason of any right or interest of the Issuer, the Trustee, the Lender or Fannie Mae in or under this Financing Agreement, or by reason of or in any manner connected with or arising out of the possession, operation, maintenance, alteration, repair, rebuilding, use or occupancy of the Project or any portion thereof, including, without limitation, all taxes (except income, value added, business and similar taxes of such entities), assessments, whether general or special, and governmental charges of any kind whatsoever that may at any time be lawfully assessed or levied against or with respect to the Project or any machinery, equipment or other property installed or brought by the Borrower therein or thereon; provided, however, that the Borrower shall have the right to protest any such taxes or assessments and to require the Issuer or the Trustee, at the Borrower's expense, to protest and contest any such taxes or assessments levied upon them and that the Borrower shall have the right to withhold payment of any such taxes or assessments pending disposition of any such protest or contest unless such withholding, protest or contest would adversely affect the rights or interests of the Issuer or the Trustee; and provided, further, that any amounts payable hereunder that are also required to be paid by the terms of the Mortgage shall be paid without duplication on the terms provided in the Mortgage.

Upon request, the Borrower shall furnish to the Issuer, the Trustee, Fannie Mae and the Lender proof of the payment of any such tax, assessment or other governmental or similar charge, or any other charge which is payable by the Borrower as set forth above.

**Section 5.02. Compliance With Laws.** The Borrower shall, throughout the term of this Financing Agreement and at no expense to the Issuer, the Trustee or Fannie Mae promptly comply or cause compliance with all laws, ordinances, rules, regulations and requirements of duly constituted public authorities which may be applicable to the Project or to the repair and alteration thereof, or to the use or manner of use of the Project, including, but not limited to, the applicable provisions of the Americans With Disabilities Act and all applicable federal, State and local environmental, labor, health and safety laws, rules and regulations.

**Section 5.03. Maintenance of Legal Existence.** During the term of this Financing Agreement, the Borrower shall maintain its existence as set forth in Section 2.01(a) and shall not terminate, dissolve or dispose of all or substantially all of its assets; provided, however, that the Borrower may, with the written permission of the Issuer, consolidate with or merge into another entity or permit one or more other entities to consolidate with or merge into it, or transfer all or substantially all of its assets to another entity, but only on the condition that the assignee entity or the entity resulting from or surviving such merger or consolidation (if other than the Borrower), or the entity to which such transfer shall be made, shall be duly organized and existing, in good standing and qualified to do business under the laws of the State, shall remain so continuously during the term hereof, and shall expressly assume in writing and agree to perform all of the Borrower's obligations hereunder and under all other documents executed by the Borrower in connection with the issuance of the Bonds, including the Tax Exemption Agreement and the Regulatory Agreement; provided, further, that (i) the Borrower delivers a Favorable Opinion of Bond Counsel, and (ii) any transfer of the Project shall be effected in accordance with the Mortgage Loan Documents. Nothing in this Section 5.03 shall be deemed to relieve the Borrower of its obligations to comply with the provisions of the Mortgage Loan Documents.

**Section 5.04. Operation of Project.** The Borrower will not sell, transfer or otherwise dispose of the Project except as provided in the Tax Exemption Agreement, the Regulatory Agreement, the Mortgage Loan Documents and Section 5.03 of this Financing Agreement.

**Section 5.05. Tax Covenants.** The Borrower represents, warrants, and covenants that:

(a) The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes. With the intent not to limit the generality of the foregoing, the Borrower covenants and agrees that it will comply with the instructions and requirements of the Tax Exemption Agreement, which is incorporated by reference herein as if set forth fully herein.

(b) The Borrower will, on a timely basis, provide the Issuer with all necessary information and, with respect to the Borrower's rebate requirement or yield reduction payments (both as may be required under the Tax Exemption Agreement) required to be paid, all necessary funds, in addition to any funds that are then available for such purpose in the Rebate Fund, to enable the Issuer to comply with all arbitrage and rebate

requirements of the Code. To that end, the Borrower covenants and agrees to make such payments to the Trustee as are required of it under the Tax Exemption Agreement. The obligation of the Borrower to make such payments shall remain in effect and be binding upon the Borrower notwithstanding the release and discharge of the Indenture and this Financing Agreement.

(c) Neither the Borrower nor any “related party,” within the meaning of Section 1.150-1(b) of the Regulations, to the Borrower shall be permitted to purchase any Bonds in an amount related to the amount of the Mortgage Loan.

(d) The requirements stated in this Section 5.05 will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the excludability of interest on the Bonds from gross income for federal income tax purposes.

**Section 5.06. Further Assurances and Corrective Instruments.** The parties hereto agree that they will, from time to time, execute, acknowledge and deliver, or cause to be executed, acknowledged and delivered, such supplements hereto and to the other documents contemplated hereby as may reasonably be required to carry out the intention of or to facilitate the performance of this Financing Agreement, the Mortgage Loan Documents or the other Bond Documents or to perfect or give further assurances of any of the rights granted or provided for herein, the Mortgage Loan Documents or the other Bond Documents.

**Section 5.07. Compliance With Other Documents.** The Borrower shall make all payments and shall observe and perform all covenants, conditions and agreements required to be paid, observed or performed by the Borrower under the Mortgage Note, the Mortgage, the other Mortgage Loan Documents, the Tax Exemption Agreement, the Regulatory Agreement and all other documents, instruments or agreements which may at any time, or from time to time, be entered into by the Borrower with respect to the Project or the operation, occupancy or use thereof. The Indenture has been submitted to the Borrower for examination, and the Borrower, by execution of this Financing Agreement, acknowledges and agrees that it has participated in the negotiation of the Indenture that it has approved and agreed to each of the provisions of the Indenture and that it is bound by, shall adhere to the provisions of, and shall have the rights set forth by the terms and conditions of, the Indenture and covenants and agrees to perform all obligations required of the Borrower pursuant to the terms of the Indenture.

The Borrower hereby grants to the Trustee for the benefit of Fannie Mae and the Bondholders a security interest in all of its rights in and to all funds created or established by the Trustee under the Indenture in the manner and subject to the terms and conditions of the Indenture.

**Section 5.08. Notice of Certain Events.** The Borrower hereby covenants to advise the Lender, the Issuer and the Trustee promptly in writing of the occurrence of any default by the Borrower in the performance or observance of any covenant, agreement, representation, warranty or obligation of the Borrower set forth in this Financing Agreement, in any of the other Bond Documents or any other documents contemplated hereby or thereby, or of any Event of Default hereunder known to it or of which it has received notice, or any event which, with the passage of time or service of notice, or both, would constitute an Event of Default hereunder, specifying the nature and period of existence of such event and the actions being taken or proposed to be taken

with respect thereto. Such notice shall be given promptly, and in no event less than ten (10) Business Days after the Borrower receives notice or has knowledge of the occurrence of any such event. The Borrower further agrees that it will give prompt written notice to the Trustee and the Lender if insurance proceeds or condemnation awards are received with respect to the Project and are not used to repair or replace the Project, which notice shall state the amount of such proceeds or award.

The Borrower further covenants to provide such parties notice of the Placed in Service Date promptly upon its occurrence.

**Section 5.09. Indemnification.** TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE BORROWER HEREBY COVENANTS AND AGREES AS FOLLOWS: TO PROTECT, INDEMNIFY AND SAVE THE ISSUER AND ITS GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS FROM AND AGAINST ALL LIABILITY, LOSSES, DAMAGES, COSTS, EXPENSES (INCLUDING REASONABLE ATTORNEYS' FEES), TAXES, CAUSES OF ACTION, SUITS, CLAIMS, DEMANDS AND JUDGMENTS OF ANY NATURE OR FORM, BY OR ON BEHALF OF ANY PERSON ARISING IN ANY MANNER FROM THE TRANSACTION OF WHICH THIS FINANCING AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT INCLUDING, WITHOUT LIMITING THE GENERALITY OF THE FOREGOING, ARISING FROM (I) THE WORK DONE ON THE PROJECT OR THE OPERATION OF THE PROJECT DURING THE TERM OF THIS FINANCING AGREEMENT OR (II) ANY BREACH OR DEFAULT ON THE PART OF THE BORROWER IN THE PERFORMANCE OF ANY OF ITS OBLIGATIONS UNDER THIS FINANCING AGREEMENT, OR (III) THE PROJECT OR ANY PART THEREOF, OR (IV) ANY VIOLATION OF CONTRACT, AGREEMENT OR RESTRICTION RELATING TO THE PROJECT EXCLUDING THE PAYMENT OF THE PRINCIPAL, PREMIUM, IF ANY, AND INTEREST ON THE BONDS, OR (V) ANY LIABILITY, VIOLATION OF LAW, ORDINANCE OR REGULATION AFFECTING THE PROJECT OR ANY PART THEREOF OR THE OWNERSHIP OR OCCUPANCY OR USE THEREOF. UPON NOTICE FROM THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES, THE BORROWER SHALL DEFEND THE ISSUER OR ANY OF ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS OR EMPLOYEES IN ANY ACTION OR PROCEEDING BROUGHT IN CONNECTION WITH ANY OF THE ABOVE; PROVIDED, HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

IT IS THE INTENTION OF THE PARTIES HERETO THAT THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHALL NOT INCUR PECUNIARY LIABILITY BY REASON OF THE TERMS OF THIS FINANCING AGREEMENT OR BY REASON OF THE UNDERTAKINGS REQUIRED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN CONNECTION WITH THE ISSUANCE OF THE BONDS, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS FINANCING AGREEMENT, THE TAX

EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT, AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; THE PERFORMANCE OF ANY ACT REQUIRED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THIS FINANCING AGREEMENT; OR THE PERFORMANCE OF ANY ACT REQUESTED OF THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES BY THE BORROWER OR IN ANY WAY ARISING FROM THE TRANSACTION OF WHICH THIS FINANCING AGREEMENT IS A PART OR ARISING IN ANY MANNER IN CONNECTION WITH THE PROJECT OR THE FINANCING OF THE PROJECT, INCLUDING BUT NOT LIMITED TO THE EXECUTION AND DELIVERY OF THE INDENTURE, THIS FINANCING AGREEMENT, THE TAX EXEMPTION AGREEMENT, THE REGULATORY AGREEMENT AND ALL OTHER INSTRUMENTS AND DOCUMENTS REQUIRED TO CLOSE THE TRANSACTION; NEVERTHELESS, IF THE ISSUER OR ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES SHOULD INCUR ANY SUCH PECUNIARY LIABILITY WITH RESPECT TO EVENTS OCCURRING AFTER THE DATE HEREOF, THEN IN SUCH EVENT THE BORROWER SHALL INDEMNIFY AND HOLD THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES HARMLESS AGAINST ALL CLAIMS BY OR ON BEHALF OF ANY PERSON, ARISING OUT OF THE SAME, AND ALL COSTS AND EXPENSES INCURRED IN CONNECTION WITH ANY SUCH CLAIM OR IN CONNECTION WITH ANY ACTION OR PROCEEDING BROUGHT THEREON, AND UPON TIMELY NOTICE FROM THE ISSUER THE BORROWER SHALL DEFEND THE ISSUER AND ITS RESPECTIVE GOVERNING BOARD MEMBERS, DIRECTORS, OFFICERS, AGENTS AND EMPLOYEES IN ANY SUCH ACTION OR PROCEEDING, AND PROVIDE COMPETENT COUNSEL SATISFACTORY TO THE ISSUER AND THE BORROWER SHALL PAY THE ISSUER EXPENSES INCLUDING PAYMENT OF THE COUNSEL USED BY THE ISSUER; PROVIDED HOWEVER, THAT THE ISSUER SHALL HAVE THE RIGHT TO EMPLOY SEPARATE COUNSEL IN ANY ACTION DESCRIBED IN THE PRECEDING SENTENCE AT THE EXPENSE OF THE BORROWER.

NOTWITHSTANDING ANY PROVISION OF THIS FINANCING AGREEMENT TO THE CONTRARY, THE ISSUER SHALL BE INDEMNIFIED BY THE BORROWER WITH RESPECT TO LIABILITIES ARISING FROM THE ISSUER'S OWN GROSS NEGLIGENCE, NEGLIGENCE OR BREACH OF CONTRACTUAL DUTY, BUT NOT FOR ANY LIABILITIES ARISING FROM THE ISSUER'S OWN BAD FAITH, FRAUD OR WILLFUL MISCONDUCT.

NOTWITHSTANDING ANY PROVISION OF THIS FINANCING AGREEMENT TO THE CONTRARY THE BORROWER'S OBLIGATIONS WITH RESPECT TO INDEMNIFICATION WILL NOT BE SECURED BY THE PROJECT AND SHALL BE PERSONAL OBLIGATIONS OF THE BORROWER AND ANY SUCCESSOR OWNER OF THE PROJECT BY FORECLOSURE, DEED IN LIEU OF FORECLOSURE OR OTHERWISE SHALL NOT BE RESPONSIBLE FOR OR INCUR ANY LIABILITY WITH RESPECT TO ANY INDEMNIFICATION OBLIGATIONS DESCRIBED HEREIN.

The Borrower covenants and agrees to indemnify, hold harmless and defend the Trustee,

and its respective officers, members, directors, officials, agents and employees and each of them (each an “**indemnified party**”) from and against, (a) any and all claims, joint or several, by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated hereby or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating thereto; (b) any and all claims, joint or several, arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Mortgage Loan, its assignment to the Lender or the execution or amendment of any document related thereto, including, but not limited to, the Mortgage Loan Documents; (c) any and all claims, joint or several, arising from any act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with the Mortgage Loan or the Project including but not limited to, the Mortgage Loan Documents; (d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought thereon; (e) any and all claims arising in connection with the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any Person other than the Issuer or the party seeking indemnification in connection therewith and the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Indenture, the Tax Exemption Agreement, the Regulatory Agreement and this Financing Agreement; (f) any and all claims arising in connection with the operation of the Project, or the conditions thereof, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof; and (g) any and all losses, claims, damages, liabilities or expenses, joint or several, arising out of or connected with the Trustee’s acceptance or administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or under this Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement or any other agreements in connection therewith to which it is a party, except in the case of the foregoing indemnification of the Trustee or any of its respective officers, members, directors, officials and employees, to the extent such damages are caused by the negligence or willful misconduct of such Person. In the event that any action or proceeding is brought against any indemnified party with respect to which indemnity may be sought hereunder, the Borrower, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Borrower, subject to the approval of the indemnified party in such party’s sole but reasonable discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Trustee 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 participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that unless such separate counsel is employed with the approval of the Borrower, which approval shall not be unreasonably withheld, the Borrower shall not be required to pay the fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Regulatory Agreement, the Borrower shall remain obligated to indemnify each indemnified party pursuant to this Section if such subsequent owner fails to indemnify any party entitled to be indemnified hereunder, unless such indemnified party has consented to such transfer and to the assignment of the rights and obligations of the Borrower hereunder.

During any period that Fannie Mae owns the Project and that this Section 5.09 is applicable to Fannie Mae, Fannie Mae's obligations under this Section 5.09 shall be limited to acts and omissions of Fannie Mae occurring during the period of Fannie Mae's ownership of the Project.

Nothing contained in this Section 5.09 shall in any way be construed to limit the indemnification rights of the Issuer contained in the Regulatory Agreement. With respect to the Issuer, the Regulatory Agreement shall control in any conflicts between this Section 5.09 and the Regulatory Agreement.

**Section 5.10. Right To Perform Borrower's Obligations.** In the event the Borrower fails to perform any of its obligations under this Financing Agreement, the Issuer, the Lender, Fannie Mae and/or the Trustee, after giving the requisite notice, if any, may, but shall be under no obligation to, perform such obligation and pay all costs related thereto, and all such costs so advanced by the Issuer, the Lender, Fannie Mae or the Trustee shall become an additional obligation of the Borrower hereunder, payable on demand with interest thereon at the default rate of interest payable under the Mortgage Loan Documents.

**Section 5.11. Nonrecourse Provisions.** Notwithstanding anything to the contrary, the obligations of the Borrower pursuant to this Financing Agreement shall be secured by the Subordinate Mortgage subject to the provisions of the Subordination Agreement, and except with respect to Sections 4.02 and 5.09 hereof shall be non-recourse to the Borrower; provided that none of the Borrower's partners, officers, directors, employees or agents shall have any personal liability hereunder.

**Section 5.12. Trust Indenture.** The provisions of the Indenture concerning the Bonds and other matters therein are an integral part of the terms and conditions of the Mortgage Loan, and this Financing Agreement shall constitute conclusive evidence of approval of the Indenture by the Borrower to the extent it relates to the Borrower. Additionally, the Borrower agrees that, whenever the Indenture 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 Indenture, and the Borrower agrees to carry out and perform all of its obligations under the Indenture as fully as if the Borrower were a party to the Indenture.

## **ARTICLE VI MORTGAGE LOAN DOCUMENTS**

**Section 6.01. Assurances.** The Borrower, the Issuer and the Trustee each agree that they shall not enter into any contract or agreement, perform any act, or request any other party hereto to enter into any contracts or agreements or perform any acts, which shall adversely affect the Mortgage Loan Documents in any material respect.

**Section 6.02. Security for Borrower Obligations.** The Issuer acknowledges that the Project shall be encumbered by the Mortgage Loan Documents. Notwithstanding any provisions of this Financing Agreement or the Regulatory Agreement to the contrary, all obligations of the Borrower under this Financing Agreement and the Regulatory Agreement for the payment of money and all claims for damages against the Borrower occasioned by breach or alleged breach by the Borrower of its obligations under the Regulatory Agreement or this Financing Agreement,

including indemnification obligations, shall be secured by the Subordinate Mortgage subject to the provisions of the Subordination Agreement.

## **ARTICLE VII TRUSTEE'S INTEREST IN AGREEMENT**

### **Section 7.01. Issuer Assignment of This Financing Agreement.**

(a) Pursuant to the Indenture, the Issuer shall pledge, assign and transfer all of its right, title and interest in this Financing Agreement (other than the Reserved Rights of the Issuer), and the revenues, receipts and collections hereunder and thereunder, to the Trustee in the manner and to the extent provided in the Indenture as security for the payment of the principal of, premium, if any, and interest on the Bonds, and the parties hereby acknowledge that the covenants and agreements contained herein are for the benefit of the registered owners from time to time of the Bonds and may be enforced on their behalf by the Trustee. The Issuer shall execute and deliver from time to time, in addition to the instruments of assignment herein specifically provided for, such other and further instruments and documents as may be reasonably requested by the Trustee from time to time to further evidence, effect or perfect such pledge and assignment for the purposes contemplated in the Indenture.

(b) The Borrower hereby acknowledges and consents to the assignment and pledge (subject to the reservation by the Issuer of its Reserved Rights) by the Issuer to the Trustee in the manner and to the extent provided in the Indenture. The Borrower further acknowledges and consents to the right of the Trustee to enforce all rights of the Issuer and the Bondholders assigned under the Indenture.

## **ARTICLE VIII EVENTS OF DEFAULT AND REMEDIES**

**Section 8.01. Events of Default.** Each of the following shall constitute an event of default under this Financing Agreement, and the term “**Event of Default**” shall mean, whenever used in this Financing Agreement, any one or more of the following events:

(a) Failure by the Borrower to pay any amounts due under this Financing Agreement at the times and in the amounts required hereby; or

(b) Failure by the Borrower to observe or perform any covenants, agreements or obligations in this Financing Agreement on its part to be observed or performed (other than as provided in clause (i) above) for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied, given to the Borrower by any party to this Financing Agreement; provided, however, that if said failure shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the Bonds and if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected, and provided further that any such failure shall have been cured within ninety (90) days of receipt of notice of such failure; or



(c) Breach of any of the covenants, agreements or obligations of the Borrower under or the occurrence of a default which is continuing under the Tax Exemption Agreement or the Regulatory Agreement, including any exhibits thereto, which continues beyond all applicable notice, grace, and cure periods; or

(d) The occurrence of an Event of Default caused by the Borrower under and as defined in the Indenture or under any of the other Bond Documents, which continues beyond all applicable notice, grace, and cure periods.

Nothing contained in this Section 8.01 is intended to amend or modify any of the provisions of the Mortgage Loan Documents nor to bind the Borrower, the Lender or Fannie Mae to any notice and cure periods other than as expressly set forth in the Mortgage Loan Documents. Issuer, Trustee, Lender and Fannie Mae agree that (i) Tax Credit Investor shall have the right, but not the obligation, to cure any default on behalf of the Borrower on the same terms provided to the Borrower in this Financing Agreement; and (ii) any cure of any Event of Default hereunder made or tendered by the Tax Credit Investor shall be deemed to be a cure by the Borrower, and shall be accepted or rejected hereunder on the same basis as if made or tendered by the Borrower.

#### **Section 8.02. Remedies Upon an Event of Default.**

(a) Subject to Section 8.02(d), whenever any Event of Default shall have occurred and be continuing, the Issuer or the Trustee may take any one or more of the following remedial steps:

(1) By any suit, action or proceeding, pursue all remedies now or hereafter existing at law or in equity to collect all amounts then due and thereafter to become due under this Financing Agreement, to enforce the performance of any covenant, obligation or agreement of the Borrower under this Financing Agreement (subject to the nonrecourse provisions of this Financing Agreement and the Regulatory Agreement) or to enjoin acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee.

(2) Take whatever other action at law or in equity may appear necessary or desirable to enforce any monetary obligation of the Borrower under this Financing Agreement or to enforce any other covenant, obligation or agreement of the Borrower under (i) this Financing Agreement, (ii) the Tax Exemption Agreement, or (iii) the Regulatory Agreement.

(3) Have access to and inspect, examine, audit and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower.

(b) The provisions of subsection (a) hereof are subject to the condition that if, after any Event of Default, except a default under the Regulatory Agreement, (i) all amounts which would then be payable hereunder by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and (ii) the Borrower shall have also performed all other obligations in respect of which it is then in default hereunder and shall have paid the reasonable charges and

expenses of the Issuer and the Trustee, including reasonable attorney fees and expenses paid or incurred in connection with such default, then and in every such case, such Event of Default may be waived and annulled by the Trustee, but no such waiver or annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) Subject to the limitations of the Regulatory Agreement and this Financing Agreement, the Issuer, without the consent of the Trustee, but only after written notice to the Trustee, the Borrower, the Lender and Fannie Mae, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any Reserved Right of the Issuer; provided that, the Issuer may not (i) terminate this Financing Agreement or cause the Mortgage Loan to become due and payable, (ii) cause the Trustee to declare the principal of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable, or cause the Trustee to accelerate, foreclose or take any other action or seek other remedies under the Bond Documents, the Mortgage Loan Documents or any other documents contemplated hereby or thereby to obtain such performance or observance, (iii) cause the acceleration, foreclosure or taking of any other action or the seeking of any remedies under the Mortgage Loan Documents, (iv) 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, interest and other amounts due under the Mortgage Loan, or (v) interfere with or attempt to influence the exercise by Fannie Mae of any of its rights under the Bond Documents or the Mortgage Loan Documents.

(d) Except as required to be deposited in the Rebate Fund pursuant to the Tax Exemption Agreement, any amounts collected pursuant to action taken under this Section 8.02 shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, the Issuer, the Lender or Fannie Mae and their respective counsel, be applied in accordance with the provisions of the Indenture. No action taken pursuant to this Section shall relieve the Borrower from the Borrower's obligations pursuant to Section 5.09 hereof.

(e) No remedy herein conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy now or hereafter existing pursuant to any other agreement at law or in equity or by statute.

(f) Notwithstanding any other provision of this Financing Agreement to the contrary, after the Purchase Date, so long as Fannie Mae is not in default under the Pass-Through Certificate, none of the Issuer, the Trustee or any Person under their control shall exercise any remedies or direct any proceedings under this Financing Agreement or the Mortgage Loan Documents, other than to (i) enforce rights under the Pass-Through Certificate, (ii) enforce the tax covenants in the Indenture, this Financing Agreement and the Tax Exemption Agreement, or (iii) enforce rights of specific performance under the Regulatory Agreement; provided, however, that any enforcement under (ii) or (iii) above shall not include seeking monetary damages other than the Issuer Fees and the Trustee's fees and expenses.

### **Section 8.03. Default Under Regulatory Agreement.**

(a) If the Borrower fails, at any time for any reason, to comply with the requirements of the Regulatory Agreement, then within thirty (30) days after the earlier of the date the violation is discovered by the Issuer or the Trustee or the date the Issuer or the Trustee received notice thereof, the Issuer (if necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes) or the Trustee, on behalf of and at the request of the Issuer, shall institute an action for specific performance to correct the violation. The Borrower hereby acknowledges and agrees that were money damages a remedy under the Regulatory Agreement, money damages alone would not be an adequate remedy at law for a default by the Borrower arising from a failure to comply with the Regulatory Agreement, and therefore the Borrower agrees that the remedy of specific performance (subject to the provisions of Section 8.02(c) hereof) shall be available to the Issuer and/or the Trustee in any such case.

(b) Notwithstanding the availability of the remedy of specific performance provided for in subsection (a) of this Section, promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer shall, by notice in writing to the Lender and the Borrower, inform the Lender and the Borrower that a violation of the Regulatory Agreement has occurred; notwithstanding the occurrence of such violation, neither the Issuer nor the Trustee shall have, and each of them acknowledges that they shall not have, any right to cause or direct acceleration of the Mortgage Loan, to enforce the Mortgage Note or to foreclose on the Mortgage.

### **Section 8.04. Limitation on Waivers.**

(a) No delay or omission to exercise any right or power occurring 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 appropriate. The Issuer and the Trustee agree to give only such notices as may be herein expressly required.

(b) In the event any covenant, agreement or condition contained in this Financing Agreement shall be breached by a party and thereafter waived by another party, such waiver shall not bind any party which has not waived the breach and shall be limited to the particular breach so waived and shall not be deemed to waive any other breach hereunder nor be a waiver of the same breach on a future occasion. By reason of the assignment and pledge of certain of the Issuer's rights and interests in this Financing Agreement to the Trustee, the Issuer shall have no power to waive or release the Borrower from any Event of Default or the performance or observance of any obligation or condition of the Borrower under this Financing Agreement without first requesting and receiving the prior written consent of the Trustee, but shall do so if, requested by the Trustee; provided that the Issuer shall not be required to grant such waiver or release unless it shall have been provided with (i) if deemed necessary in the sole discretion of the Issuer a Counsel's Opinion that such action will not result in any pecuniary liability to it and a Favorable Opinion of Bond Counsel, (ii) such indemnification as the Issuer shall deem reasonably necessary, and (iii) written notice from the Trustee of the request for such waiver or release.

**Section 8.05. Notice of Default; Lender's Right To Cure.** The Issuer and the Trustee shall each give notice to the other and to the Lender, the Borrower and the Tax Credit Investor of the occurrence of any Event of Default by the Borrower hereunder of which it has actual knowledge. The Lender shall have the right, but not the obligation, to cure any such default by the Borrower, and upon performance by the Lender to the satisfaction of the Issuer and the Trustee of the covenant, agreement or obligation of the Borrower with respect to which an Event of Default has occurred, the parties hereto shall be restored to their former respective positions, it being agreed that the Lender shall have the right to repayment from the Borrower of moneys it has expended and any other appropriate redress for actions it has taken to cure any default by the Borrower; provided that the Borrower's reimbursement obligation shall be non-recourse to the same extent as the underlying obligation is non-recourse to the Borrower and its partners.

**Section 8.06. Rights Cumulative.** All rights and remedies herein given or granted to the Issuer and the Trustee are cumulative, nonexclusive and in addition to any and all rights and remedies that the Issuer and the Trustee may have or may be given by reason of any law, statute, ordinance or otherwise. Notwithstanding anything to the contrary contained in this Financing Agreement, neither the Trustee nor the Issuer may commence any action against the Borrower for specific performance or any other remedy at law or in equity, other than to enforce performance and observance of any Reserved Right of the Issuer and its rights under Section 8.03, without first obtaining the prior written consent of Fannie Mae.

## **ARTICLE IX MISCELLANEOUS**

**Section 9.01. Notices.** All notices, certificates or other communications herein provided shall be given in writing to the Issuer, the Borrower, the Trustee, Fannie Mae and the Lender, and shall be sufficiently given and shall be deemed given if given in the manner provided in the Indenture. Copies of each notice, certificate or other communication given hereunder by any party hereto shall be given to all parties hereto. By notice given hereunder, any party may designate further or different addresses to which subsequent notices, certificates or other communications are to be sent. A duplicate copy of each notice, certificate, request or other communication given hereunder to the Issuer, the Borrower, the Lender or the Trustee shall also be given to Fannie Mae. Copies of all notices provided to the Borrower pursuant to this Agreement shall also be simultaneously provided to the Tax Credit Investor at its address provided in the Indenture.

**Section 9.02. Amendment.** This Financing Agreement and all other documents contemplated hereby to which the Issuer is a party may be amended or terminated only if permitted by the Indenture, and no amendment to this Financing Agreement shall be binding upon, any party hereto until such amendment is reduced to writing and executed by the parties hereto; provided that, except as provided in the Tax Exemption Agreement, no amendment, supplement or other modification to this Financing Agreement or any other Bond Document shall be effective without the prior written consent of Fannie Mae.

**Section 9.03. Entire Agreement.** Except as provided in the other Bond Documents and the Mortgage Loan Documents, this Financing Agreement contains all agreements among the parties hereto, and there are no other representations, warranties, promises, agreements or

understandings, oral, written or implied, among the parties hereto, unless reference is made thereto in this Financing Agreement or the Indenture.

**Section 9.04. Binding Effect.** This Financing Agreement shall be binding upon the Issuer, the Borrower and the Trustee and their respective successors and assigns. Notwithstanding anything herein to the contrary, to the extent Fannie Mae or its designee shall become the owner of the Project as a result of a foreclosure or a deed in lieu of foreclosure or similar conveyance, Fannie Mae, and its designee, if applicable, shall not be liable for any breach or default or any of the obligations of any prior owner of the Project under this Financing Agreement, and shall only be responsible for defaults and obligations incurred during the period Fannie Mae or its designee, if applicable, is the owner of the Project.

**Section 9.05. Severability.** If any clause, provision or section of this Financing Agreement shall be ruled invalid or unenforceable by any court of competent jurisdiction, the invalidity or unenforceability of such clause, provision or section shall not affect any of the remaining clauses, provisions or sections.

**Section 9.06. Execution in Counterparts.** This Financing 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 9.07. Governing Law.** This Financing Agreement shall be governed by and interpreted in accordance with the internal laws of the State without regard to conflicts of laws principles.

**Section 9.08. Limited Liability of the Issuer; No Liability of Officers.** Notwithstanding anything contained herein to the contrary:

(a) **THE ISSUER SHALL BE OBLIGATED TO PAY THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON, THE BONDS SOLELY OUT OF THE TRUST ESTATE. THE BONDS SHALL CONSTITUTE A VALID CLAIM OF THE RESPECTIVE HOLDERS THEREOF AGAINST THE TRUST ESTATE, WHICH IS PLEDGED TO SECURE THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, AND INTEREST ON THE BONDS AND WHICH SHALL BE UTILIZED FOR NO OTHER PURPOSE, EXCEPT AS EXPRESSLY AUTHORIZED IN THE INDENTURE. THE BONDS, TOGETHER WITH INTEREST THEREON, SHALL BE LIMITED OBLIGATIONS OF THE ISSUER GIVING RISE TO NO CHARGE AGAINST THE ISSUER'S GENERAL CREDIT AND PAYABLE SOLELY FROM, AND CONSTITUTE CLAIMS OF THE HOLDERS THEREOF AGAINST ONLY, THE TRUST ESTATE. THE BONDS, THE PREMIUM, IF ANY, AND THE INTEREST THEREON SHALL NOT BE DEEMED TO CONSTITUTE DEBT OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, AND NONE OF THE ISSUER, THE STATE OR ANY POLITICAL SUBDIVISION THEREOF SHALL BE LIABLE THEREON, NOR IN ANY EVENT SHALL THE BONDS BE PAYABLE OUT OF ANY FUNDS OR PROPERTIES OTHER THAN THOSE SPECIFICALLY PLEDGED THERETO. NEITHER THE FAITH AND CREDIT NOR TAXING POWER OF THE STATE**

**OR ANY POLITICAL SUBDIVISION THEREOF IS PLEDGED TO THE PAYMENT OF THE BONDS. THE ISSUER HAS NO TAXING POWER.**

(b) All covenants, obligations and agreements of the Issuer contained in this Financing Agreement and the Indenture shall be effective to the extent authorized and permitted by applicable law. No covenant, agreement or obligation contained herein shall be deemed to be a covenant, agreement or obligation of any present or future governing board member, director, officer, employee or agent of the Issuer in his individual capacity, and neither the governing board members of the Issuer nor any director, officer or employee thereof executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. No governing board member, director, officer, employee or agent of the Issuer shall incur any personal liability with respect to any other action taken by him pursuant to the Indenture or the Act, provided such governing board member, director, officer, employee or agent acts in good faith.

(c) No agreements or provisions contained in the Indenture nor any agreement, covenant or undertaking by the Issuer contained in any document executed by the Issuer in connection with the Project, or the issuance, sale and delivery of the Bonds, shall give rise to any pecuniary liability of the Issuer or a charge against its general credit, or shall obligate the Issuer financially in any way except as may be payable from the repayments by the Borrower under this Financing Agreement and the proceeds of the Bonds and other amounts pledged under the Indenture as part of the Trust Estate. No failure of the Issuer to comply with any term, condition, covenant or agreement herein or in any document executed by the Issuer in connection with the issuance and sale of the Bonds shall subject the Issuer to liability for any claim for damages, costs or other financial or pecuniary charge except to the extent that the same can be paid or recovered from the repayments by the Borrower under this Financing Agreement or other amounts pledged under the Indenture as part of the Trust Estate. Nothing herein shall preclude a proper party in interest from seeking and obtaining, to the extent permitted by law, specific performance against the Issuer for any failure to comply with any term, condition, covenant or agreement herein, provided that no costs, expenses or other monetary relief shall be recoverable from the Issuer except as may be payable from the repayments by the Borrower and other amounts pledged under the Indenture as part of the Trust Estate.

(d) No recourse shall be had for the payment of the principal of or premium or interest on any of the Bonds or for any claim based thereon or upon any obligation, covenant or agreement contained in the Indenture against any past, present or future governing board member, director, officer, employee or agent of the Issuer, or of any successor public corporation, as such, either directly or through the Issuer or any successor public corporation, under any rule of law or equity, statute or constitution or by the enforcement of any assessment or penalty or otherwise, and all such liability of any such governing board members, directors, officers, employees or agents, as such, is hereby expressly waived and released as a condition of, and consideration for, the execution of the Indenture and the issuance of such Bonds.

(e) Anything in the Indenture to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that (i) the Issuer may rely conclusively on the truth and accuracy of any certificate, opinion, notice, or other instrument furnished to the Issuer by the Trustee or the Borrower as to the existence of any fact or state of affairs required hereunder to be noticed by the Issuer; (ii) the Issuer shall not be under any obligation hereunder to perform any record keeping or to provide any legal services; and (iii) none of the provisions of the Indenture shall require the Issuer to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers hereunder, unless it shall first have been adequately indemnified to its satisfaction against the cost, expenses, and liability which may be incurred thereby.

(f) No provision, representation, covenant or agreement contained in this Financing Agreement or in the Indenture, the Bonds, or any obligation herein or therein imposed upon the Issuer, or the breach thereof, shall constitute or give rise to or impose upon the Issuer a pecuniary liability (except to the extent of any loan repayments, revenues and receipts derived by the Issuer pursuant to this Financing Agreement and other amounts pledged as part of the Trust Estate). No provision hereof shall be construed to impose a charge against the general credit of the Issuer, the State or any other political subdivision of the State, the taxing powers of the foregoing, within the meaning of any constitutional provision or statutory limitation, or any personal or pecuniary liability upon any governing board member, director, officer, agent or employee of the Issuer.

**Section 9.09. Term of This Financing Agreement.** This Financing Agreement shall be in full force and effect from its date to and including such date as all of the Bonds shall have been fully paid or retired (or provision for such payment shall have been made as provided in the Indenture); provided, however, that the provisions of Sections 4.02 (unless all such fees described therein shall have been paid or provision shall have been made for their payment), 5.05 and 5.09 of this Financing Agreement shall survive the termination hereof.

**IN WITNESS WHEREOF**, the parties hereto have caused this Financing Agreement to be executed by their duly authorized representatives as of the date of execution set forth below.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Issuer

By: \_\_\_\_\_  
Name: J. B. Goodwin  
Title: Chair

**NORTHGATE PRESERVATION, L.P.**, a New York  
limited partnership

By: Northgate Preservation GP, LLC, a New York  
limited liability company, its general partner

By: \_\_\_\_\_  
Name: Matthew Finkle  
Title: Vice President

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

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

**REGIONS BANK**, an Alabama banking  
corporation, as Lender

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



**EXHIBIT A**  
**TERM SHEET**

**Term Sheet**

Information provided by Lender for Official Statement

*Represents an excerpt of the term sheet schedules to the Annex A, edited for purposes of the Official Statement*

<b>Pool Statistics</b>	
Issuance UPB (\$)	
Maximum Issuance Principal Balance	
Security Maturity Date	
Term to Maturity (months)	
Weighted Average Remaining Term to Maturity (months)	
Amortization Term (months)	
Security Funds Transfer Type	
Security Type	
Transaction ID Pool Number	
CUSIP	
Settlement Date (anticipated)	
Pool Issue Date (anticipated)	
MBS First Payment Date (anticipated)	
Number of Loans	

<b>Loan Information</b>	
Seller Name	
Servicer Name	
Property ID	
First Loan Payment Date	
Note Date	
Loan Maturity Date	
Original UPB (\$)	
Loan Issuance UPB / Unit (\$)	
Pass-Through Rate to Investor	
Servicing Fee	
Guarantee Fee	
Note Rate	
Original Loan Term (months)	
Remaining Loan Term (months)	
Original Amortization Term (Months)	
Amortization Type	
Interest Only Term (Months)	
Interest Only End Date	
Interest Type	
Interest Accrual Method	
Prepayment Lockout Term (months)	
Yield Maintenance Period, Years 1-16.5	
1% Prepayment Period, Years 16.5 – 16.75	
Prepayment Premium End Date	
Lien Priority	
Loan Purpose	

Ownership Interest	
Balloon Maturity Y/N	
Additional Debt (Y/N)	
Cross Collateralized (Y/N)	
Cross Defaulted (Y/N)	
Tax Escrow (Y/N)	
Pricing Tier	
Tier Drop Eligible	
Good Faith Deposit	
MBS Disclosure	
Modified Loss Share	
Physical Occupancy	
Physical Occupancy As-Of-Date	
Underwritten Economic Occupancy	
Underwritten Gross Income	
Underwritten Total Operating Expense	
Underwritten Replacement Reserves	
UW NCF	
Property Value	
Property Value As-Of-Date	
Maximum Allowable LTV	
Underwritten Actual LTV	
Monthly Debt Service	
Minimum Allowable DSCR	
Underwritten Actual DSCR	
Estimated Actual DSCR Interest Only	

<b>Property Information</b>	
Property Name	
Address	
Property County	
Units	
Property Type	
Affordable Housing Type	
% Units with Income or Rental Restrictions	
# of Units At or Below 30% Area Median Income	
# of Units At or Below 50% Area Median Income	
# of Units At or Below 60% Area Median Income	
HAP Contract (Y/N)	
Remaining Term of HAP Contract (months)	
Additional Affordability Detail	
Age Restricted (Y/N)	

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## AMORTIZATION SCHEDULE

[To come from Lender]

**EXHIBIT B**

\$19,000,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019

**COMPLETION CERTIFICATE**

Pursuant to Section 2.01 of the Financing Agreement (the “**Financing Agreement**”) among the Texas Department of Housing and Community Affairs (the “**Issuer**”), Northgate Preservation, L.P., a New York limited partnership (the “**Borrower**”), and the Trustee and the Lender named therein, dated as of [June] 1, 2019, and relating to the captioned Bonds, the undersigned Authorized Borrower Representative hereby certifies that (with capitalized words and terms used and not defined in this Certificate having the meanings assigned or referenced in the Financing Agreement):

(a) The rehabilitation of the Project was substantially completed and available and suitable for use as multifamily housing on \_\_\_\_\_ (the “**Completion Date**”).

(b) The acquisition, rehabilitation, equipping and improvement of the Project and those other facilities have been accomplished in such a manner as to conform in all material respects with all applicable zoning, planning, building, environmental and other similar Governmental regulations.

(c) The costs of the rehabilitation of the Project financed with the Mortgage Loan were \$\_\_\_\_\_.

(d) The applicable government having jurisdiction over the Project has issued certificates of occupancy with respect to each building in the Project.

(e) The proceeds of the Bonds were used in accordance with Paragraph 9 of the Tax Exemption Agreement, including the requirement that at least 95% of the proceeds of the Bonds be expended for Qualified Project Costs as described in the Tax Exemption Agreement and no more than 2% of the proceeds of the Bonds be expended for Costs of Issuance.

(f) This Certificate is given without prejudice to any rights against third parties that now exist or subsequently may come into being.

IN WITNESS WHEREOF, the Authorized Borrower Representative has set his or her hand as of the \_\_\_\_ day of \_\_\_\_\_, 20\_\_.

Authorized Borrower Representative

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

**MULTIFAMILY LOAN AND SECURITY AGREEMENT  
(NON-RECOURSE)**

**BY AND BETWEEN**

**NORTHGATE PRESERVATION, L.P.,**  
a New York limited partnership

**AND**

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,** a  
public and official agency of the State of Texas

**DATED AS OF**

**[June \_\_, 2019]**

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## SCHEDULES & EXHIBITS

### Schedules

Schedule 1	Definitions Schedule (required)	Form 6101.FR
Schedule 2	Summary of Loan Terms (required)	Form 6102.FR
Schedule 2		
Addenda:	Section 8 HAP Contract	Form 6102.02
	Tax Credit Properties	Form 6102.03
	Rehabilitation Reserve – Moderate Rehabilitation	Form 6102.13
	Rent Restriction Agreement – Scorecard Exclusions for Affordable Housing	Form 6102.23
	Replacement Reserve Deposits – Deposits Partially or Fully Waived	Form 6102.04
Schedule 3	Interest Rate Type Provisions (required)	Form 6103.FR
Schedule 4	Prepayment Premium Schedule (required)	Form 6104.01
Schedule 5	Required Replacement Schedule (required)	
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Schedule 7	Exceptions to Representations and Warranties Schedule (required)	
Schedule 8	Rehabilitation Work Schedule	

### Exhibits

Exhibit A	Modifications to Loan Agreement (Section 8 HAP Contract)	Form 6216
Exhibit B	Modifications to Loan Agreement (Tax Credit Properties)	Form 6219
Exhibit C	Modifications to Loan Agreement (Rent Restriction Agreement –Scorecard Exclusions for Affordable Housing – M.TEB)	Form 6253
Exhibit D	Rehabilitation Reserve – Moderate Rehabilitation	Form 6222.MOD
Exhibit E	Replacement Reserve – Deposits Partially or Fully Waived	Form 6220
Exhibit F	First Lien – Permitted Subordinate Debt With Cross-Default	Form 6212

**MULTIFAMILY LOAN AND SECURITY AGREEMENT  
(Non-Recourse)**

This MULTIFAMILY LOAN AND SECURITY AGREEMENT (as amended, restated, replaced, supplemented, or otherwise modified from time to time, the “**Loan Agreement**”) is made as of the Effective Date (as hereinafter defined) by and between **NORTHGATE PRESERVATION, L.P.**, a New York limited partnership (“**Borrower**”), and **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas (“**Lender**”).

**RECITALS:**

WHEREAS, Borrower desires to obtain the Mortgage Loan (as hereinafter defined) from Lender to be secured by the Mortgaged Property (as hereinafter defined); and

WHEREAS, Lender is willing to make the Mortgage Loan on the terms and conditions contained in this Loan Agreement and in the other Loan Documents (as hereinafter defined);

NOW, THEREFORE, in consideration of the making of the Mortgage Loan by Lender and other good and valuable consideration, the receipt and adequacy of which are hereby conclusively acknowledged, the parties hereby covenant, agree, represent, and warrant as follows:

**AGREEMENTS:**

**ARTICLE 1 - DEFINITIONS; SUMMARY OF MORTGAGE  
LOAN TERMS**

**Section 1.01 Defined Terms.**

Capitalized terms not otherwise defined in the body of this Loan Agreement shall have the meanings set forth in the Definitions Schedule attached as Schedule 1 to this Loan Agreement.

**Section 1.02 Schedules, Exhibits, and Attachments Incorporated.**

The schedules, exhibits, and any other addenda or attachments are incorporated fully into this Loan Agreement by this reference and each constitutes a substantive part of this Loan Agreement.

## ARTICLE 2 - GENERAL MORTGAGE LOAN TERMS

### Section 2.01 Mortgage Loan Origination and Security.

#### (a) Making of Mortgage Loan.

Subject to the terms and conditions of this Loan Agreement and the other Loan Documents, Lender hereby makes the Mortgage Loan to Borrower, and Borrower hereby accepts the Mortgage Loan from Lender. Borrower covenants and agrees that it shall:

(1) pay the Indebtedness, including the Prepayment Premium, if any (whether in connection with any voluntary prepayment or in connection with an acceleration by Lender of the Indebtedness), in accordance with the terms of this Loan Agreement and the other Loan Documents; and

(2) perform, observe, and comply with this Loan Agreement and all other provisions of the other Loan Documents.

#### (b) Security for Mortgage Loan.

The Mortgage Loan is made pursuant to this Loan Agreement, is evidenced by the Note, and is secured by the Security Instrument, this Loan Agreement, and the other Loan Documents that are expressly stated to be security for the Mortgage Loan.

#### (c) Protective Advances.

As provided in the Security Instrument, Lender may take such actions or disburse such funds as Lender reasonably deems necessary to perform the obligations of Borrower under this Loan Agreement and the other Loan Documents and to protect Lender's interest in the Mortgaged Property.

### Section 2.02 Payments on Mortgage Loan.

#### (a) Debt Service Payments.

##### (1) Short Month Interest.

If the date the Mortgage Loan proceeds are disbursed is any day other than the first day of the month, interest for the period beginning on the disbursement date and ending on and including the last day of the month in which the disbursement occurs shall be payable by Borrower on the date the Mortgage Loan proceeds are disbursed. In the event that the disbursement date is not the same as the Effective Date, then:

(A) the disbursement date and the Effective Date must be in the same month, and

(B) the Effective Date shall not be the first day of the month.

**(2) Interest Accrual and Computation.**

Except as provided in Section 2.02(a)(1), interest shall be paid in arrears. Interest shall accrue as provided in the Schedule of Interest Rate Type Provisions and shall be computed in accordance with the Interest Accrual Method. If the Interest Accrual Method is "Actual/360," Borrower acknowledges and agrees that the amount allocated to interest for each month will vary depending on the actual number of calendar days during such month.

**(3) Monthly Debt Service Payments.**

Consecutive monthly debt service installments (comprised of either interest only or principal and interest, depending on the Amortization Type), each in the amount of the applicable Monthly Debt Service Payment, shall be due and payable on the First Payment Date, and on each Payment Date thereafter until the Maturity Date, at which time all Indebtedness shall be due. Any regularly scheduled Monthly Debt Service Payment that is received by Lender before the applicable Payment Date shall be deemed to have been received on such Payment Date solely for the purpose of calculating interest due. All payments made by Borrower under this Loan Agreement shall be made without set-off, counterclaim, or other defense.

**(4) Payment at Maturity.**

The unpaid principal balance of the Mortgage Loan, any Accrued Interest thereon and all other Indebtedness shall be due and payable on the Maturity Date.

**(5) Interest Rate Type.**

See the Schedule of Interest Rate Type Provisions for additional provisions, if any, specific to the Interest Rate Type.

**(b) Capitalization of Accrued But Unpaid Interest.**

Any accrued and unpaid interest on the Mortgage Loan remaining past due for thirty (30) days or more may, at Lender's election, be added to and become part of the unpaid principal balance of the Mortgage Loan.

**(c) Late Charges.**

(1) If any Monthly Debt Service Payment due hereunder is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the applicable Payment Date, or any amount payable under this Loan Agreement (other than the payment due on the Maturity Date for repayment of the Mortgage Loan in full) or any other Loan Document

is not received by Lender within ten (10) days (or fifteen (15) days for any Mortgaged Property located in Mississippi or North Carolina to comply with applicable law) after the date such amount is due, inclusive of the date on which such amount is due, Borrower shall pay to Lender, immediately without demand by Lender, the Late Charge.

The Late Charge is payable in addition to, and not in lieu of, any interest payable at the Default Rate pursuant to Section 2.02(d).

(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan;

(B) it is extremely difficult and impractical to determine those additional expenses;

(C) Lender is entitled to be compensated for such additional expenses; and

(D) the Late Charge represents a fair and reasonable estimate, taking into account all circumstances existing on the date hereof, of the additional expenses Lender will incur by reason of any such late payment.

**(d) Default Rate.**

(1) Default interest shall be paid as follows:

(A) If any amount due in respect of the Mortgage Loan (other than amounts due on the Maturity Date) remains past due for thirty (30) days or more, interest on such unpaid amount(s) shall accrue from the date payment is due at the Default Rate and shall be payable upon demand by Lender.

(B) If any Indebtedness due is not paid in full on the Maturity Date, then interest shall accrue at the Default Rate on all such unpaid amounts from the Maturity Date until fully paid and shall be payable upon demand by Lender.

Absent a demand by Lender, any such amounts shall be payable by Borrower in the same manner as provided for the payment of Monthly Debt Service Payments. To the extent permitted by applicable law, interest shall also accrue at the Default Rate on any judgment obtained by Lender against Borrower in connection with the Mortgage Loan. To the extent Borrower or any other Person is vested with a right of redemption, interest shall continue to accrue at the Default Rate during any redemption period until such time as the Mortgaged Property has been redeemed.



(2) Borrower acknowledges and agrees that:

(A) its failure to make timely payments will cause Lender to incur additional expenses in servicing and processing the Mortgage Loan; and

(B) in connection with any failure to timely pay all amounts due in respect of the Mortgage Loan on the Maturity Date, or during the time that any amount due in respect of the Mortgage Loan is delinquent for more than thirty (30) days:

(i) Lender's risk of nonpayment of the Mortgage Loan will be materially increased;

(ii) Lender's ability to meet its other obligations and to take advantage of other investment opportunities will be adversely impacted;

(iii) Lender will incur additional costs and expenses arising from its loss of the use of the amounts due;

(iv) it is extremely difficult and impractical to determine such additional costs and expenses;

(v) Lender is entitled to be compensated for such additional risks, costs, and expenses; and

(vi) the increase from the Interest Rate to the Default Rate represents a fair and reasonable estimate of the additional risks, costs, and expenses Lender will incur by reason of Borrower's delinquent payment and the additional compensation Lender is entitled to receive for the increased risks of nonpayment associated with a delinquency on the Mortgage Loan (taking into account all circumstances existing on the Effective Date).

**(e) Address for Payments.**

All payments due pursuant to the Loan Documents shall be payable at Lender's Payment Address, or such other place and in such manner as may be designated from time to time by written notice to Borrower by Lender.

**(f) Application of Payments.**

If at any time Lender receives, from Borrower or otherwise, any payment in respect of the Indebtedness that is less than all amounts due and payable at such time, then Lender may apply such payment to amounts then due and payable in any manner and in any order determined by Lender or hold in suspense and not apply such payment at Lender's election. Neither Lender's acceptance of a payment that is less than all amounts then due and payable, nor Lender's

application of, or suspension of the application of, such payment, shall constitute or be deemed to constitute either a waiver of the unpaid amounts or an accord and satisfaction. Notwithstanding the application of any such payment to the Indebtedness, Borrower's obligations under this Loan Agreement and the other Loan Documents shall remain unchanged.

**Section 2.03 Lockout/Prepayment.**

**(a) Prepayment; Prepayment Lockout; Prepayment Premium.**

(1) Borrower shall not make a voluntary full or partial prepayment on the Mortgage Loan during any Prepayment Lockout Period nor shall Borrower make a voluntary partial prepayment at any time. Except as expressly provided in this Loan Agreement (including as provided in the Prepayment Premium Schedule), a Prepayment Premium calculated in accordance with the Prepayment Premium Schedule shall be payable in connection with any prepayment of the Mortgage Loan.

(2) If a Prepayment Lockout Period applies to the Mortgage Loan, and during such Prepayment Lockout Period Lender accelerates the unpaid principal balance of the Mortgage Loan or otherwise applies collateral held by Lender to the repayment of any portion of the unpaid principal balance of the Mortgage Loan, the Prepayment Premium shall be due and payable and equal to the amount obtained by multiplying the percentage indicated (if at all) in the Prepayment Premium Schedule by the amount of principal being prepaid at the time of such acceleration or application.

**(b) Voluntary Prepayment in Full.**

At any time after the expiration of any Prepayment Lockout Period, Borrower may voluntarily prepay the Mortgage Loan in full on a Permitted Prepayment Date so long as:

(1) Borrower delivers to Lender a Prepayment Notice specifying the Intended Prepayment Date not more than sixty (60) days, but not less than thirty (30) days (if given via U.S. Postal Service) or twenty (20) days (if given via facsimile, e-mail, or overnight courier) prior to such Intended Prepayment Date; and

(2) Borrower pays to Lender an amount equal to the sum of:

(A) the entire unpaid principal balance of the Mortgage Loan; plus

(B) all Accrued Interest (calculated through the last day of the month in which the prepayment occurs); plus

(C) the Prepayment Premium; plus

(D) all other Indebtedness.

In connection with any such voluntary prepayment, Borrower acknowledges and agrees that interest shall always be calculated and paid through the last day of the month in which the prepayment occurs (even if the Permitted Prepayment Date for such month is not the last day of such month, or if Lender approves prepayment on an Intended Prepayment Date that is not a Permitted Prepayment Date). Borrower further acknowledges that Lender is not required to accept a voluntary prepayment of the Mortgage Loan on any day other than a Permitted Prepayment Date. However, if Lender does approve an Intended Prepayment Date that is not a Permitted Prepayment Date and accepts a prepayment on such Intended Prepayment Date, such prepayment shall be deemed to be received on the immediately following Permitted Prepayment Date. If Borrower fails to prepay the Mortgage Loan on the Intended Prepayment Date for any reason (including on any Intended Prepayment Date that is approved by Lender) and such failure either continues for five (5) Business Days, or into the following month, Lender shall have the right to recalculate the payoff amount. If Borrower prepays the Mortgage Loan either in the following month or more than five (5) Business Days after the Intended Prepayment Date that was approved by Lender, Lender shall also have the right to recalculate the payoff amount based upon the amount of such payment and the date such payment was received by Lender. Borrower shall immediately pay to Lender any additional amounts required by any such recalculation.

**(c) Acceleration of Mortgage Loan.**

Upon acceleration of the Mortgage Loan, Borrower shall pay to Lender:

- (1) the entire unpaid principal balance of the Mortgage Loan;
- (2) all Accrued Interest (calculated through the last day of the month in which the acceleration occurs);
- (3) the Prepayment Premium; and
- (4) all other Indebtedness.

**(d) Application of Collateral.**

Any application by Lender of any collateral or other security to the repayment of all or any portion of the unpaid principal balance of the Mortgage Loan prior to the Maturity Date in accordance with the Loan Documents shall be deemed to be a prepayment by Borrower. Any such prepayment shall require the payment to Lender by Borrower of the Prepayment Premium calculated on the amount being prepaid in accordance with this Loan Agreement.

**(e) Casualty and Condemnation.**

Notwithstanding any provision of this Loan Agreement to the contrary, no Prepayment Premium shall be payable with respect to any prepayment occurring as a result of the application of any insurance proceeds or amounts received in connection with a Condemnation Action in accordance with this Loan Agreement.

**(f) No Effect on Payment Obligations.**

Unless otherwise expressly provided in this Loan Agreement, any prepayment required by any Loan Document of less than the entire unpaid principal balance of the Mortgage Loan shall not extend or postpone the due date of any subsequent Monthly Debt Service Payments, Monthly Replacement Reserve Deposit, or other payment, or change the amount of any such payments or deposits.

**(g) Loss Resulting from Prepayment.**

In any circumstance in which a Prepayment Premium is due under this Loan Agreement, Borrower acknowledges that:

(1) any prepayment of the unpaid principal balance of the Mortgage Loan, whether voluntary or involuntary, or following the occurrence of an Event of Default by Borrower, will result in Lender's incurring loss, including reinvestment loss, additional risk, expense, and frustration or impairment of Lender's ability to meet its commitments to third parties;

(2) it is extremely difficult and impractical to ascertain the extent of such losses, risks, and damages;

(3) the formula for calculating the Prepayment Premium represents a reasonable estimate of the losses, risks, and damages Lender will incur as a result of a prepayment; and

(4) the provisions regarding the Prepayment Premium contained in this Loan Agreement are a material part of the consideration for the Mortgage Loan, and that the terms of the Mortgage Loan are in other respects more favorable to Borrower as a result of Borrower's voluntary agreement to such prepayment provisions.

**ARTICLE 3 - PERSONAL LIABILITY**

**Section 3.01 Non-Recourse Mortgage Loan; Exceptions.**

Except as otherwise provided in this Article 3 or in any other Loan Document, none of Borrower, or any director, officer, manager, member, partner, shareholder, trustee, trust beneficiary, or employee of Borrower, shall have personal liability under this Loan Agreement or any other Loan Document for the repayment of the Indebtedness or for the performance of any other obligations of Borrower under the Loan Documents, and Lender's only recourse for the satisfaction of such Indebtedness and the performance of such obligations shall be Lender's exercise of its rights and remedies with respect to the Mortgaged Property and any other collateral held by Lender as security for the Indebtedness. This limitation on Borrower's liability shall not limit or impair Lender's enforcement of its rights against Guarantor under any Loan Document.

**Section 3.02 Personal Liability of Borrower (Exceptions to Non-Recourse Provision).**

**(a) Personal Liability Based on Lender's Loss.**

Borrower shall be personally liable to Lender for the repayment of the portion of the Indebtedness equal to any loss or damage suffered by Lender as a result of, subject to any notice and cure period, if any:

(1) failure to pay as directed by Lender upon demand after an Event of Default (to the extent actually received by Borrower):

(A) all Rents to which Lender is entitled under the Loan Documents; and

(B) the amount of all security deposits then held or thereafter collected by Borrower from tenants and not properly applied pursuant to the applicable Leases;

(2) failure to maintain all insurance policies required by the Loan Documents, except to the extent Lender has the obligation to pay the premiums pursuant to Section 12.03(c);

(3) failure to apply all insurance proceeds received by Borrower or any amounts received by Borrower in connection with a Condemnation Action, as required by the Loan Documents;

(4) failure to comply with any provision of this Loan Agreement or any other Loan Document relating to the delivery of books and records, statements, schedules, and reports;

(5) except to the extent directed otherwise by Lender pursuant to the terms of the Loan Documents, failure to apply Rents to the ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service Amounts, as and when each is due and payable, except that Borrower will not be personally liable with respect to Rents that are distributed by Borrower in any calendar year if Borrower has paid all ordinary and necessary expenses of owning and operating the Mortgaged Property and Debt Service Amounts for such calendar year;

(6) waste or abandonment of the Mortgaged Property; or

(7) grossly negligent or reckless unintentional material misrepresentation or omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with ongoing financial or other reporting required by the Loan Documents, or any request for action or consent by Lender.

Notwithstanding the foregoing, Borrower shall not have personal liability under clauses (1), (3), or (5) above to the extent that Borrower lacks the legal right to direct the disbursement of the applicable funds due to an involuntary Bankruptcy Event that occurs without the consent, encouragement, or active participation of (A) Borrower, Guarantor, or Key Principal, (B) any Person Controlling Borrower, Guarantor, or Key Principal or (C) any Person Controlled by or under common Control with Borrower, Guarantor, or Key Principal.

**(b) Full Personal Liability for Mortgage Loan.**

Borrower shall be personally liable to Lender for the repayment of all of the Indebtedness, and the Mortgage Loan shall be fully recourse to Borrower, upon the occurrence of any of the following:

(1) failure by Borrower to materially comply with the single-asset entity requirements of Section 4.02(d) of this Loan Agreement;

(2) a Transfer (other than a conveyance of the Mortgaged Property at a Foreclosure Event pursuant to the Security Instrument and this Loan Agreement) that is not permitted under this Loan Agreement or any other Loan Document;

(3) the occurrence of any Bankruptcy Event (other than an acknowledgement in writing as described in clause (b) of the definition of “Bankruptcy Event”); provided, however, in the event of an involuntary Bankruptcy Event, Borrower shall only be personally liable if such involuntary Bankruptcy Event occurs with the consent, encouragement, or active participation of (A) Borrower, Guarantor, or Key Principal, (B) any Person Controlling Borrower, Guarantor, or Key Principal, or (C) any Person Controlled by or under common Control with Borrower, Guarantor, or Key Principal;

(4) fraud, written material misrepresentation, or material omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with any application for or creation of the Indebtedness; or

(5) fraud, written intentional material misrepresentation, or intentional material omission by Borrower, Guarantor, Key Principal, or any officer, director, partner, manager, member, shareholder, or trustee of Borrower, Guarantor, or Key Principal in connection with ongoing financial or other reporting required by the Loan Documents, or any request for action or consent by Lender.

**Section 3.03 Personal Liability for Indemnity Obligations.**

Borrower shall be personally and fully liable to Lender for Borrower’s indemnity obligations under Section 13.01(e) of this Loan Agreement, the Environmental Indemnity Agreement, and any other express indemnity obligations provided by Borrower under any Loan Document. Borrower’s liability for such indemnity obligations shall not be limited by the amount of the Indebtedness, the repayment of the Indebtedness, or otherwise, provided that Borrower’s

liability for such indemnities shall not include any loss caused by the gross negligence or willful misconduct of Lender as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

**Section 3.04 Lender’s Right to Forego Rights Against Mortgaged Property.**

To the extent that Borrower has personal liability under this Loan Agreement or any other Loan Document, Lender may exercise its rights against Borrower personally to the fullest extent permitted by applicable law without regard to whether Lender has exercised any rights against the Mortgaged Property, the UCC Collateral, or any other security, or pursued any rights against Guarantor, or pursued any other rights available to Lender under this Loan Agreement, any other Loan Document, or applicable law. For purposes of this Section 3.04 only, the term “Mortgaged Property” shall not include any funds that have been applied by Borrower as required or permitted by this Loan Agreement prior to the occurrence of an Event of Default, or that Borrower was unable to apply as required or permitted by this Loan Agreement because of a Bankruptcy Event. To the fullest extent permitted by applicable law, in any action to enforce Borrower’s personal liability under this Article 3, Borrower waives any right to set off the value of the Mortgaged Property against such personal liability.

**ARTICLE 4 - BORROWER STATUS**

**Section 4.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 4.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Due Organization and Qualification.**

Borrower is validly existing and qualified to transact business and is in good standing in the state in which it is formed or organized, the Property Jurisdiction, and in each other jurisdiction that qualification or good standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to be so qualified or in good standing would adversely affect Borrower’s operation of the Mortgaged Property or the validity, enforceability or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document.

**(b) Location.**

Borrower’s General Business Address is Borrower’s principal place of business and principal office.

**(c) Power and Authority.**

Borrower has the requisite power and authority:

(1) to own the Mortgaged Property and to carry on its business as now conducted and as contemplated to be conducted in connection with the performance of its obligations under this Loan Agreement and under the other Loan Documents to which it is a party; and

(2) to execute and deliver this Loan Agreement and the other Loan Documents to which it is a party, and to carry out the transactions contemplated by this Loan Agreement and the other Loan Documents to which it is a party.

**(d) Due Authorization.**

The execution, delivery, and performance of this Loan Agreement and the other Loan Documents to which it is a party have been duly authorized by all necessary action and proceedings by or on behalf of Borrower, and no further approvals or filings of any kind, including any approval of or filing with any Governmental Authority, are required by or on behalf of Borrower as a condition to the valid execution, delivery, and performance by Borrower of this Loan Agreement or any of the other Loan Documents to which it is a party, except filings required to perfect and maintain the liens to be granted under the Loan Documents and routine filings to maintain good standing and its existence.

**(e) Valid and Binding Obligations.**

This Loan Agreement and the other Loan Documents to which it is a party have been duly executed and delivered by Borrower and constitute the legal, valid, and binding obligations of Borrower, enforceable against Borrower in accordance with their respective terms, except as such enforceability may be limited by applicable Insolvency Laws or by the exercise of discretion by any court.

**(f) Effect of Mortgage Loan on Borrower's Financial Condition.**

The Mortgage Loan will not render Borrower Insolvent. Borrower reasonably expects to have sufficient working capital, including proceeds from the Mortgage Loan, cash flow from the Mortgaged Property, or other sources, not only to adequately maintain the Mortgaged Property, but also to pay all of Borrower's outstanding debts as they come due, including all Debt Service Amounts, exclusive of Borrower's ability to refinance or pay in full the Mortgage Loan on the Maturity Date. In connection with the execution and delivery of this Loan Agreement and the other Loan Documents (and the delivery to, or for the benefit of, Lender of any collateral contemplated thereunder), and the incurrence by Borrower of the obligations under this Loan Agreement and the other Loan Documents, Borrower did not receive less than reasonably equivalent value in exchange for the incurrence of the obligations of Borrower under this Loan Agreement and the other Loan Documents.



**(g) Economic Sanctions, Anti-Money Laundering, and Anti-Corruption.**

(1) None of Borrower, Guarantor, or Key Principal, nor to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, nor any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is in violation of any applicable civil or criminal laws or regulations, including those requiring internal controls, intended to prohibit, prevent, or regulate money laundering, drug trafficking, terrorism, or corruption, of the United States and the jurisdiction where the Mortgaged Property is located or where the Person resides, is domiciled, or has its principal place of business.

(2) None of Borrower, Guarantor, or Key Principal, nor to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, nor any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is a Person:

(A) against whom proceedings are pending for any alleged violation of any laws described in Section 4.01(g)(1);

(B) that has been convicted of any violation of, has been subject to civil penalties or Economic Sanctions pursuant to, or had any of its property seized or forfeited under, any laws described in Section 4.01(g)(1); or

(C) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is a Sanctioned Person or is otherwise prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law.

(3) Borrower, Guarantor, and Key Principal are in compliance with all applicable Economic Sanctions laws and regulations.

**(h) Borrower Single Asset Status.**

Borrower:

(1) does not own or lease any real property, personal property, or assets other than the Mortgaged Property;

(2) does not own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(3) except as previously disclosed to Lender, has no material financial obligation under or secured by any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, or other agreement or instrument to which Borrower is a party, or by which

Borrower is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property) that (i) are not evidenced by a promissory note, (ii) are payable within sixty (60) days of the date incurred, and (iii) as of the Effective Date, do not exceed, in the aggregate, four percent (4%) of the original principal balance of the Mortgage Loan;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate; and

(C) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents;

(4) has maintained its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless Borrower's assets have been included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) has not commingled its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(6) has been adequately capitalized in light of its contemplated business operations;

(7) has not assumed, guaranteed, or pledged its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument), or held out its credit as being available to satisfy the obligations of any other Person;

(8) has not made loans or advances to any other Person; and

(9) has not entered into, and is not a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm's length transaction with an unrelated third party.

**(i) No Bankruptcies or Judgments.**

None of Borrower, Guarantor, or Key Principal, nor to Borrower's knowledge, any Person Controlling Borrower, Guarantor, or Key Principal, nor any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, is currently:

- (1) the subject of or a party to any completed or pending bankruptcy, reorganization, including any receivership or other insolvency proceeding;
  - (2) preparing or intending to be the subject of a Bankruptcy Event; or
  - (3) the subject of any judgment unsatisfied of record or docketed in any court;
- or
- (4) Insolvent.

**(j) No Actions or Litigation.**

(1) There are no claims, actions, suits, or proceedings at law or in equity by or before any Governmental Authority now pending against or, to Borrower's knowledge, threatened against or affecting Borrower or the Mortgaged Property not otherwise covered by insurance (except claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be disclosed); and

(2) there are no claims, actions, suits, or proceedings at law or in equity by or before any Governmental Authority now pending or, to Borrower's knowledge, threatened against or affecting Guarantor or Key Principal, which claims, actions, suits, or proceedings, if adversely determined (individually or in the aggregate) reasonably would be expected to materially adversely affect the financial condition or business of Borrower, Guarantor, or Key Principal or the condition, operation, or ownership of the Mortgaged Property (except claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be deemed material).

**(k) Payment of Taxes, Assessments, and Other Charges.**

Borrower confirms that:

- (1) it has filed all federal, state, county, and municipal tax returns and reports required to have been filed by Borrower;
- (2) it has paid, before any fine, penalty interest, lien, or costs may be added thereto, all taxes, governmental charges, and assessments due and payable with respect to such returns and reports;

(3) there is no controversy or objection pending, or to the knowledge of Borrower, threatened in respect of any tax returns of Borrower; and

(4) it has made adequate reserves on its books and records for all taxes that have accrued but which are not yet due and payable.

**(l) Not a Foreign Person.**

Borrower is not a “foreign person” within the meaning of Section 1445(f)(3) of the Internal Revenue Code.

**(m) ERISA.**

Borrower represents and warrants that:

(1) Borrower is not an Employee Benefit Plan;

(2) no asset of Borrower constitutes “plan assets” (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;

(3) no asset of Borrower is subject to any laws of any Governmental Authority governing the assets of an Employee Benefit Plan; and

(4) neither Borrower nor any ERISA Affiliate is subject to any obligation or liability with respect to any ERISA Plan.

**(n) Default Under Other Obligations.**

(1) The execution, delivery, and performance of the obligations imposed on Borrower under this Loan Agreement and the Loan Documents to which it is a party will not cause Borrower to be in default under the provisions of any agreement, judgment, or order to which Borrower is a party or by which Borrower is bound.

(2) None of Borrower, Guarantor, or Key Principal is in default under any obligation to Lender.

**(o) Prohibited Person.**

None of Borrower, Guarantor, or Key Principal is a Prohibited Person, nor to Borrower’s knowledge, is any Person:

(1) Controlling Borrower, Guarantor, or Key Principal a Prohibited Person; or

(2) Controlled by and having a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal a Prohibited Person.

**(p) No Contravention.**

Neither the execution and delivery of this Loan Agreement and the other Loan Documents to which Borrower is a party, nor the fulfillment of or compliance with the terms and conditions of this Loan Agreement and the other Loan Documents to which Borrower is a party, nor the performance of the obligations of Borrower under this Loan Agreement and the other Loan Documents does or will conflict with or result in any breach or violation of, or constitute a default under, any of the terms, conditions, or provisions of Borrower's organizational documents, or any indenture, existing agreement, or other instrument to which Borrower is a party or to which Borrower, the Mortgaged Property, or other assets of Borrower are subject.

**(q) Lockbox Arrangement.**

Borrower is not party to any type of lockbox agreement or similar cash management arrangement that has not been approved by Lender in writing, and no direct or indirect owner of Borrower is party to any type of lockbox agreement or similar cash management arrangement with respect to Rents or other income from the Mortgaged Property that has not been approved by Lender in writing.

**Section 4.02 Covenants.**

**(a) Maintenance of Existence; Organizational Documents.**

Borrower shall maintain its existence, its entity status, franchises, rights, and privileges under the laws of the state of its formation or organization (as applicable). Borrower shall continue to be duly qualified and in good standing to transact business in each jurisdiction in which qualification or standing is required according to applicable law to conduct its business with respect to the Mortgaged Property and where the failure to do so would adversely affect Borrower's operation of the Mortgaged Property or the validity, enforceability, or the ability of Borrower to perform its obligations under this Loan Agreement or any other Loan Document. Neither Borrower nor any partner, member, manager, officer, or director of Borrower shall, except as permitted by Article 11 of this Loan Agreement:

- (1) make or allow any material change to the organizational documents or organizational structure of Borrower, including changes relating to the Control of Borrower, or
- (2) file any action, complaint, petition, or other claim to:
  - (A) divide, partition, or otherwise compel the sale of the Mortgaged Property, or
  - (B) otherwise change the Control of Borrower.

**(b) Economic Sanctions, Anti-Money Laundering, and Anti-Corruption.**

(1) Borrower, Guarantor, Key Principal, and any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal shall remain in compliance with any applicable civil or criminal laws or regulations (including those requiring internal controls) intended to prohibit, prevent, or regulate money laundering, drug trafficking, terrorism, or corruption, of the United States and the jurisdiction where the Mortgaged Property is located or where the Person resides, is domiciled, or has its principal place of business.

(2) At no time shall Borrower, Guarantor, or Key Principal, or any Person Controlling Borrower, Guarantor, or Key Principal, or any Person Controlled by Borrower, Guarantor, or Key Principal that also has a direct or indirect ownership interest in Borrower, Guarantor, or Key Principal, be a Person:

(A) against whom proceedings are pending for any alleged violation of any laws described in Section 4.02(b)(1);

(B) that has been convicted of any violation of, has been subject to civil penalties or Economic Sanctions pursuant to, or had any of its property seized or forfeited under, any laws described in Section 4.02(b)(1); or

(C) with whom any United States Person, any entity organized under the laws of the United States or its constituent states or territories, or any entity, regardless of where organized, having its principal place of business within the United States or any of its territories, is a Sanctioned Person or is otherwise prohibited from transacting business of the type contemplated by this Loan Agreement and the other Loan Documents under any other applicable law.

(3) Borrower, Guarantor, and Key Principal shall at all times remain in compliance with any applicable Economic Sanctions laws and regulations.

**(c) Payment of Taxes, Assessments, and Other Charges.**

Borrower shall file, or cause to be filed, all federal, state, county, and municipal tax returns and reports required to be filed by Borrower and shall pay, before any fine, penalty interest, or cost may be added thereto, all taxes payable with respect to such returns and reports.

**(d) Borrower Single Asset Status.**

Until the Indebtedness is fully paid, Borrower:

(1) shall not acquire or lease any real property, personal property, or assets other than the Mortgaged Property;

(2) shall not acquire, own, operate, or participate in any business other than the leasing, ownership, management, operation, and maintenance of the Mortgaged Property;

(3) shall not commingle its assets or funds with those of any other Person, unless such assets or funds can easily be segregated and identified in the ordinary course of business from those of any other Person;

(4) shall maintain its financial statements, accounting records, and other partnership, real estate investment trust, limited liability company, or corporate documents, as the case may be, separate from those of any other Person (unless Borrower's assets are included in a consolidated financial statement prepared in accordance with generally accepted accounting principles);

(5) except as previously disclosed to Lender, shall have no material financial obligation under any indenture, mortgage, deed of trust, deed to secure debt, loan agreement, other agreement or instrument to which Borrower is a party or by which Borrower is otherwise bound, or to which the Mortgaged Property is subject or by which it is otherwise encumbered, other than:

(A) unsecured trade payables incurred in the ordinary course of the operation of the Mortgaged Property (exclusive of amounts (i) to be paid out of the Replacement Reserve Account or Repairs Escrow Account, or (ii) for rehabilitation, restoration, repairs, or replacements of the Mortgaged Property or otherwise approved by Lender) so long as such trade payables (1) are not evidenced by a promissory note, (2) are payable within sixty (60) days of the date incurred, and (3) as of any date, do not exceed, in the aggregate, two percent (2%) of the original principal balance of the Mortgage Loan; provided, however, that otherwise compliant outstanding trade payables may exceed two percent (2%) up to an aggregate amount of four percent (4%) of the original principal balance of the Mortgage Loan for a period (beginning on or after the Effective Date) not to exceed ninety (90) consecutive days;

(B) if the Security Instrument grants a lien on a leasehold estate, Borrower's obligations as lessee under the ground lease creating such leasehold estate; and

(C) obligations under the Loan Documents and obligations secured by the Mortgaged Property to the extent permitted by the Loan Documents;

(6) shall not assume, guaranty, or pledge its assets to secure the liabilities or obligations of any other Person (except in connection with the Mortgage Loan or other mortgage loans that have been paid in full or collaterally assigned to Lender, including in connection with any Consolidation, Extension and Modification Agreement or similar instrument) or hold out its credit as being available to satisfy the obligations of any other Person;

(7) shall not make loans or advances to any other Person; or

(8) shall not enter into, or become a party to, any transaction with any Borrower Affiliate, except in the ordinary course of business and on terms which are no more favorable to any such Borrower Affiliate than would be obtained in a comparable arm's-length transaction with an unrelated third party.

**(e) ERISA.**

Borrower covenants that:

(1) no asset of Borrower shall constitute "plan assets" (within the meaning of Section 3(42) of ERISA and Department of Labor Regulation Section 2510.3-101) of an Employee Benefit Plan;

(2) no asset of Borrower shall be subject to the laws of any Governmental Authority governing the assets of an Employee Benefit Plan; and

(3) neither Borrower nor any ERISA Affiliate shall incur any obligation or liability with respect to any ERISA Plan.

**(f) Notice of Litigation or Insolvency.**

Borrower shall give immediate written notice to Lender of any claims, actions, suits, or proceedings at law or in equity (including any insolvency, bankruptcy, or receivership proceeding) by or before any Governmental Authority pending or, to Borrower's knowledge, threatened against or affecting Borrower, Guarantor, Key Principal, or the Mortgaged Property, which claims, actions, suits, or proceedings, if adversely determined reasonably would be expected to materially adversely affect the financial condition or business of Borrower, Guarantor, or Key Principal, or the condition, operation, or ownership of the Mortgaged Property (including any claims, actions, suits, or proceedings regarding fair housing, anti-discrimination, or equal opportunity, which shall always be deemed material).

**(g) Payment of Costs, Fees, and Expenses.**

In addition to the payments specified in this Loan Agreement, Borrower shall pay, on demand, all of Lender's out-of-pocket fees, costs, charges, or expenses (including the reasonable fees and expenses of attorneys, accountants, and other experts) incurred by Lender, except for fees, costs, charges or expenses incurred in connection with Lender's gross negligence or willful misconduct as determined by a court of law with competent jurisdiction, in connection with:

(1) any amendment to, or consent, or waiver required under, this Loan Agreement or any of the Loan Documents (whether or not any such amendments, consents, or waivers are entered into);



(2) defending or participating in any litigation arising from actions by third parties and brought against or involving Lender with respect to:

(A) the Mortgaged Property;

(B) any event, act, condition, or circumstance in connection with the Mortgaged Property; or

(C) the relationship between or among Lender, Borrower, Key Principal, and Guarantor in connection with this Loan Agreement or any of the transactions contemplated by this Loan Agreement;

(3) the administration or enforcement of, or preservation of rights or remedies under, this Loan Agreement or any other Loan Documents including or in connection with any litigation or appeals, any Foreclosure Event or other disposition of any collateral granted pursuant to the Loan Documents; and

(4) any Bankruptcy Event or Guarantor Bankruptcy Event.

**(h) Restrictions on Distributions.**

No distributions or dividends of any nature with respect to Rents or other income from the Mortgaged Property shall be made to any Person having a direct ownership interest in Borrower if an Event of Default has occurred and is continuing.

**(i) Lockbox Arrangement.**

Borrower shall not enter into any type of lockbox agreement or similar cash management arrangement that has not been approved by Lender in writing, and no direct or indirect owner of Borrower shall enter into any type of lockbox agreement or similar cash management arrangement with respect to Rents or other income from the Mortgaged Property that has not been approved by Lender in writing. Lender's approval of any such cash management arrangement may be conditioned upon requiring Borrower to enter into a lockbox agreement or similar cash management arrangement with Lender in form and substance acceptable to Lender with regard to Rents and other income from the Mortgaged Property.

## **ARTICLE 5 - THE MORTGAGE LOAN**

### **Section 5.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 5.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Receipt and Review of Loan Documents.**

Borrower has received and reviewed this Loan Agreement and all of the other Loan Documents.

**(b) No Default.**

No default exists under any of the Loan Documents.

**(c) No Defenses.**

The Loan Documents are not currently subject to any right of rescission, set-off, counterclaim, or defense by either Borrower or Guarantor, including the defense of usury, and neither Borrower nor Guarantor has asserted any right of rescission, set-off, counterclaim, or defense with respect thereto.

**(d) Loan Document Taxes.**

All mortgage, mortgage recording, stamp, intangible, or any other similar taxes required to be paid by any Person under applicable law currently in effect in connection with the execution, delivery, recordation, filing, registration, perfection, or enforcement of any of the Loan Documents, including the Security Instrument, have been paid or will be paid in the ordinary course of the closing of the Mortgage Loan.

**Section 5.02 Covenants.**

**(a) Ratification of Covenants; Estoppels; Certifications.**

Borrower shall:

(1) promptly notify Lender in writing upon any violation of any covenant set forth in any Loan Document of which Borrower has notice or knowledge; provided, however, any such written notice by Borrower to Lender shall not relieve Borrower of, or result in a waiver of, any obligation under this Loan Agreement or any other Loan Document; and

(2) within ten (10) days after a request from Lender, provide a written statement, signed and acknowledged by Borrower, certifying to Lender or any person designated by Lender, as of the date of such statement:

(A) that the Loan Documents are unmodified and in full force and effect (or, if there have been modifications, that the Loan Documents are in full force and effect as modified and setting forth such modifications);

(B) the unpaid principal balance of the Mortgage Loan;

(C) the date to which interest on the Mortgage Loan has been paid;

(D) that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail);

(E) whether or not there are then-existing any setoffs or defenses known to Borrower against the enforcement of any right or remedy of Lender under the Loan Documents; and

(F) any additional facts reasonably requested in writing by Lender and known to Borrower.

**(b) Further Assurances.**

**(1) Other Documents As Lender May Require.**

Within ten (10) Business Days after request by Lender, Borrower shall, subject to Section 5.02(d) below, execute, acknowledge, and deliver, at its cost and expense, all further acts, deeds, conveyances, assignments, financing statements, transfers, documents, agreements, assurances, and such other instruments as Lender may reasonably require from time to time in order to better assure, grant, and convey to Lender the rights intended to be granted, now or in the future, to Lender under this Loan Agreement and the other Loan Documents.

**(2) Corrective Actions.**

Within ten (10) Business Days after request by Lender, Borrower shall provide, or cause to be provided, to Lender, at Borrower's cost and expense, such further documentation or information reasonably deemed necessary or appropriate by Lender in the exercise of its rights under the related commitment letter between Borrower and Lender or to correct patent mistakes in the Loan Documents, the Title Policy, or the funding of the Mortgage Loan.

**(c) Sale of Mortgage Loan.**

Borrower shall, subject to Section 5.02(d) below:

(1) comply with the reasonable requirements of Lender or any Investor of the Mortgage Loan or provide, or cause to be provided, to Lender or any Investor of the Mortgage Loan within ten (10) Business Days of the request, at Borrower's cost and expense, such further documentation or information as Lender or Investor may reasonably require, in order to enable:

(A) Lender to sell the Mortgage Loan to such Investor;

(B) Lender to obtain a refund of any commitment fee from any such Investor; or

(C) any such Investor to further sell or securitize the Mortgage Loan;

(2) ratify and affirm in writing the representations and warranties set forth in any Loan Document as of such date specified by Lender modified as necessary to reflect changes that have occurred subsequent to the Effective Date;

(3) confirm that Borrower is not in default in paying the Indebtedness or in performing or observing any of the covenants or agreements contained in this Loan Agreement or any of the other Loan Documents (or, if Borrower is in default, describing such default in reasonable detail); and

(4) execute and deliver to Lender and/or any Investor such other documentation, including any amendments, corrections, deletions, or additions to this Loan Agreement or other Loan Document(s) as is reasonably required by Lender or such Investor.

**(d) Limitations on Further Acts of Borrower.**

Nothing in Section 5.02(b) and Section 5.02(c) shall require Borrower to do any further act that has the effect of:

(1) changing the economic terms of the Mortgage Loan set forth in the related commitment letter between Borrower and Lender;

(2) imposing on Borrower or Guarantor greater personal liability under the Loan Documents than that set forth in the related commitment letter between Borrower and Lender; or

(3) materially changing the rights and obligations of Borrower or Guarantor under the commitment letter.

**(e) Financing Statements; Record Searches.**

(1) Borrower shall pay all costs and expenses associated with:

(A) any filing or recording of any financing statements, including all continuation statements, termination statements, and amendments or any other filings related to security interests in or liens on collateral; and

(B) any record searches for financing statements that Lender may require.

(2) Borrower hereby authorizes Lender to file any financing statements, continuation statements, termination statements, and amendments (including an “all assets” or “all personal property” collateral description or words of similar import) in form and substance as Lender may require in order to protect and preserve Lender’s lien priority and security interest in the Mortgaged Property (and to the extent Lender has filed any such financing statements, continuation statements, or amendments prior to the Effective Date, such filings by Lender are hereby authorized and ratified by Borrower).

**(f) Loan Document Taxes.**

Borrower shall pay, on demand, any transfer taxes, documentary taxes, assessments, or charges made by any Governmental Authority in connection with the execution, delivery, recordation, filing, registration, perfection, or enforcement of any of the Loan Documents or the Mortgage Loan.

## **ARTICLE 6 - PROPERTY USE, PRESERVATION, AND MAINTENANCE**

### **Section 6.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 6.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Compliance with Law; Permits and Licenses.**

(1) To Borrower’s knowledge, all improvements to the Land and the use of the Mortgaged Property comply with all applicable laws, ordinances, statutes, rules, and regulations, including all applicable statutes, rules, and regulations pertaining to requirements for equal opportunity, anti-discrimination, fair housing, and rent control, and Borrower has no knowledge of any action or proceeding (or threatened action or proceeding) regarding noncompliance or nonconformity with any of the foregoing.

(2) To Borrower’s actual knowledge, there is no evidence of any illegal activities on the Mortgaged Property.

(3) To Borrower’s knowledge, no permits or approvals from any Governmental Authority, other than those previously obtained and furnished to Lender, are necessary for the commencement and completion of the Repairs or Replacements, as applicable, other than those permits or approvals which will be timely obtained in the ordinary course of business.

(4) All required permits, licenses, and certificates to comply with all zoning and land use statutes, laws, ordinances, rules, and regulations, and all applicable health, fire, safety, and building codes, and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses, or the equivalent, have been obtained and are in full force and effect.

(5) No portion of the Mortgaged Property has been purchased with the proceeds of any illegal activity.

**(b) Property Characteristics.**

(1) The Mortgaged Property contains at least:

(A) the Property Square Footage;

(B) the Total Parking Spaces; and

(C) the Total Residential Units.

(2) No part of the Land is included or assessed under or as part of another tax lot or parcel, and no part of any other property is included or assessed under or as part of the tax lot or parcels for the Land.

**(c) Property Ownership.**

Borrower is sole owner or ground lessee of the Mortgaged Property.

**(d) Condition of the Mortgaged Property.**

(1) Borrower has not made any claims, and to Borrower's knowledge, no claims have been made, against any contractor, engineer, architect, or other party with respect to the construction or condition of the Mortgaged Property or the existence of any structural or other material defect therein; and

(2) neither the Land nor the Improvements has sustained any damage other than damage which has been fully repaired, or is fully insured and is being repaired in the ordinary course of business.

**(e) Personal Property.**

Borrower owns (or, to the extent disclosed on the Exceptions to Representations and Warranties Schedule, leases) all of the Personal Property that is material to and is used in connection with the management, ownership, and operation of the Mortgaged Property.

**Section 6.02 Covenants.**

**(a) Use of Property.**

From and after the Effective Date, Borrower shall not, unless required by applicable law or Governmental Authority:

(1) change the use of all or any part of the Mortgaged Property;

- (2) convert any individual dwelling units or common areas to commercial use, or convert any common area or commercial use to individual dwelling units;
- (3) initiate or acquiesce in a change in the zoning classification of the Land;
- (4) establish any condominium or cooperative regime with respect to the Mortgaged Property;
- (5) subdivide the Land; or
- (6) suffer, permit, or initiate the joint assessment of any Mortgaged Property with any other real property constituting a tax lot separate from such Mortgaged Property which could cause the part of the Land to be included or assessed under or as part of another tax lot or parcel, or any part of any other property to be included or assessed under or as part of the tax lot or parcels for the Land.

**(b) Property Maintenance.**

Borrower shall:

- (1) pay the expenses of operating, managing, maintaining, and repairing the Mortgaged Property (including insurance premiums, utilities, Repairs, and Replacements) before the last date upon which each such payment may be made without any penalty or interest charge being added;
- (2) keep the Mortgaged Property in good repair and marketable condition (ordinary wear and tear excepted) (including the replacement of Personalty and Fixtures with items of equal or better function and quality in the ordinary course of business) and subject to Section 9.03(b)(3) and Section 10.03(d) restore or repair promptly, in a good and workmanlike manner, any damaged part of the Mortgaged Property to the equivalent of its original condition or condition immediately prior to the damage (if improved after the Effective Date), whether or not any insurance proceeds or amounts received in connection with a Condemnation Action are available to cover any costs of such restoration or repair;
- (3) commence all Required Repairs, Additional Lender Repairs, and Additional Lender Replacements as follows:
  - (A) with respect to any Required Repairs, promptly following the Effective Date (subject to Force Majeure, if applicable), in accordance with the timelines set forth on the Required Repair Schedule, or if no timelines are provided, as soon as practical following the Effective Date;
  - (B) with respect to Additional Lender Repairs, in the event that Lender determines that Additional Lender Repairs are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's written notice of such Additional Lender Repairs (subject to Force Majeure, if applicable), commence any

such Additional Lender Repairs in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(C) with respect to Additional Lender Replacements, in the event that Lender determines that Additional Lender Replacements are necessary from time to time or pursuant to Section 6.03(c), promptly following Lender's written notice of such Additional Lender Replacements (subject to Force Majeure, if applicable), commence any such Additional Lender Replacements in accordance with Lender's timelines, or if no timelines are provided, as soon as practical;

(4) make, construct, install, diligently perform, and complete all Replacements, Repairs, and any other work permitted under the Loan Documents:

(A) in a good and workmanlike manner as soon as practicable following the commencement thereof, free and clear of any Liens, including mechanics' or materialmen's liens and encumbrances (except Permitted Encumbrances and mechanics' or materialmen's liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials);

(B) in accordance with all applicable laws, ordinances, rules, and regulations of any Governmental Authority, including applicable building codes, special use permits, and environmental regulations;

(C) in accordance with all applicable insurance and bonding requirements; and

(D) within all timeframes required by Lender, and Borrower acknowledges that it shall be an Event of Default if Borrower abandons or ceases work on any Repair at any time prior to the completion of the Repairs for a period of longer than twenty (20) days (except when Force Majeure exists and Borrower is diligently pursuing the reinstatement of such work, provided, however, any such abandonment or cessation shall not in any event allow the Repair to be completed after the Completion Period, subject to Force Majeure); and

(5) subject to the terms of Section 6.03(a), provide for professional management of the Mortgaged Property by a residential rental property manager satisfactory to Lender under a contract approved by Lender in writing;

(6) give written notice to Lender of, and, unless otherwise directed in writing by Lender, appear in and defend any action or proceeding purporting to affect the Mortgaged Property, Lender's security for the Mortgage Loan, or Lender's rights under this Loan Agreement; and



(7) upon Lender's written request, submit to Lender any contracts or work orders described in Section 13.02(b).

**(c) Property Preservation.**

Borrower shall:

(1) not commit waste or abandon or (ordinary wear and tear excepted) permit impairment or deterioration of the Mortgaged Property;

(2) not (nor permit any other Person to) demolish, make any change in the unit mix, otherwise alter the Mortgaged Property or any part of the Mortgaged Property, or remove any Personalty or Fixtures from the Mortgaged Property, except for: (A) alterations required in connection with Repairs and Replacements; or (B) the replacement of tangible Personalty or Fixtures, provided (i) such Personalty or Fixtures are replaced with items of equal or better function and quality, and (ii) such replacement does not result in a vacancy of more than 5% of units for more than a period of 90 days (other than in connection with the routine re-leasing of units);

(3) not engage in or knowingly permit, and shall take appropriate measures to prevent and abate or cease and desist, any illegal activities at the Mortgaged Property that could endanger tenants or visitors, result in damage to the Mortgaged Property, result in forfeiture of the Land or otherwise materially impair the lien created by the Security Instrument or Lender's interest in the Mortgaged Property;

(4) not permit any condition to exist on the Mortgaged Property that would invalidate any part of any insurance coverage required by this Loan Agreement; or

(5) not subject the Mortgaged Property to any voluntary, elective, or non-compulsory tax lien or assessment (or opt in to any voluntary, elective, or non-compulsory special tax district or similar regime).

**(d) Property Inspections.**

Borrower shall:

(1) permit Lender, its agents, representatives, and designees to enter upon and inspect the Mortgaged Property (including in connection with any Replacement or Repair, or to conduct any Environmental Inspection pursuant to the Environmental Indemnity Agreement), and shall cooperate and provide access to all areas of the Mortgaged Property (subject to the rights of tenants under the Leases):

(A) during normal business hours following reasonable advance notice to Borrower (except in the event of exigent circumstances or emergency);

(B) at such other reasonable time upon reasonable notice of not less than one (1) Business Day;

(C) at any time when exigent circumstances exist; or

(D) at any time after an Event of Default has occurred and is continuing;  
and

(2) pay for reasonable costs or expenses incurred by Lender or its agents in connection with any such inspections.

**(e) Compliance with Laws.**

Borrower shall:

(1) comply with all laws, ordinances, statutes, rules, and regulations of any Governmental Authority and all recorded lawful covenants and agreements relating to or affecting the Mortgaged Property, including all laws, ordinances, statutes, rules and regulations, and covenants pertaining to construction of improvements on the Land, fair housing, and requirements for equal opportunity, anti-discrimination, and Leases;

(2) procure and maintain all required permits, licenses, charters, registrations, and certificates necessary to comply with all zoning and land use statutes, laws, ordinances, rules and regulations, and all applicable health, fire, safety, and building codes and for the lawful use and operation of the Mortgaged Property, including certificates of occupancy, apartment licenses, or the equivalent;

(3) comply with all applicable laws that pertain to the maintenance and disposition of tenant security deposits;

(4) at all times maintain records sufficient to demonstrate compliance with the provisions of this Section 6.02(e); and

(5) promptly after receipt or notification thereof, provide Lender copies of any building code or zoning violation from any Governmental Authority with respect to the Mortgaged Property.

**Section 6.03 Mortgage Loan Administration Matters Regarding the Property.**

**(a) Property Management.**

From and after the Effective Date, each property manager and each property management agreement must be approved by Lender. If, in connection with the making of the Mortgage Loan, or at any later date, Lender waives in writing the requirement that Borrower enter into a written contract for management of the Mortgaged Property, and Borrower later elects to enter into a written contract or change the management of the Mortgaged Property, such new property manager

or the property management agreement must be approved by Lender. As a condition to any approval by Lender, Lender may require that Borrower and such new property manager enter into a collateral assignment of the property management agreement on a form approved by Lender.

**(b) Subordination of Fees to Affiliated Property Managers.**

Any property manager that is a Borrower Affiliate to whom fees are payable for the management of the Mortgaged Property must enter into an assignment of management agreement or other agreement with Lender, in a form approved by Lender, providing for subordination of those fees and such other provisions as Lender may require.

**(c) Property Condition Assessment.**

If, in connection with any inspection of the Mortgaged Property, Lender determines that the condition of the Mortgaged Property has deteriorated (ordinary wear and tear excepted) since the Effective Date, Lender may obtain, at Borrower's expense, a property condition assessment of the Mortgaged Property. Lender's right to obtain a property condition assessment pursuant to this Section 6.03(c) shall be in addition to any other rights available to Lender under this Loan Agreement in connection with any such deterioration. Any such inspection or property condition assessment may result in Lender requiring Additional Lender Repairs or Additional Lender Replacements as further described in Section 13.02(a)(9)(B).

## **ARTICLE 7 - LEASES AND RENTS**

### **Section 7.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 7.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Prior Assignment of Rents.**

Borrower has not executed any:

(1) prior assignment of Rents (other than an assignment of Rents securing prior indebtedness that has been paid off and discharged or will be paid off and discharged with the proceeds of the Mortgage Loan); or

(2) instrument which would prevent Lender from exercising its rights under this Loan Agreement or the Security Instrument.

**(b) Prepaid Rents.**

Borrower has not accepted, and does not expect to receive prepayment of, any Rents for more than two (2) months prior to the due dates of such Rents.

**Section 7.02 Covenants.**

**(a) Leases.**

Borrower shall:

(1) comply with and observe Borrower's obligations under all Leases, including Borrower's obligations pertaining to the maintenance and disposition of tenant security deposits;

(2) surrender possession of the Mortgaged Property, including all Leases and all security deposits and prepaid Rents, immediately upon appointment of a receiver or Lender's entry upon and taking of possession and control of the Mortgaged Property upon an Event of Default, as applicable;

(3) require that all Residential Leases have initial terms of not less than six (6) months and not more than twenty-four (24) months (however, if customary in the applicable market for properties comparable to the Mortgaged Property, Residential Leases with terms of less than six (6) months (but in no case less than one (1) month) may be permitted with Lender's prior written consent); and

(4) promptly provide Lender a copy of any non-Residential Lease at the time such Lease is executed (subject to Lender's consent rights for Material Commercial Leases in Section 7.02(b)) and, upon Lender's written request, promptly provide Lender a copy of any Residential Lease then in effect.

**(b) Commercial Leases.**

(1) With respect to Material Commercial Leases, Borrower shall not:

(A) enter into any Material Commercial Lease except with the prior written consent of Lender, which consent shall not be unreasonably conditioned, withheld or delayed; or

(B) modify the terms of, extend, or terminate any Material Commercial Lease (including any Material Commercial Lease in existence on the Effective Date) without the prior written consent of Lender, which consent shall not be unreasonably conditioned, withheld or delayed.

(2) With respect to any non-Material Commercial Lease, Borrower shall not:

(A) enter into any non-Material Commercial Lease that materially alters the use and type of operation of the premises subject to the Lease in effect as of the Effective Date or reduces the number or size of residential units at the Mortgaged Property; or

(B) modify the terms of any non-Material Commercial Lease (including any non-Material Commercial Lease in existence on the Effective Date) in any way that materially alters the use and type of operation of the premises subject to such non-Material Commercial Lease in effect as of the Effective Date, reduces the number or size of residential units at the Mortgaged Property, or results in such non-Material Commercial Lease being deemed a Material Commercial Lease.

(3) With respect to any Material Commercial Lease or non-Material Commercial Lease, Borrower shall cause the applicable tenant to provide within ten (10) days after a request by Borrower, a certificate of estoppel, or if not provided by tenant within such ten (10) day period, Borrower shall provide such certificate of estoppel, certifying (to Borrower's knowledge as to (E), (F) and (G) below):

(A) that such Material Commercial Lease or non-Material Commercial Lease is unmodified and in full force and effect (or if there have been modifications, that such Material Commercial Lease or non-Material Commercial Lease is in full force and effect as modified and stating the modifications);

(B) the term of the Lease including any extensions thereto;

(C) the dates to which the Rent and any other charges hereunder have been paid by tenant;

(D) the amount of any security deposit delivered to Borrower as landlord;

(E) whether or not Borrower is in default (or whether any event or condition exists which, with the passage of time, would constitute an event of default) under such Lease;

(F) the address to which notices to tenant should be sent; and

(G) any other information as may be reasonably required by Lender.

**(c) Payment of Rents.**

Borrower shall:

(1) pay to Lender upon demand all Rents actually received by Borrower after an Event of Default has occurred and is continuing;

(2) cooperate with Lender's efforts in connection with the assignment of Rents set forth in the Security Instrument; and

(3) not accept Rent under any Lease (whether a Residential Lease or a non-Residential Lease) for more than two (2) months in advance.

**(d) Assignment of Rents.**

Borrower shall not:

(1) perform any acts nor execute any instrument that would prevent Lender from exercising its rights under the assignment of Rents granted in the Security Instrument or in any other Loan Document; nor

(2) interfere with Lender's collection of such Rents.

**(e) Further Assignments of Leases and Rents.**

Borrower shall execute and deliver any further assignments of Leases and Rents as Lender may reasonably require.

**(f) Options to Purchase by Tenants.**

No Lease (whether a Residential Lease or a non-Residential Lease) shall contain an option to purchase, right of first refusal to purchase or right of first offer to purchase, except as required by applicable law.

**Section 7.03 Mortgage Loan Administration Regarding Leases and Rents.**

**(a) Material Commercial Lease Requirements.**

Each Material Commercial Lease, including any renewal or extension of any Material Commercial Lease in existence as of the Effective Date, shall provide, directly or pursuant to a subordination, non-disturbance and attornment agreement approved by Lender, that:

(1) the tenant shall, upon written notice from Lender after the occurrence of an Event of Default, pay all Rents payable under such Lease to Lender;

(2) such Lease and all rights of the tenant thereunder are expressly subordinate to the lien of the Security Instrument;

(3) the tenant shall attorn to Lender and any purchaser at a Foreclosure Event (such attornment to be self-executing and effective upon acquisition of title to the Mortgaged Property by any purchaser at a Foreclosure Event or by Lender in any manner);

(4) the tenant agrees to execute such further evidences of attornment as Lender or any purchaser at a Foreclosure Event may from time to time request; and

(5) such Lease shall not terminate as a result of a Foreclosure Event unless Lender or any other purchaser at such Foreclosure Event affirmatively elects to terminate such Lease pursuant to the terms of the subordination, non-disturbance and attornment agreement.

**(b) Residential Lease Form.**

All Residential Leases entered into from and after the Effective Date shall be on forms approved by Lender.

**ARTICLE 8 - BOOKS AND RECORDS; FINANCIAL REPORTING**

**Section 8.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 8.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Financial Information.**

All financial statements and data, including statements of cash flow and income and operating expenses, that have been delivered to Lender in respect of the Mortgaged Property:

- (1) are true, complete, and correct in all material respects as of the date delivered; and
- (2) accurately represent the financial condition of the Mortgaged Property as of such date.

**(b) No Change in Facts or Circumstances.**

All information in the Loan Application and in all financial statements, rent rolls, reports, certificates, and other documents submitted in connection with the Loan Application are complete and accurate in all material respects. There has been no material adverse change in any fact or circumstance that would make any such information incomplete or inaccurate.

**Section 8.02 Covenants.**

**(a) Obligation to Maintain Accurate Books and Records.**

Borrower shall keep and maintain at all times at the Mortgaged Property or the property management agent's offices or Borrower's General Business Address and, upon Lender's written request, shall make available during normal business hours (except in the event of exigent circumstances or emergency) at the Land or office of the property manager:

- (1) complete and accurate books of account and records (including copies of supporting bills and invoices) adequate to reflect correctly the operation of the Mortgaged Property; and
- (2) copies of all written contracts, Leases, and other instruments that affect Borrower or the Mortgaged Property.

**(b) Items to Furnish to Lender.**

Borrower shall furnish to Lender the following, certified as true, complete, and accurate, in all material respects, by an individual having authority to bind Borrower (or Guarantor, as applicable), in such form and with such detail as Lender reasonably requires:

(1) within forty-five (45) days after the end of each first, second, and third calendar quarter, a statement of income and expenses for Borrower on a year-to-date basis as of the end of each calendar quarter;

(2) within one hundred twenty (120) days after the end of each calendar year:

(A) for any Borrower that is an entity, a statement of income and expenses and a statement of cash flows for such calendar year for Borrower only;

(B) for any Borrower that is an individual, or a trust established for estate-planning purposes, a personal financial statement for such calendar year;

(C) when requested in writing by Lender, balance sheet(s) showing all assets and liabilities of Borrower and a statement of all contingent liabilities as of the end of such calendar year;

(D) if an energy consumption metric for the Mortgaged Property is required to be reported to any Governmental Authority, the Fannie Mae Energy Performance Metrics report, as generated by ENERGY STAR® Portfolio Manager, for the Mortgaged Property for such calendar year, which report must include the ENERGY STAR score, the Source Energy Use Intensity (EUI), the month and year ending period for such ENERGY STAR score and such Source Energy Use Intensity, and the ENERGY STAR Portfolio Manager Property Identification Number; provided that, if the Governmental Authority does not require the use of ENERGY STAR Portfolio Manager for the reporting of the energy consumption metric and Borrower does not use ENERGY STAR Portfolio Manager, then Borrower shall furnish to Lender the Source Energy Use Intensity for the Mortgaged Property for such calendar year;

(E) a written certification ratifying and affirming that:

(i) Borrower has taken no action in violation of Section 4.02(d) regarding its single asset status;

(ii) Borrower has received no notice of any building code violation, or if Borrower has received such notice, evidence of remediation;

(iii) Borrower has made no application for rezoning nor received any notice that the Mortgaged Property has been or is being rezoned; and



(iv) Borrower has taken no action and has no knowledge of any action that would violate the provisions of Section 11.02(b)(1)(F) regarding liens encumbering the Mortgaged Property;

(F) an accounting of all security deposits held pursuant to all Leases, including the name of the institution (if any) and the names and identification numbers of the accounts (if any) in which such security deposits are held and the name of the person to contact at such financial institution, along with any authority or release necessary for Lender to access information regarding such accounts; and

(G) written confirmation (or a certificate of no change) of:

(i) any changes occurring since the Effective Date (or that no such changes have occurred since the Effective Date) in (1) the direct owners of Borrower, (2) the indirect owners (and any non-member managers) of Borrower that Control Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), or (3) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts), and their respective interests;

(ii) the names of all officers and directors of (1) any Borrower which is a corporation, (2) any corporation which is a general partner of any Borrower which is a partnership, or (3) any corporation which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(iii) the names of all managers who are not members of (1) any Borrower which is a limited liability company, (2) any limited liability company which is a general partner of any Borrower which is a partnership, or (3) any limited liability company which is the managing member or non-member manager of any Borrower which is a limited liability company; and

(H) if not already provided pursuant to Section 8.02(b)(2)(A) above, a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each calendar year;

(3) within forty-five (45) days after the end of each first, second, and third calendar quarter and within one hundred twenty (120) days after the end of each calendar year, and at any other time upon Lender's written request, a rent schedule for the Mortgaged Property showing the name of each tenant and for each tenant, the space occupied, the lease expiration date, the rent payable for the current month, the date through which rent has been paid, and any related information requested by Lender; and

(4) upon Lender's written request (but, absent an Event of Default, no more frequently than once in any six (6) month period):

(A) any item described in Section 8.02(b)(1) or Section 8.02(b)(2) for Borrower, certified as true, complete, and accurate by an individual having authority to bind Borrower;

(B) a property management or leasing report for the Mortgaged Property, showing the number of rental applications received from tenants or prospective tenants and deposits received from tenants or prospective tenants, and any other information requested by Lender;

(C) a statement of income and expenses for Borrower's operation of the Mortgaged Property on a year-to-date basis as of the end of each month for such period as requested by Lender, which statement shall be delivered within thirty (30) days after the end of such month requested by Lender;

(D) a statement of real estate owned directly or indirectly by Borrower and Guarantor for such period as requested by Lender, which statement(s) shall be delivered within thirty (30) days after the end of such month requested by Lender;

(E) for any Guarantor, by the later of thirty (30) days after the date requested by Lender and the date one hundred fifty (150) days after the end of the most recent calendar year:

(i) that is an entity, a statement of income and expenses for such calendar year;

(ii) that is an individual, or a trust established for estate-planning purposes, a personal financial statement for such calendar year; and

(iii) balance sheet(s) showing all assets and liabilities of Guarantor and a statement of all contingent liabilities as of the end of such calendar year; and

(F) a statement that identifies:

(i) the direct owners of Borrower and their respective interests;

(ii) the indirect owners (and any non-member managers) of Borrower that Control Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests; and

(iii) the indirect owners of Borrower that hold twenty-five percent (25%) or more of the ownership interests in Borrower (excluding any Publicly-Held Corporations or Publicly-Held Trusts) and their respective interests.

**(c) Audited Financials.**

In the event Borrower or Guarantor receives or obtains any audited financial statements and such financial statements are required to be delivered to Lender under Section 8.02(b), Borrower shall deliver or cause to be delivered to Lender the audited versions of such financial statements.

**(d) Delivery of Books and Records.**

If an Event of Default has occurred and is continuing, Borrower shall deliver to Lender, upon written demand, all books and records relating to the Mortgaged Property or its operation.

**Section 8.03 Mortgage Loan Administration Matters Regarding Books and Records and Financial Reporting.**

**(a) Lender's Right to Obtain Audited Books and Records.**

Lender may require that Borrower's or Guarantor's books and records be audited, at Borrower's expense, by an independent certified public accountant selected by Lender in order to produce or audit any statements, schedules, and reports of Borrower, Guarantor, or the Mortgaged Property required by Section 8.02, if:

- (1) Borrower or Guarantor fails to provide in a timely manner the statements, schedules, and reports required by Section 8.02 and, thereafter, Borrower or Guarantor fails to provide such statements, schedules, and reports within the cure period provided in Section 14.01(c);
- (2) the statements, schedules, and reports submitted to Lender pursuant to Section 8.02 are not full, complete, and accurate in all material respects as determined by Lender and, thereafter, Borrower or Guarantor fails to provide such statements, schedules, and reports within the cure period provided in Section 14.01(c); or
- (3) an Event of Default has occurred and is continuing.

Notwithstanding the foregoing, the ability of Lender to require the delivery of audited financial statements shall be limited to not more than once per Borrower's fiscal year so long as no Event of Default has occurred during such fiscal year (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing). Borrower shall cooperate with Lender in order to satisfy the provisions of this Section 8.03(a). All related costs and expenses of Lender shall become due and payable by Borrower within ten (10) Business Days after demand therefor.

**(b) Credit Reports; Credit Score.**

No more often than once in any twelve (12) month period, Lender is authorized to obtain a credit report (if applicable) on Borrower or Guarantor, the cost of which report shall be paid by

Borrower. Lender is authorized to obtain a Credit Score (if applicable) for Borrower or Guarantor at any time at Lender's expense.

## ARTICLE 9 - INSURANCE

### Section 9.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 9.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### (a) Compliance with Insurance Requirements.

Borrower is in compliance with Lender's insurance requirements (or has obtained a written waiver from Lender for any non-compliant coverage) and has timely paid all premiums on all required insurance policies.

#### (b) Property Condition.

(1) The Mortgaged Property has not been damaged by fire, water, wind, or other cause of loss; or

(2) if previously damaged, any previous damage to the Mortgaged Property has been repaired and the Mortgaged Property has been fully restored.

### Section 9.02 Covenants.

#### (a) Insurance Requirements.

(1) As required by Lender and applicable law, and as may be modified from time to time, Borrower shall:

(A) keep the Improvements insured at all times against any hazards, which insurance shall include coverage against loss by fire and all other perils insured by the "special causes of loss" coverage form, general boiler and machinery coverage, business income coverage, and flood (if any of the Improvements are located in an area identified by the Federal Emergency Management Agency (or any successor) as an area having special flood hazards and to the extent flood insurance is available in that area), and may include sinkhole insurance, mine subsidence insurance, earthquake insurance, terrorism insurance, windstorm insurance and, if the Mortgaged Property does not conform to applicable building, zoning, or land use laws, ordinance and law coverage;

(B) maintain at all times commercial general liability insurance, workmen's compensation insurance, and such other liability, errors and omissions, and fidelity insurance coverage; and

(C) maintain builder's risk and public liability insurance, and other insurance in connection with completing the Repairs or Replacements, as applicable.

**(b) Delivery of Policies, Renewals, Notices, and Proceeds.**

Borrower shall:

(1) cause all insurance policies (including any policies not otherwise required by Lender) which can be endorsed with standard non-contributing, non-reporting mortgagee clauses making loss payable to Lender (or Lender's assigns) to be so endorsed;

(2) promptly deliver to Lender a copy of all renewal and other notices received by Borrower with respect to the policies and all receipts for paid premiums;

(3) deliver evidence, in form and content acceptable to Lender, that each required insurance policy under this Article 9 has been renewed not less than fifteen (15) days prior to the applicable expiration date, and (if such evidence is other than an original or duplicate original of a renewal policy) deliver the original or duplicate original of each renewal policy (or such other evidence of insurance as may be required by or acceptable to Lender) in form and content acceptable to Lender within ninety (90) days after the applicable expiration date of the original insurance policy;

(4) provide immediate written notice to the insurance company and to Lender of any event of loss;

(5) execute such further evidence of assignment of any insurance proceeds as Lender may require; and

(6) provide immediate written notice to Lender of Borrower's receipt of any insurance proceeds under any insurance policy required by Section 9.02(a)(1) above and, if requested by Lender, deliver to Lender all of such proceeds received by Borrower to be applied by Lender in accordance with this Article 9.

**Section 9.03 Mortgage Loan Administration Matters Regarding Insurance**

**(a) Lender's Ongoing Insurance Requirements.**

Borrower acknowledges that Lender's insurance requirements may change from time to time. All insurance policies and renewals of insurance policies required by this Loan Agreement shall be:

(1) in the form and with the terms required by Lender;

(2) in such amounts, with such maximum deductibles and for such periods required by Lender; and

- (3) issued by insurance companies satisfactory to Lender.

BORROWER ACKNOWLEDGES THAT ANY FAILURE OF BORROWER TO COMPLY WITH THE REQUIREMENTS SET FORTH IN SECTION 9.02(a) OR SECTION 9.02(b)(3) ABOVE SHALL PERMIT LENDER TO PURCHASE THE APPLICABLE INSURANCE AT BORROWER'S COST. SUCH INSURANCE MAY, BUT NEED NOT, PROTECT BORROWER'S INTERESTS. THE COVERAGE THAT LENDER PURCHASES MAY NOT PAY ANY CLAIM THAT BORROWER MAKES OR ANY CLAIM THAT IS MADE AGAINST BORROWER IN CONNECTION WITH THE MORTGAGED PROPERTY. IF LENDER PURCHASES INSURANCE FOR THE MORTGAGED PROPERTY AS PERMITTED HEREUNDER, BORROWER WILL BE RESPONSIBLE FOR THE COSTS OF THAT INSURANCE, INCLUDING INTEREST AT THE DEFAULT RATE AND ANY OTHER CHARGES LENDER MAY IMPOSE IN CONNECTION WITH THE PLACEMENT OF THE INSURANCE UNTIL THE EFFECTIVE DATE OF THE CANCELLATION OR THE EXPIRATION OF THE INSURANCE. THE COSTS OF THE INSURANCE SHALL BE ADDED TO BORROWER'S TOTAL OUTSTANDING BALANCE OR OBLIGATION AND SHALL CONSTITUTE ADDITIONAL INDEBTEDNESS. THE COSTS OF THE INSURANCE MAY BE MORE THAN THE COST OF INSURANCE BORROWER MAY BE ABLE TO OBTAIN ON ITS OWN. BORROWER MAY LATER CANCEL ANY INSURANCE PURCHASED BY LENDER, BUT ONLY AFTER PROVIDING EVIDENCE THAT BORROWER HAS OBTAINED INSURANCE AS REQUIRED BY THIS LOAN AGREEMENT AND THE OTHER LOAN DOCUMENTS.

**(b) Application of Proceeds on Event of Loss.**

- (1) Upon an event of loss, Lender may, at Lender's option:

(A) hold such proceeds to be applied to reimburse Borrower for the cost of Restoration (in accordance with Lender's then-current policies relating to the restoration of casualty damage on similar multifamily residential properties); or

(B) apply such proceeds to the payment of the Indebtedness, whether or not then due; provided, however, Lender shall not apply insurance proceeds to the payment of the Indebtedness and shall permit Restoration pursuant to Section 9.03(b)(1)(A) if all of the following conditions are met:

(i) no Event of Default has occurred and is continuing (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(ii) Lender determines that the combination of insurance proceeds and amounts provided by Borrower will be sufficient funds to complete the Restoration;

(iii) Lender determines that the Net Cash Flow generated by the Mortgaged Property after completion of the Restoration will be sufficient

to support a debt service coverage ratio not less than the debt service coverage ratio immediately prior to the event of loss, but in no event less than 1.0x (the debt service coverage ratio shall be calculated on a thirty (30) year amortizing basis (if applicable, on a *proforma* basis approved by Lender) in all events and shall include all operating costs and other expenses, Imposition Deposits, deposits to Collateral Accounts, and Mortgage Loan repayment obligations);

(iv) Lender determines that the Restoration will be completed before the earlier of (1) one year before the stated Maturity Date, or (2) one year after the date of the loss or casualty; and

(v) Borrower provides Lender, upon written request, evidence of the availability during and after the Restoration of the insurance required to be maintained by Borrower pursuant to this Loan Agreement.

After the completion of Restoration in accordance with the above requirements, as determined by Lender, the balance, if any, of such proceeds shall be returned to Borrower.

(2) Notwithstanding the foregoing, if any loss is estimated to be in an amount equal to or less than \$250,000, Lender shall not exercise its rights and remedies as power-of-attorney herein and shall allow Borrower to make proof of loss, to adjust and compromise any claims under policies of property damage insurance, to appear in and prosecute any action arising from such policies of property damage insurance, and to collect and receive the proceeds of property damage insurance; provided that each of the following conditions shall be satisfied:

(A) Borrower shall immediately notify Lender of the casualty giving rise to the claim;

(B) no Event of Default has occurred and is continuing (or any event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing);

(C) the Restoration will be completed before the earlier of (i) one year before the stated Maturity Date, or (ii) one year after the date of the loss or casualty;

(D) Lender determines that the combination of insurance proceeds and amounts provided by Borrower will be sufficient funds to complete the Restoration;

(E) all proceeds of property damage insurance shall be issued in the form of joint checks to Borrower and Lender;

(F) all proceeds of property damage insurance shall be applied to the Restoration;

(G) Borrower shall deliver to Lender evidence satisfactory to Lender of completion of the Restoration and obtainment of all lien releases;

(H) Borrower shall have complied to Lender's satisfaction with the foregoing requirements on any prior claims subject to this provision, if any; and

(I) Lender shall have the right to inspect the Mortgaged Property (subject to the rights of tenants under the Leases).

(3) If Lender elects to apply insurance proceeds to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to the damaged portion of the Mortgaged Property and, at its expense and regardless of whether such costs are covered by insurance, clean up any debris resulting from the casualty event, and, if required or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable, and marketable condition. Nothing in this Section 9.03(b) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement. Insurance proceeds in excess of the amount to be applied to repay the Indebtedness shall be promptly paid to Borrower.

**(c) Payment Obligations Unaffected.**

The application of any insurance proceeds to the Indebtedness shall not extend or postpone the Maturity Date, or the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, or any other installments referred to in this Loan Agreement or in any other Loan Document. Notwithstanding the foregoing, if Lender applies insurance proceeds to the Indebtedness in connection with a casualty of less than the entire Mortgaged Property, and after such application of proceeds the debt service coverage ratio (as determined by Lender) is less than 1.25x based on the then-applicable Monthly Debt Service Payment and the anticipated ongoing Net Cash Flow of the Mortgaged Property after such casualty event, then Lender may, at its discretion, permit an adjustment to the Monthly Debt Service Payments that become due and owing thereafter, based on Lender's then-current underwriting requirements. In no event shall the preceding sentence obligate Lender to make any adjustment to the Monthly Debt Service Payments.

**(d) Foreclosure Sale.**

If the Mortgaged Property is transferred pursuant to a Foreclosure Event or Lender otherwise acquires title to the Mortgaged Property, Borrower acknowledges that Lender shall automatically succeed to all rights of Borrower in and to any insurance policies and unearned insurance premiums applicable to the Mortgaged Property and in and to the proceeds resulting from any damage to the Mortgaged Property prior to such Foreclosure Event or such acquisition.



**(e) Appointment of Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

**ARTICLE 10 - CONDEMNATION**

**Section 10.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 10.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

**(a) Prior Condemnation Action.**

No part of the Mortgaged Property has been taken in connection with a Condemnation Action.

**(b) Pending Condemnation Actions.**

No Condemnation Action is pending nor, to Borrower's knowledge, is threatened for the partial or total condemnation or taking of the Mortgaged Property.

**Section 10.02 Covenants.**

**(a) Notice of Condemnation.**

Borrower shall:

(1) promptly notify Lender of any Condemnation Action of which Borrower has knowledge;

(2) appear in and prosecute or defend, at its own cost and expense, any action or proceeding relating to any Condemnation Action, including any defense of Lender's interest in the Mortgaged Property tendered to Borrower by Lender, unless otherwise directed by Lender in writing; and

(3) execute such further evidence of assignment of any condemnation award in connection with a Condemnation Action as Lender may require.

**(b) Condemnation Proceeds.**

Borrower shall pay to Lender all awards or proceeds of a Condemnation Action promptly upon receipt.

**Section 10.03 Mortgage Loan Administration Matters Regarding Condemnation.**

**(a) Application of Condemnation Awards.**

Lender may apply any awards or proceeds of a Condemnation Action, after the deduction of Lender's expenses incurred in the collection of such amounts, to:

- (1) the restoration or repair of the Mortgaged Property, if applicable;
  - (2) the payment of the Indebtedness, with the balance, if any, paid to Borrower;
- or
- (3) Borrower.

**(b) Payment Obligations Unaffected.**

The application of any awards or proceeds of a Condemnation Action to the Indebtedness shall not extend or postpone the Maturity Date, or the due date or the full payment of any Monthly Debt Service Payment, Monthly Replacement Reserve Deposit, or any other installments referred to in this Loan Agreement or in any other Loan Document.

**(c) Appointment of Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

**(d) Preservation of Mortgaged Property.**

If a Condemnation Action results in or from damage to the Mortgaged Property and Lender elects to apply the proceeds or awards from such Condemnation Action to the Indebtedness in accordance with the terms of this Loan Agreement, Borrower shall not be obligated to restore or repair the Mortgaged Property. Rather, Borrower shall restrict access to any portion of the Mortgaged Property which has been damaged or destroyed in connection with such Condemnation Action and, at Borrower's expense and regardless of whether such costs are covered by insurance, clean up any debris resulting in or from the Condemnation Action, and, if required by any Governmental Authority or otherwise permitted by Lender, demolish or raze any remaining part of the damaged Mortgaged Property to the extent necessary to keep and maintain the Mortgaged Property in a safe, habitable, and marketable condition. Nothing in this Section 10.03(d) shall affect any of Lender's remedial rights against Borrower in connection with a breach by Borrower of any of its obligations under this Loan Agreement or under any Loan Document, including any failure to timely pay Monthly Debt Service Payments or maintain the insurance coverage(s) required by this Loan Agreement.

## ARTICLE 11 - LIENS, TRANSFERS, AND ASSUMPTIONS

### Section 11.01 Representations and Warranties.

The representations and warranties made by Borrower to Lender in this Section 11.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### (a) No Labor or Materialmen's Claims.

All parties furnishing labor and materials on behalf of Borrower have been paid in full. There are no mechanics' or materialmen's liens (whether filed or unfiled) outstanding for work, labor, or materials (and no claims or work outstanding that under applicable law could give rise to any such mechanics' or materialmen's liens) affecting the Mortgaged Property, whether prior to, equal with, or subordinate to the lien of the Security Instrument.

#### (b) No Other Interests.

No Person:

(1) other than Borrower has any possessory ownership or interest in the Mortgaged Property or right to occupy the same except under and pursuant to the provisions of existing Leases, the material terms of all such Leases having been previously disclosed in writing to Lender; nor

(2) has an option, right of first refusal, or right of first offer (except as required by applicable law) to purchase the Mortgaged Property, or any interest in the Mortgaged Property, except as previously disclosed to Lender.

### Section 11.02 Covenants.

#### (a) Liens; Encumbrances.

Borrower shall not permit the grant, creation, or existence of any Lien, whether voluntary, involuntary, or by operation of law, on all or any portion of the Mortgaged Property (including any voluntary, elective, or non-compulsory tax lien or assessment pursuant to a voluntary, elective, or non-compulsory special tax district or similar regime) other than:

(1) Permitted Encumbrances;

(2) the creation of:

(A) any tax lien, municipal lien, utility lien, mechanics' lien, materialmen's lien, or judgment lien against the Mortgaged Property if bonded off, released of record, or otherwise remedied to Lender's satisfaction within sixty (60)

days after the earlier of the date Borrower has actual notice or constructive notice of the existence of such lien; or

(B) any mechanics' or materialmen's liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials; and

(3) the lien created by the Loan Documents.

**(b) Transfers.**

**(1) Mortgaged Property.**

Borrower shall not Transfer, or cause or permit a Transfer of, all or any part of the Mortgaged Property (including any interest in the Mortgaged Property) other than:

(A) a Transfer to which Lender has consented in writing;

(B) Leases permitted pursuant to the Loan Documents;

(C) [reserved];

(D) a Transfer of obsolete or worn out Personalty or Fixtures that are contemporaneously replaced by items of equal or better function and quality which are free of Liens (other than those created by the Loan Documents);

(E) the grant of an easement, servitude, or restrictive covenant to which Lender has consented, and Borrower has paid to Lender, upon demand, all costs and expenses incurred by Lender in connection with reviewing Borrower's request (including reasonable attorneys' fees and a \$5,000 review fee, which shall be in lieu of any other Review Fee or Transfer Fee);

(F) a lien permitted pursuant to Section 11.02(a) of this Loan Agreement; or

(G) the conveyance of the Mortgaged Property following a Foreclosure Event.

**(2) Interests in Borrower, Key Principal, or Guarantor.**

Other than a Transfer to which Lender has consented in writing, Borrower shall not Transfer, or cause or permit to be Transferred:

(A) any direct or indirect ownership interest in Borrower, Key Principal, or Guarantor (if applicable) if such Transfer would cause a change in Control;

(B) a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor (if applicable);

(C) fifty percent (50%) or more of Key Principal's or Guarantor's direct or indirect ownership interests in Borrower that existed on the Effective Date (individually or on an aggregate basis);

(D) the economic benefits or rights to cash flows attributable to any ownership interests in Borrower, Key Principal, or Guarantor (if applicable) separate from the Transfer of the underlying ownership interests if the Transfer of the underlying ownership interest is prohibited by this Loan Agreement; or

(E) a Transfer to a new key principal or new guarantor (if such new key principal or guarantor is an entity), which entity has an organizational existence termination date that ends before the Maturity Date.

Notwithstanding the foregoing, if a Publicly-Held Corporation or a Publicly-Held Trust Controls Borrower, Key Principal, or Guarantor, or owns a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor, a Transfer of any ownership interests in such Publicly-Held Corporation or Publicly-Held Trust shall not be prohibited under this Loan Agreement as long as (i) such Transfer does not result in a conversion of such Publicly-Held Corporation or Publicly-Held Trust to a privately held entity, and (ii) Borrower provides written notice to Lender not later than thirty (30) days thereafter of any such Transfer that results in any Person owning ten percent (10%) or more of the ownership interests in such Publicly-Held Corporation or Publicly-Held Trust.

### **(3) Transfers of Non-Controlling Interests.**

Transfers of direct or indirect limited partnership or non-managing member interests in Borrower that result in a Transfer of fifty percent (50%) or more of the limited partnership or non-managing membership interests shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) Key Principal or Guarantor (as applicable) Controls Borrower with the same rights and abilities as Key Principal or Guarantor (as applicable) Controls Borrower immediately prior to the date of such Transfer;

(B) such Transfer satisfies the requirements of Section 11.02(b)(2)(C);

(C) Borrower shall provide Lender not less than thirty (30) days prior written notice of the proposed Transfer and obtain Lender's approval;

(D) Borrower shall provide with its notice to Lender an organizational chart reflecting, and all organizational documents relevant to, the proposed Transfer;

(E) Borrower shall provide with its notice to Lender a certification that no change of Control of Borrower or Key Principal shall occur as a result of such Transfer;

(F) the transferee shall not be, as of the date of the Transfer, a Prohibited Person if, as a result of the Transfer, the transferee will own twenty-five percent (25%) or more of the direct or indirect ownership interests in Borrower (or, if any other investor will own twenty-five percent (25%) or more of the direct or indirect ownership interests in Borrower that did not own twenty-five percent (25%) or more before the Transfer, such investor shall not, as of the date of the Transfer, be a Prohibited Person);

(G) Borrower shall pay to Lender:

(i) concurrently with its notice to Lender, the Review Fee plus a Transfer Fee of \$25,000; and

(ii) upon demand, any out-of-pocket costs and expenses, including reasonable attorneys' fees and expenses, incurred by Lender in connection with its review of the Transfer request; and

(H) Borrower shall execute upon demand such documents or certifications as Lender reasonably requires in order to confirm the post-transfer ownership structure, compliance with the stated conditions, and any other relevant factual matter.

**(4) Name Change or Entity Conversion.**

Lender shall consent to Borrower changing its name, changing its jurisdiction of organization, or converting from one type of legal entity into another type of legal entity for any lawful purpose, provided that:

(A) Lender receives written notice at least thirty (30) days prior to such change or conversion, which notice shall include organizational charts that reflect the structure of Borrower both prior to and subsequent to such name change or entity conversion;

(B) such Transfer is not otherwise prohibited under the provisions of Section 11.02(b)(2);

(C) Borrower executes an amendment to this Loan Agreement and any other Loan Documents required by Lender documenting the name change or entity conversion;

(D) Borrower agrees and acknowledges, at Borrower's expense, that (i) Borrower will execute and record in the land records any instrument required by

the Property Jurisdiction to be recorded to evidence such name change or entity conversion (or provide Lender with written confirmation from the title company (via electronic mail or letter) that no such instrument is required), (ii) Borrower will execute any additional documents required by Lender, including the amendment to this Loan Agreement, and allow such documents to be recorded or filed in the land records of the Property Jurisdiction, (iii) Lender will obtain a “date down” endorsement to the Lender’s Title Policy (or obtain a new Title Policy if a “date down” endorsement is not available in the Property Jurisdiction), evidencing title to the Mortgaged Property being in the name of the successor entity and the Lien of the Security Instrument against the Mortgaged Property, and (iv) Lender will file any required UCC-3 financing statement and make any other filing deemed necessary to maintain the priority of its Liens on the Mortgaged Property; and

(E) no later than ten (10) days subsequent to such name change or entity conversion, Borrower shall provide Lender (i) the documentation filed with the appropriate office in Borrower’s state of formation evidencing such name change or entity conversion, (ii) copies of the organizational documents of Borrower, including any amendments, filed with the appropriate office in Borrower’s state of formation reflecting the post-conversion Borrower name, form of organization, and structure, and (iii) if available, new certificates of good standing or valid formation for Borrower.

**(5) No Delaware Statutory Trust or Series LLC Conversion.**

Notwithstanding any provisions herein to the contrary, no Borrower, Guarantor, or Key Principal shall convert to a Delaware Statutory Trust or a series limited liability company.

**(c) No Other Indebtedness.**

Other than the Mortgage Loan, the TDHCA Subordinate Obligations, and as previously disclosed to Lender, Borrower shall not incur or be obligated at any time with respect to any loan or other indebtedness (except trade payables or otherwise permitted in this Loan Agreement), including any indebtedness secured by a Lien on, or the cash flows from, the Mortgaged Property.

**(d) No Mezzanine Financing or Preferred Equity.**

Neither Borrower nor any direct or indirect owner of Borrower shall: (1) incur any Mezzanine Debt other than Permitted Mezzanine Debt; (2) issue any Preferred Equity other than Permitted Preferred Equity; or (3) incur any similar indebtedness or issue any similar equity.

**Section 11.03 Mortgage Loan Administration Matters Regarding Liens, Transfers, and Assumptions.**

**(a) Assumption of Mortgage Loan.**

Lender shall consent to a Transfer of the Mortgaged Property to and an assumption of the Mortgage Loan by a new borrower if each of the following conditions is satisfied prior to the Transfer:

(1) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(a);

(2) no Event of Default has occurred and is continuing, and no event which, with the giving of written notice or the passage of time, or both, would constitute an Event of Default has occurred and is continuing;

(3) Lender determines that:

(A) the proposed new borrower, new key principal, and any other new guarantor fully satisfy all of Lender's then-applicable borrower, key principal, or guarantor eligibility, credit, management, and other loan underwriting standards, which shall include an analysis of (i) the previous relationships between Lender and the proposed new borrower, new key principal, new guarantor, and any Person in Control of them, and the organization of the new borrower, new key principal, and new guarantor (if applicable), and (ii) the operating and financial performance of the Mortgaged Property, including physical condition and occupancy;

(B) none of the proposed new borrower, new key principal, and any new guarantor, or any owners of the proposed new borrower, new key principal, and any new guarantor, are a Prohibited Person; and

(C) none of the proposed new borrower, new key principal, and any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date;

(4) [reserved];

(5) the proposed new borrower has:

(A) executed an assumption agreement acceptable to Lender that, among other things, requires the proposed new borrower to assume and perform all obligations of Borrower (or any other transferor), and that may require that the new borrower comply with any provisions of any Loan Document that previously may have been waived by Lender for Borrower, subject to the terms of Section 11.03(g);



(B) if required by Lender, delivered to the title company for filing and/or recording in all applicable jurisdictions, all applicable Loan Documents including the assumption agreement to correctly evidence the assumption and the confirmation, continuation, perfection, and priority of the Liens created hereunder and under the other Loan Documents; and

(C) delivered to Lender a “date-down” endorsement to the Title Policy acceptable to Lender (or a new title insurance policy if a “date-down” endorsement is not available);

(6) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(A) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(B) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender;

(7) Lender has reviewed and approved the Transfer documents; and

(8) Lender has received the fees described in Section 11.03(g).

**(b) Transfers to Key Principal-Owned Affiliates or Guarantor-Owned Affiliates.**

(1) Except as otherwise covered in Section 11.03(b)(2) or (3) below, Transfers of direct or indirect ownership interests in Borrower (i) to Key Principal or Guarantor, or to a transferee through which Key Principal or Guarantor (as applicable) Controls Borrower with the same rights and abilities as Key Principal or Guarantor (as applicable) Controls Borrower immediately prior to the date of such Transfer, or where such interest or interests are transferred; or (ii) to Senior Management or an entity Controlled by a Related Controlled Entity, shall be consented to by Lender if such Transfer satisfies the applicable requirements of Section 11.03(a) as they would relate to such transferee, other than Section 11.03(a)(5).

(2) Transfers of direct or indirect interests in Borrower held by a Key Principal or Guarantor to other Key Principals or Guarantors, as applicable, shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) the Transfer does not cause a change in the Control of Borrower; and

(B) the transferor Key Principal or Guarantor maintains the same right and ability to Control Borrower as existed prior to the Transfer.

(3) Transfers of direct or indirect interests in Borrower held by Senior Management or a Related Controlled Entity to other Key Principals, Guarantors, Senior Management, or a Related Controlled Entity, as applicable, shall be consented to by Lender if such Transfer satisfies the following conditions:

(A) the Transfer does not cause a change in the Control of Borrower;

(B) the Key Principal or Guarantor maintains the same right and ability to Control Borrower as existed prior to the Transfer; and

(C) Lender has confirmed that the transferee individual(s) are within the definition of "Senior Management" and each transferee entity, as applicable, is a Related Controlled Entity.

If the conditions set forth in this Section 11.03(b) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(c) Estate Planning.**

Notwithstanding the provisions of Section 11.02(b)(2) so long as (1) the Transfer does not cause a change in the Control of Borrower, and (2) the transferor Key Principal or Guarantor, as applicable, maintains the same right and ability to Control Borrower as existed prior to the Transfer, Lender shall consent to Transfers of direct or indirect ownership interests in Borrower held by a Key Principal, Guarantor, Senior Management, or a Related Controlled Entity and Transfers of direct or indirect ownership interests, in an entity Key Principal or entity Guarantor or an entity Controlled by Senior Management or Related Controlled Entity to:

(A) Immediate Family Members of such Key Principal, Guarantor or Senior Management each of whom must have obtained the legal age of majority;

(B) United States domiciled trusts established for the benefit of the transferor Key Principal or transferor Guarantor, or transferor Senior Management, or Immediate Family Members of the transferor Key Principal or the transferor Guarantor, transferor Senior Management; or

(C) partnerships or limited liability companies of which the partners or members, respectively, are comprised entirely of (i) such Key Principal or Guarantor and Immediate Family Members (each of whom must have obtained the legal age of majority) of such Key Principal or Guarantor, (ii) Immediate Family Members (each of whom must have obtained the legal age of majority) of such Key Principal, Guarantor, Senior Management, or a Related Controlled Entity, or (iii) United States domiciled trusts established for the benefit of the transferor Key Principal, transferor Guarantor, transferor Senior Management, transferor Related Controlled Entity or Immediate Family Members of the transferor Key Principal, the transferor Guarantor, transferor Senior Management, or transferor Related Controlled Entity.

If the conditions set forth in this Section 11.03(c) are satisfied, the Transfer Fee shall be waived provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(d) Termination or Revocation of Trust.**

If any of Borrower, Guarantor, or Key Principal is a trust, or if Control of Borrower, Guarantor, or Key Principal is Transferred or if a Restricted Ownership Interest in Borrower, Guarantor, or Key Principal would be Transferred due to the termination or revocation of a trust, the termination or revocation of such trust is an unpermitted Transfer; provided that the termination or revocation of the trust due to the death of an individual trustor shall not be considered an unpermitted Transfer so long as:

- (1) Lender is notified within thirty (30) days of the death; and
- (2) such Borrower, Guarantor, Key Principal, or other Person, as applicable, is replaced with an individual or entity acceptable to Lender, in accordance with the provisions of Section 11.03(a) within ninety (90) days of the date of the death causing the termination or revocation.

If the conditions set forth in this Section 11.03(d) are satisfied, the Transfer Fee shall be waived; provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(e) Death of Key Principal or Guarantor; Transfer Due to Death.**

(1) If a Key Principal or Guarantor that is a natural person dies, or if Control of Borrower, Guarantor, or Key Principal is Transferred, or if a Restricted Ownership Interest in Borrower, Guarantor, or Key Principal would be Transferred as a result of the death of a Person (except in the case of trusts which is addressed in Section 11.03(d)), Borrower must notify Lender in writing within ninety (90) days in the event of such death. Unless waived in writing by Lender, the deceased shall be replaced by an individual or entity within one hundred eighty (180) days, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(e);

(B) Lender determines that, if applicable:

(i) any proposed new key principal and any other new guarantor (or Person Controlling such new key principal or new guarantor) fully satisfies all of Lender's then-applicable key principal or guarantor eligibility, credit, management, and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new key principal and new guarantor (or Person Controlling such new key principal or new guarantor) and the organization of the new key principal and new guarantor);

(ii) none of any proposed new key principal or any new guarantor, or any owners of the proposed new key principal or any new guarantor, is a Prohibited Person; and

(iii) none of any proposed new key principal or any new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date; and

(C) if applicable, one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Key Principal, Guarantor, or other Person is required by Lender due to the death described in this Section 11.03(e), and such replacement has not occurred within such period, the period for replacement may be extended by Lender to a date not more than one year from the date of such death; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox agreement or similar cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(e) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(f) Bankruptcy of Guarantor.**

(1) Upon the occurrence of any Guarantor Bankruptcy Event, unless waived in writing by Lender, the applicable Guarantor shall be replaced by an individual or entity within ninety (90) days of such Guarantor Bankruptcy Event, subject to Borrower's satisfaction of the following conditions:

(A) Borrower has submitted to Lender all information required by Lender to make the determination required by this Section 11.03(f);

(B) Lender determines that:

(i) the proposed new guarantor fully satisfies all of Lender's then-applicable guarantor eligibility, credit, management, and other loan underwriting standards (including any standards with respect to previous relationships between Lender and the proposed new guarantor and the organization of the new guarantor (if applicable));

(ii) no new guarantor is a Prohibited Person; and

(iii) no new guarantor (if any of such are entities) shall have an organizational existence termination date that ends before the Maturity Date; and

(C) one or more individuals or entities acceptable to Lender as new guarantors have executed and delivered to Lender:

(i) an assumption agreement acceptable to Lender that requires the new guarantor to assume and perform all obligations of Guarantor under any Guaranty given in connection with the Mortgage Loan; or

(ii) a substitute Non-Recourse Guaranty and other substitute guaranty in a form acceptable to Lender.

(2) In the event a replacement Guarantor is required by Lender due to the Guarantor Bankruptcy Event described in this Section 11.03(f), and such replacement has not occurred within such period, the period for replacement may be extended by Lender in its discretion; however, Lender may require as a condition to any such extension that:

(A) the then-current property manager be replaced with a property manager reasonably acceptable to Lender (or if a property manager has not been previously engaged, a property manager reasonably acceptable to Lender be engaged); or

(B) a lockbox agreement or similar cash management arrangement (with the property manager) reasonably acceptable to Lender during such extended replacement period be instituted.

If the conditions set forth in this Section 11.03(f) are satisfied, the Transfer Fee shall be waived, provided Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g).

**(g) Further Conditions to Transfers and Assumption.**

(1) In connection with any Transfer of the Mortgaged Property, or an ownership interest in Borrower, Key Principal, or Guarantor for which Lender's approval is required

under this Loan Agreement (including Section 11.03(a)), Lender may, as a condition to any such approval, require:

(A) additional collateral, guaranties, or other credit support to mitigate any risks concerning the proposed transferee or the performance or condition of the Mortgaged Property;

(B) amendment of the Loan Documents to delete or modify any specially negotiated terms or provisions previously granted for the exclusive benefit of original Borrower, Key Principal, or Guarantor and to restore the original provisions of the standard Fannie Mae form multifamily loan documents, to the extent such provisions were previously modified; or

(C) a modification to the amounts required to be deposited into the Reserve/Escrow Account pursuant to the terms of Section 13.02(a)(3)(B).

(2) In connection with any request by Borrower for consent to a Transfer, Borrower shall pay to Lender upon demand:

(A) the Transfer Fee (to the extent charged by Lender);

(B) the Review Fee (regardless of whether Lender approves or denies such request); and

(C) all of Lender's out-of-pocket costs (including reasonable attorneys' fees) incurred in reviewing the Transfer request, regardless of whether Lender approves or denies such request.

**(h) Additional Transfers.**

(1) Limited Partnership Interest Transfers. Notwithstanding the provisions of Section 11.02(b)(2) and 11.03(b) and provided no Event of Default shall have occurred and is continuing, Transfer of limited partnership interests in Borrower shall not constitute an Event of Default, and the Borrower shall not be required to obtain Lender's prior written consent or comply with the requirements of Section 11.03(g)(1) and (2); provided, however, that such transfers of limited partnership interests are to the following entities or persons: (i) an Affiliate of any Key Principal, (ii) an Affiliate of Guarantor, (iii) a Related Controlled Entity, (iv) the Senior Management, (v) Immediate Family Members of the Senior Management or trusts established for the benefit of the Senior Management and/or Immediate Family Members, including trusts for the benefit of minor children and/or trusts for the benefit of Immediate Family Members which also benefit minor children; provided, however, that such Transfer of ownership interests will not cause a change in the Control of Borrower (or other intermediate entity), and after which Transfer, the transferor Senior Management shall maintain the same right and ability to Control Borrower (or other intermediate entity) as existed prior to the Transfer, or (vi) one or more third parties that

are not Affiliates of Borrower, or Key Principal or The Related Companies, Inc., provided that a Key Principal, The Related Companies, Inc., a Related Controlled Entity or Senior Management, either individually or collectively retain Control of such limited partner of the Borrower.

(2) By way of clarification, the requirement to pay the 1% transfer fee as provided in Section 11.03(g)(2)(A) shall not apply to Transfers under this Section 11.03(h)(1).

(3) Review Fee for Transfers to a Related Controlled Entity or Senior Management. The Borrower shall pay a review fee of \$10,000 in connection with a Transfer to a Related Controlled Entity or Senior Management under Section 11.03(h)(1).

## **ARTICLE 12 - IMPOSITIONS**

### **Section 12.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 12.01 are made as of the Effective Date and are true and correct as of the Effective Date except as disclosed on the Exceptions to Representations and Warranties Schedule.

#### **(a) Payment of Taxes, Assessments, and Other Charges.**

Borrower has:

(1) paid (or with the approval of Lender, established an escrow fund sufficient to pay when due and payable) all amounts and charges relating to the Mortgaged Property that have become due and payable before any fine, penalty interest, lien, or costs may be added thereto, including Impositions, leasehold payments, and ground rents;

(2) paid all Taxes for the Mortgaged Property that have become due before any fine, penalty interest, lien, or costs may be added thereto pursuant to any notice of assessment received by Borrower and any and all taxes that have become due against Borrower before any fine, penalty interest, lien, or costs may be added thereto;

(3) no knowledge of any basis for any additional assessments;

(4) no knowledge of any presently pending special assessments against all or any part of the Mortgaged Property, or any presently pending special assessments against Borrower; and

(5) not received any written notice of any contemplated special assessment against the Mortgaged Property, or any contemplated special assessment against Borrower.

## **Section 12.02 Covenants.**

### **(a) Imposition Deposits, Taxes, and Other Charges.**

Borrower shall:

(1) deposit the Imposition Deposits with Lender on each Payment Date (or on another day designated in writing by Lender) in amount sufficient, in Lender's discretion, to enable Lender to pay each Imposition before the last date upon which such payment may be made without any penalty or interest charge being added, plus an amount equal to no more than one-sixth (1/6) (or the amount permitted by applicable law) of the Impositions for the trailing twelve (12) months (calculated based on the aggregate annual Imposition costs divided by twelve (12) and multiplied by two (2));

(2) deposit with Lender, within ten (10) days after written notice from Lender (subject to applicable law), such additional amounts estimated by Lender to be reasonably necessary to cure any deficiency in the amount of the Imposition Deposits held for payment of a specific Imposition;

(3) except as set forth in Section 12.03(c) below, pay all Impositions, leasehold payments, ground rents, and Taxes when due and before any fine, penalty interest, lien, or costs may be added thereto;

(4) promptly deliver to Lender a copy of all notices of, and invoices for, Impositions, and, if Borrower pays any Imposition directly, Borrower shall promptly furnish to Lender receipts evidencing such payments; and

(5) promptly deliver to Lender a copy of all notices of any special assessments and contemplated special assessments against the Mortgaged Property or Borrower.

## **Section 12.03 Mortgage Loan Administration Matters Regarding Impositions.**

### **(a) Maintenance of Records by Lender.**

Lender shall maintain records of the monthly and aggregate Imposition Deposits held by Lender for the purpose of paying Taxes, insurance premiums, and each other obligation of Borrower for which Imposition Deposits are required.

### **(b) Imposition Accounts.**

All Imposition Deposits shall be held in an institution (which may be Lender, if Lender is such an institution) whose deposits or accounts are insured or guaranteed by a federal agency and which accounts meet the standards for custodial accounts as required by Lender from time to time. Lender shall not be obligated to open additional accounts, or deposit Imposition Deposits in additional institutions, when the amount of the Imposition Deposits exceeds the maximum amount of the federal deposit insurance or guaranty. No interest, earnings, or profits on the Imposition



Deposits shall be paid to Borrower unless applicable law so requires. Imposition Deposits shall not be trust funds, nor shall they operate to reduce the Indebtedness, unless applied by Lender for that purpose in accordance with this Loan Agreement. For the purposes of 9-104(a)(3) of the UCC, Lender is the owner of the Imposition Deposits and shall be deemed a “customer” with sole control of the account holding the Imposition Deposits.

**(c) Payment of Impositions; Sufficiency of Imposition Deposits.**

Lender may pay an Imposition according to any bill, statement, or estimate from the appropriate public office or insurance company without inquiring into the accuracy of the bill, statement, or estimate or into the validity of the Imposition. Imposition Deposits shall be required to be used by Lender to pay Taxes, insurance premiums and any other individual Imposition only if:

- (1) no Event of Default exists;
- (2) Borrower has timely delivered to Lender all applicable bills or premium notices that it has received; and
- (3) sufficient Imposition Deposits are held by Lender for each Imposition at the time such Imposition becomes due and payable.

Lender shall have no liability to Borrower or any other Person for failing to pay any Imposition if any of the conditions are not satisfied. If at any time the amount of the Imposition Deposits held for payment of a specific Imposition exceeds the amount reasonably deemed necessary by Lender to be held in connection with such Imposition, the excess may be credited against future installments of Imposition Deposits for such Imposition.

**(d) Imposition Deposits Upon Event of Default.**

If an Event of Default has occurred and is continuing, Lender may apply any Imposition Deposits, in such amount and in such order as Lender determines, to pay any Impositions or as a credit against the Indebtedness.

**(e) Contesting Impositions.**

Other than insurance premiums, Borrower may contest, at its expense, by appropriate legal proceedings, the amount or validity of any Imposition if:

- (1) Borrower notifies Lender of the commencement or expected commencement of such proceedings;
- (2) Lender determines that the Mortgaged Property is not in danger of being sold or forfeited;

(3) Borrower deposits with Lender (or the applicable Governmental Authority if required by applicable law) reserves sufficient to pay the contested Imposition, if required by Lender (or the applicable Governmental Authority);

(4) Borrower furnishes whatever additional security is required in the proceedings or is reasonably requested in writing by Lender; and

(5) Borrower commences, and at all times thereafter diligently prosecutes, such contest in good faith until a final determination is made by the applicable Governmental Authority.

**(f) Release to Borrower.**

Upon payment in full of all sums secured by the Security Instrument and this Loan Agreement and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower the balance of any Imposition Deposits then on deposit with Lender.

## **ARTICLE 13 - REPLACEMENT RESERVE AND REPAIRS**

### **Section 13.01 Covenants.**

**(a) Initial Deposits to Replacement Reserve Account and Repairs Escrow Account.**

On the Effective Date, Borrower shall pay to Lender:

(1) the Initial Replacement Reserve Deposit for deposit into the Replacement Reserve Account; and

(2) the Repairs Escrow Deposit for deposit into the Repairs Escrow Account.

**(b) Monthly Replacement Reserve Deposits.**

Borrower shall deposit the applicable Monthly Replacement Reserve Deposit into the Replacement Reserve Account on each Payment Date.

**(c) Payment for Replacements and Repairs.**

Borrower shall:

(1) pay all invoices for the Replacements and Repairs, regardless of whether funds on deposit in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, are sufficient, prior to any request for disbursement from the Replacement Reserve Account or the Repairs Escrow Account, as applicable (unless Lender has agreed to issue joint checks in connection with a particular Replacement or Repair);

(2) pay all applicable fees and charges of any Governmental Authority on account of the Replacements and Repairs, as applicable; and

(3) provide evidence satisfactory to Lender of completion of the Replacements and any Required Repairs (within the Completion Period or within such other period or by such other date set forth in the Required Repair Schedule and any Borrower Requested Repairs and Additional Lender Repairs (by the date specified by Lender for any such Borrower Requested Repairs or Additional Lender Repairs)).

**(d) Assignment of Contracts for Replacements and Repairs.**

Borrower shall collaterally assign to Lender as additional security any contract or subcontract for Replacements or Repairs, upon Lender's written request, on a form of assignment approved by Lender.

**(e) Indemnification.**

If Lender elects to exercise its rights under Section 14.03 due to Borrower's failure to timely commence or complete any Replacements or Repairs, Borrower shall indemnify and hold Lender harmless for, from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the performance by Lender of the Replacements or Repairs or investment of the Reserve/Escrow Account Funds; provided that Borrower shall have no indemnity obligation if such actions, suits, claims, demands, liabilities, losses, damages, obligations, and costs or expenses, including litigation costs and reasonable attorneys' fees, arise as a result of the willful misconduct or gross negligence of Lender, Lender's agents, employees, or representatives as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

**(f) Amendments to Loan Documents.**

Subject to Section 5.02, Borrower shall execute and deliver to Lender, upon written request, an amendment to this Loan Agreement, the Security Instrument, and any other Loan Document deemed necessary or desirable to perfect Lender's lien upon any portion of the Mortgaged Property for which Reserve/Escrow Account Funds were expended.

**(g) Administrative Fees and Expenses.**

Borrower shall pay to Lender:

(1) by the date specified in the applicable invoice, the Repairs Escrow Account Administrative Fee and the Replacement Reserve Account Administration Fee for Lender's services in administering the Repairs Escrow Account and Replacement Reserve Account and investing the funds on deposit in the Repairs Escrow Account and the Replacement Reserve Account, respectively;

(2) upon demand, a reasonable inspection fee, not exceeding the Maximum Inspection Fee, for each inspection of the Mortgaged Property by Lender in connection with a Repair or Replacement, plus all other reasonable costs and out-of-pocket expenses relating to such inspections; and

(3) upon demand, all reasonable fees charged by any engineer, architect, inspector or other person inspecting the Mortgaged Property on behalf of Lender for each inspection of the Mortgaged Property in connection with a Repair or Replacement, plus all other reasonable costs and out-of-pocket expenses relating to such inspections.

## **Section 13.02 Mortgage Loan Administration Matters Regarding Reserves.**

### **(a) Accounts, Deposits, and Disbursements.**

#### **(1) Custodial Accounts.**

(A) The Replacement Reserve Account shall be an interest-bearing account that meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from the investment of the Replacement Reserve Deposits or for obtaining any specific level or percentage of earnings on such investment. All interest, if any, earned on the Replacement Reserve Deposits shall be added to and become part of the Replacement Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default has occurred and is continuing under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Replacement Reserve Account not less frequently than the Replacement Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the Reserve/Escrow Account if an Event of Default has occurred and is continuing.

(B) Lender shall not be obligated to deposit the Repairs Escrow Deposits into an interest-bearing account.

#### **(2) Disbursements by Lender Only.**

Only Lender or a designated representative of Lender may make disbursements from the Replacement Reserve Account and the Repairs Escrow Account. Except as provided in Section 13.02(a)(8), disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement.

#### **(3) Adjustment to Deposits.**

##### **(A) Mortgage Loan Terms Exceeding Ten (10) Years.**

If the Loan Term exceeds ten (10) years (or five (5) years in the case of any Mortgaged Property that is an “affordable housing property” as indicated on the

Summary of Loan Terms), a property condition assessment shall be ordered by Lender for the Mortgaged Property at the expense of Borrower (which expense may be paid out of the Replacement Reserve Account if excess funds are available). The property condition assessment shall be performed no earlier than the sixth (6th) month and no later than the ninth (9th) month of the tenth (10th) Loan Year and every tenth (10th) Loan Year thereafter if the Loan Term exceeds twenty (20) years (or the fifth (5th) Loan Year in the case of any Mortgaged Property that is an “affordable housing property” as indicated on the Summary of Loan Terms and every fifth (5th) Loan Year thereafter if the Loan Term exceeds ten (10) years). After review of the property condition assessment, the amount of the Monthly Replacement Reserve Deposit may be adjusted by Lender for the remaining Loan Term by written notice to Borrower so that the Monthly Replacement Reserve Deposits are sufficient to fund the Replacements as and when required and/or the amount to be held in the Repairs Escrow Account may be adjusted by Lender so that the Repairs Escrow Deposit is sufficient to fund the Repairs as and when required.

**(B) Transfers.**

In connection with any Transfer of the Mortgaged Property, or any Transfer of an ownership interest in Borrower, Guarantor, or Key Principal that requires Lender’s consent (except as set forth in Section 11.03(b) and (c)), Lender may review the amounts on deposit, if any, in the Replacement Reserve Account or the Repairs Escrow Account, the amount of the Monthly Replacement Reserve Deposit and the likely repairs and replacements required by the Mortgaged Property, and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Replacement Reserve Account or the Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit as a condition to Lender’s consent to such Transfer.

**(4) Insufficient Funds.**

Lender may, upon thirty (30) days’ prior written notice to Borrower, require an additional deposit(s) to the Replacement Reserve Account or Repairs Escrow Account, or an increase in the amount of the Monthly Replacement Reserve Deposit, if Lender determines that the amounts on deposit in either the Replacement Reserve Account or the Repairs Escrow Account are not sufficient to cover the costs for Required Repairs or Required Replacements or, pursuant to the terms of Section 13.02(a)(9), not sufficient to cover the costs for Borrower Requested Repairs, Additional Lender Repairs, Borrower Requested Replacements, or Additional Lender Replacements. Borrower’s agreement to complete the Replacements or Repairs as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Replacement Reserve Account or the Repairs Escrow Account, as applicable.

**(5) Disbursements for Replacements and Repairs.**

(A) Disbursement requests may only be made after completion or upon partial completion as permitted under Section 13.02(a)(8)(A) of the applicable Replacements and only to reimburse Borrower for the actual approved costs of the Replacements. Lender shall not disburse from the Replacement Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from the Repairs Escrow Account or any similar account. Disbursement from the Replacement Reserve Account shall not be made more frequently than the Maximum Replacement Reserve Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Replacement Reserve Account shall not be less than the Minimum Replacement Reserve Disbursement Amount.

(B) Disbursement requests may only be made after completion or upon partial completion as permitted under Section 13.02(a)(8)(A) of the applicable Repairs and only to reimburse Borrower for the actual cost of the Repairs, up to the Maximum Repair Cost. Lender shall not disburse any amounts which would cause the funds remaining in the Repairs Escrow Account after any disbursement (other than with respect to the final disbursement) to be less than the Maximum Repair Cost of the then-current estimated cost of completing all remaining Repairs. Lender shall not disburse from the Repairs Escrow Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from the Replacement Reserve Account or any similar account. Disbursement from the Repairs Escrow Account shall not be made more frequently than the Maximum Repair Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Repairs Escrow Account shall not be less than the Minimum Repairs Disbursement Amount.

**(6) Disbursement Requests.**

Each request by Borrower for disbursement from the Replacement Reserve Account or the Repairs Escrow Account must be in writing, must specify the Replacement or Repair for which reimbursement is requested (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)), and must:

(A) if applicable, specify the quantity and price of the items or materials purchased, grouped by type or category;

(B) if applicable, specify the cost of all contracted labor or other services involved in the Replacement or Repair for which such request for disbursement is made;

(C) if applicable, include copies of invoices for all items or materials purchased and all contracted labor or services provided;

(D) include evidence of payment of such Replacement or Repair satisfactory to Lender (unless Lender has agreed to issue joint checks in connection with a particular Repair or Replacement as provided in this Loan Agreement); and

(E) contain a certification by Borrower that the Repair or Replacement has been completed lien free and in a good and workmanlike manner, in accordance with any plans and specifications previously approved by Lender (if applicable) and in compliance with all applicable laws, ordinances, rules, and regulations of any Governmental Authority having jurisdiction over the Mortgaged Property, and otherwise in accordance with the provisions of this Loan Agreement.

**(7) Conditions to Disbursement.**

Lender may require any or all of the following at the expense of Borrower as a condition to disbursement of funds from the Replacement Reserve Account or the Repairs Escrow Account (provided that for any Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, and Additional Lender Repairs, Lender shall have approved the use of the Reserve/Escrow Account Funds for such replacements or repairs pursuant to the terms of Section 13.02(a)(9)):

(A) an inspection by Lender of the Mortgaged Property and the applicable Replacement or Repair;

(B) an inspection or certificate of completion by an appropriate independent qualified professional (such as an architect, engineer or property inspector, depending on the nature of the Repair or Replacement) selected by Lender;

(C) either:

(i) a search of title to the Mortgaged Property effective to the date of disbursement; or

(ii) a “date-down” endorsement to Lender’s Title Policy (or a new Lender’s Title Policy if a “date-down” is not available) extending the effective date of such policy to the date of disbursement, and showing no Liens other than (1) Permitted Encumbrances, (2) liens which Borrower is diligently contesting in good faith that have been bonded off to the satisfaction of Lender, or (3) mechanics’ or materialmen’s liens which attach automatically under the laws of any Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property and for which Borrower is not delinquent in the payment for any such work or materials; and

(D) an acknowledgement of payment, waiver of claims, and release of lien for work performed and materials supplied from each contractor, subcontractor or materialman in accordance with the requirements of applicable law and covering all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor, or materialman through the date covered by the disbursement request (or, in the event that payment to such contractor, subcontractor, or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous disbursement).

**(8) Joint Checks for Periodic Disbursements.**

Lender may, upon Borrower's written request, issue joint checks, payable to Borrower and the applicable supplier, materialman, mechanic, contractor, subcontractor, or other similar party, if:

(A) the cost of the Replacement or Repair exceeds the Replacement Threshold or the Repair Threshold, as applicable, and the contractor performing such Replacement or Repair requires periodic payments pursuant to the terms of the applicable written contract;

(B) the contract for such Repair or Replacement requires payment upon completion of the applicable portion of the work;

(C) Borrower makes the disbursement request after completion of the applicable portion of the work required to be completed under such contract;

(D) the materials for which the request for disbursement has been made are on site at the Mortgaged Property and are properly secured or installed;

(E) Lender determines that the remaining funds in the Replacement Reserve Account designated for such Replacement, or in the Repairs Escrow Account designated for such Repair, as applicable, are sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, or Additional Lender Repairs that have been previously approved by Lender;

(F) each supplier, materialman, mechanic, contractor, subcontractor, or other similar party receiving payments shall have provided, if requested in writing by Lender, a waiver of liens with respect to amounts which have been previously paid to them; and

(G) all other conditions for disbursement have been satisfied.



**(9) Replacements and Repairs Other than Required Replacements or Required Repairs.**

**(A) Borrower Requested Replacements and Borrower Requested Repairs.**

Borrower may submit a disbursement request from the Replacement Reserve Account or the Repairs Escrow Account to reimburse Borrower for any Borrower Requested Replacement or Borrower Requested Repair. The disbursement request must be in writing and include an explanation for such request. Lender shall make disbursements for Borrower Requested Replacements or Borrower Requested Repairs if:

(i) they are of the type intended to be covered by the Replacement Reserve Account or the Repairs Escrow Account, as applicable;

(ii) the costs are commercially reasonable;

(iii) the amount of funds in the Replacement Reserve Account or Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements or Additional Lender Repairs that have been previously approved by Lender; and

(iv) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit in connection with any such Borrower Requested Replacements, or an additional deposit to the Repairs Escrow Account for any such Borrower Requested Repairs.

**(B) Additional Lender Replacements and Additional Lender Repairs.**

Lender may require, as set forth in Section 6.02(b), Section 6.03(c), or otherwise from time to time, upon written notice to Borrower, that Borrower make Additional Lender Replacements or Additional Lender Repairs. Lender shall make disbursements from the Replacement Reserve Account for Additional Lender Replacements or from the Repairs Escrow Account for Additional Lender Repairs, as applicable, if:

- (i) the costs are commercially reasonable;
- (ii) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, or Additional Lender Repairs that have been previously approved by Lender; and
- (iii) all conditions for disbursement from the Replacement Reserve Account or Repairs Escrow Account, as applicable, have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Replacement Reserve Account or an increase to the Monthly Replacement Reserve Deposit for any such Additional Lender Replacements or an additional deposit to the Repairs Escrow Account for any such Additional Lender Repair.

**(10) Excess Costs.**

In the event any Replacement or Repair exceeds the approved cost set forth on the Required Replacement Schedule for Replacements, or the Maximum Repair Cost for Repairs, Borrower may submit a disbursement request to reimburse Borrower for such excess cost. The disbursement request must be in writing and include an explanation for such request. Lender shall make disbursements from the Replacement Reserve Account or the Repairs Escrow Account, as applicable, if:

- (A) the excess cost is commercially reasonable;
- (B) the amount of funds in the Replacement Reserve Account or the Repairs Escrow Account, as applicable, is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Replacements or Required Repairs (at the Maximum Repair Cost), as applicable, and any other Borrower Requested Replacements, Borrower Requested Repairs, Additional Lender Replacements, or Additional Lender Repairs that have been previously approved by Lender; and
- (C) all conditions for disbursement from the Replacement Reserve Account or the Repairs Escrow Account have been satisfied.

**(11) Final Disbursements.**

Upon completion of all Repairs in accordance with this Loan Agreement and so long as no Event of Default has occurred and is continuing, Lender shall disburse to

Borrower any amounts then remaining in the Repairs Escrow Account. Upon payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower any and all amounts then remaining in the Replacement Reserve Account and the Repairs Escrow Account (if not previously released).

**(b) Approvals of Contracts; Assignment of Claims.**

Lender retains the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors, or other parties providing labor or materials in connection with the Replacements or Repairs. Notwithstanding Borrower's assignment (in the Security Instrument) of its rights and claims against all Persons supplying labor or materials in connection with the Replacement or Repairs, Lender will not pursue any such right or claim unless an Event of Default has occurred and is continuing or as otherwise provided in Section 14.03(c).

**(c) Delays and Workmanship.**

If any work for any Replacement or Repair has not timely commenced, has not been timely performed in a workmanlike manner, or has not been timely completed in a workmanlike manner, Lender may, without notice to Borrower:

- (1) withhold disbursements from the Replacement Reserve Account or Repairs Escrow Account for such unsatisfactory Replacement or Repair, as applicable;
- (2) proceed under existing contracts or contract with third parties to make or complete such Replacement or Repair;
- (3) apply the funds in the Replacement Reserve Account or Repairs Escrow Account toward the labor and materials necessary to make or complete such Replacement or Repair, as applicable; or
- (4) exercise any and all other remedies available to Lender under this Loan Agreement or any other Loan Document, including any remedies otherwise available upon an Event of Default pursuant to the terms of Section 14.02.

To facilitate Lender's completion or making of such Replacements or Repairs, Lender shall have the right to enter onto the Mortgaged Property and perform any and all work and labor necessary to make or complete the Replacements or Repairs and employ watchmen to protect the Mortgaged Property from damage. All funds so expended by Lender shall be deemed to have been advanced to Borrower, shall be part of the Indebtedness and shall be secured by the Security Instrument and this Loan Agreement.

**(d) Appointment of Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender as attorney-in-fact pursuant to Section 14.03(c).

**(e) No Lender Obligation.**

Nothing in this Loan Agreement shall:

- (1) make Lender responsible for making or completing the Replacements or Repairs;
- (2) require Lender to expend funds, whether from the Replacement Reserve Account, the Repairs Escrow Account, or otherwise, to make or complete any Replacement or Repair;
- (3) obligate Lender to proceed with the Replacements or Repairs; or
- (4) obligate Lender to demand from Borrower additional sums to make or complete any Replacement or Repair.

**(f) No Lender Warranty.**

Lender's approval of any plans for any Replacement or Repair, release of funds from the Replacement Reserve Account or Repairs Escrow Account, inspection of the Mortgaged Property by Lender or its agents, representatives, or designees, or other acknowledgment of completion of any Replacement or Repair in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any Person that the Replacement or Repair has been completed in accordance with applicable building, zoning, or other codes, ordinances, statutes, laws, regulations, or requirements of any Governmental Authority, such responsibility being at all times exclusively that of Borrower.

## **ARTICLE 14 - DEFAULTS/REMEDIES**

### **Section 14.01 Events of Default.**

The occurrence of any one or more of the following in this Section 14.01 shall constitute an Event of Default under this Loan Agreement.

**(a) Automatic Events of Default.**

Any of the following shall constitute an automatic Event of Default:

- (1) any failure by Borrower to pay or deposit when due any amount required by the Note, this Loan Agreement or any other Loan Document;
- (2) any failure by Borrower to maintain the insurance coverage required by any Loan Document;
- (3) any failure by Borrower to comply with the provisions of Section 4.02(d) relating to its single asset status;

(4) if any warranty, representation, certification, or statement of Borrower, Guarantor, or Key Principal in this Loan Agreement or any of the other Loan Documents is false, inaccurate, or misleading in any material respect when made;

(5) fraud, gross negligence, willful misconduct, or material misrepresentation or material omission by or on behalf of Borrower, Guarantor, or Key Principal or any of their officers, directors, trustees, partners, members, or managers in connection with:

(A) the application for, or creation of, the Indebtedness;

(B) any financial statement, rent roll, or other report or information provided to Lender during the term of the Mortgage Loan; or

(C) any request for Lender's consent to any proposed action, including a request for disbursement of Reserve/Escrow Account Funds or Collateral Account Funds;

(6) the occurrence of any Transfer not permitted by the Loan Documents;

(7) the occurrence of a Bankruptcy Event;

(8) the commencement of a forfeiture action or other similar proceeding, whether civil or criminal, which, in Lender's reasonable judgment, could result in a forfeiture of the Mortgaged Property or otherwise materially impair the lien created by this Loan Agreement or the Security Instrument or Lender's interest in the Mortgaged Property;

(9) except for Transfers permitted under Section 11.03, if Borrower, Guarantor, or Key Principal is a trust, or if Control of Borrower, Guarantor, or Key Principal is Transferred or if a Restricted Ownership Interest in Borrower, Guarantor, or Key Principal would be Transferred due to the termination or revocation of a trust, the termination or revocation of such trust, except as set forth in Section 11.03(d);

(10) any failure by Borrower to complete any Repair related to fire, life, or safety issues in accordance with the terms of this Loan Agreement within the Completion Period (or such other date set forth on the Required Repair Schedule or otherwise required by Lender in writing for such Repair); or

(11) any exercise by the holder of any other debt instrument secured by a mortgage, deed of trust, or deed to secure debt on the Mortgaged Property of a right to declare all amounts due under that debt instrument immediately due and payable.

**(b) Events of Default Subject to a Specified Cure Period.**

Any of the following shall constitute an Event of Default subject to the cure period set forth in the Loan Documents:

(1) if Key Principal or Guarantor is a natural person, the death of such individual, unless all requirements of Section 11.03(e) are met;

(2) the occurrence of a Guarantor Bankruptcy Event, unless requirements of Section 11.03(f) are met;

(3) any failure by Borrower, Key Principal, or Guarantor to comply with the provisions of Section 5.02(b) and Section 5.02(c); or

(4) any failure by Borrower to perform any obligation under this Loan Agreement or any Loan Document that is subject to a specified written notice and cure period, which failure continues beyond such specified written notice and cure period as set forth herein or in the applicable Loan Document.

**(c) Events of Default Subject to Extended Cure Period.**

The following shall constitute an Event of Default if the existence of such condition or event, or such failure to perform or default in performance continues for a period of thirty (30) days after written notice by Lender to Borrower of the existence of such condition or event, or of such failure to perform or default in performance, provided, however, such period may be extended for up to an additional thirty (30) days if Borrower, in the discretion of Lender, is diligently pursuing a cure of such; provided, further, however, no such written notice, grace period, or extension shall apply if, in Lender's discretion, immediate exercise by Lender of a right or remedy under this Loan Agreement or any Loan Document is required to avoid harm to Lender or impairment of the Mortgage Loan (including the Loan Documents), the Mortgaged Property or any other security given for the Mortgage Loan:

(1) any failure by Borrower to perform any of its obligations under this Loan Agreement or any Loan Document (other than those specified in Section 14.01(a) or Section 14.01(b) above) as and when required.

**Section 14.02 Remedies.**

**(a) Acceleration; Foreclosure.**

If an Event of Default has occurred and is continuing, the entire unpaid principal balance of the Mortgage Loan, any Accrued Interest, interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other Indebtedness, at the option of Lender, shall immediately become due and payable, without any prior written notice to Borrower, unless applicable law requires otherwise (and in such case, after any required written notice has been given). Lender may exercise this option to accelerate regardless of any prior forbearance. In addition, Lender shall have all rights and remedies afforded to Lender hereunder and under the other Loan Documents, including, foreclosure on and/or the power of sale of the Mortgaged Property, as provided in the Security Instrument, and any rights and remedies available to Lender at law or in equity (subject to Borrower's statutory rights of reinstatement, if any). Any proceeds of a Foreclosure Event may be held and applied by Lender as additional collateral for the Indebtedness

pursuant to this Loan Agreement. Notwithstanding the foregoing, the occurrence of any Bankruptcy Event shall automatically accelerate the Mortgage Loan and all obligations and Indebtedness shall be immediately due and payable without written notice or further action by Lender.

**(b) Loss of Right to Disbursements from Collateral Accounts.**

If an Event of Default has occurred and is continuing, Borrower shall immediately lose all of its rights to receive disbursements from the Reserve/Escrow Accounts and any Collateral Accounts. During the continuance of any such Event of Default, Lender may use the Reserve/Escrow Account Funds and any Collateral Account Funds (or any portion thereof) for any purpose, including:

- (1) repayment of the Indebtedness, including principal prepayments and the Prepayment Premium applicable to such full or partial prepayment, as applicable (however, such application of funds shall not cure or be deemed to cure any Event of Default);
- (2) reimbursement of Lender for all losses and expenses (including reasonable legal fees) suffered or incurred by Lender as a result of such Event of Default;
- (3) completion of the Replacement or Repair or for any other replacement or repair to the Mortgaged Property; and
- (4) payment of any amount expended in exercising (and the exercise of) all rights and remedies available to Lender at law or in equity or under this Loan Agreement or under any of the other Loan Documents.

Nothing in this Loan Agreement shall obligate Lender to apply all or any portion of the Reserve/Escrow Account Funds or Collateral Account Funds on account of any Event of Default by Borrower or to repayment of the Indebtedness or in any specific order of priority.

**(c) Remedies Cumulative.**

Each right and remedy provided in this Loan Agreement is distinct from all other rights or remedies under this Loan Agreement or any other Loan Document or afforded by applicable law, and each shall be cumulative and may be exercised concurrently, independently, or successively, in any order. Lender shall not be required to demonstrate any actual impairment of its security or any increased risk of additional default by Borrower in order to exercise any of its remedies with respect to an Event of Default.

**Section 14.03 Additional Lender Rights; Forbearance.**

**(a) No Effect Upon Obligations.**

Lender may, but shall not be obligated to, agree with Borrower, from time to time, and without giving notice to, or obtaining the consent of, or having any effect upon the obligations of, Guarantor, Key Principal, or other third party obligor, to take any of the following actions:

- (1) the time for payment of the principal of or interest on the Indebtedness may be extended, or the Indebtedness may be renewed in whole or in part;
- (2) the rate of interest on or period of amortization of the Mortgage Loan or the amount of the Monthly Debt Service Payments payable under the Loan Documents may be modified;
- (3) the time for Borrower's performance of or compliance with any covenant or agreement contained in any Loan Document, whether presently existing or hereinafter entered into, may be extended or such performance or compliance may be waived;
- (4) any or all payments due under this Loan Agreement or any other Loan Document may be reduced;
- (5) any Loan Document may be modified or amended by Lender and Borrower in any respect, including an increase in the principal amount of the Mortgage Loan;
- (6) any amounts under this Loan Agreement or any other Loan Document may be released;
- (7) any security for the Indebtedness may be modified, exchanged, released, surrendered, or otherwise dealt with, or additional security may be pledged or mortgaged for the Indebtedness;
- (8) the payment of the Indebtedness or any security for the Indebtedness, or both, may be subordinated to the right to payment or the security, or both, of any other present or future creditor of Borrower; or
- (9) any other terms of the Loan Documents may be modified.

**(b) No Waiver of Rights or Remedies.**

Any waiver of an Event of Default or forbearance by Lender in exercising any right or remedy under this Loan Agreement or any other Loan Document or otherwise afforded by applicable law, shall not be a waiver of any other Event of Default or preclude the exercise or failure to exercise of any other right or remedy. The acceptance by Lender of payment of all or any part of the Indebtedness after the due date of such payment, or in an amount which is less than the required payment, shall not be a waiver of Lender's right to require prompt payment when due



of all other payments on account of the Indebtedness or to exercise any remedies for any failure to make prompt payment. Enforcement by Lender of any security for the Indebtedness shall not constitute an election by Lender of remedies so as to preclude the exercise or failure to exercise of any other right available to Lender. Lender's receipt of any insurance proceeds or amounts in connection with a Condemnation Action shall not operate to cure or waive any Event of Default.

**(c) Appointment of Lender as Attorney-In-Fact.**

Borrower hereby irrevocably makes, constitutes, and appoints Lender (and any officer of Lender or any Person designated by Lender for that purpose) as Borrower's true and lawful proxy and attorney-in-fact (and agent-in-fact) in Borrower's name, place, and stead, with full power of substitution, to:

- (1) use any of the funds in the Replacement Reserve Account or Repairs Escrow Account for the purpose of making or completing the Replacements or Repairs;
- (2) make such additions, changes, and corrections to the Replacements or Repairs as shall be necessary or desirable to complete the Replacements or Repairs;
- (3) employ such contractors, subcontractors, agents, architects, and inspectors as shall be required for such purposes;
- (4) pay, settle, or compromise all bills and claims for materials and work performed in connection with the Replacements or Repairs, or as may be necessary or desirable for the completion of the Replacements or Repairs, or for clearance of title;
- (5) adjust and compromise any claims under any and all policies of insurance required pursuant to this Loan Agreement and any other Loan Document, subject only to Borrower's rights under this Loan Agreement;
- (6) appear in and prosecute any action arising from any insurance policies;
- (7) collect and receive the proceeds of insurance, and to deduct from such proceeds Lender's expenses incurred in the collection of such proceeds;
- (8) commence, appear in, and prosecute, in Lender's or Borrower's name, any Condemnation Action;
- (9) settle or compromise any claim in connection with any Condemnation Action;
- (10) execute all applications and certificates in the name of Borrower which may be required by any of the contract documents;
- (11) prosecute and defend all actions or proceedings in connection with the Mortgaged Property or the rehabilitation and repair of the Mortgaged Property;

(12) take such actions as are permitted in this Loan Agreement and any other Loan Documents;

(13) execute such financing statements and other documents and to do such other acts as Lender may require to perfect and preserve Lender's security interest in, and to enforce such interests in, the collateral; and

(14) carry out any remedy provided for in this Loan Agreement and any other Loan Documents, including endorsing Borrower's name to checks, drafts, instruments and other items of payment and proceeds of the collateral, executing change of address forms with the postmaster of the United States Post Office serving the address of Borrower, changing the address of Borrower to that of Lender, opening all envelopes addressed to Borrower, and applying any payments contained therein to the Indebtedness.

Borrower hereby acknowledges that the constitution and appointment of such proxy and attorney-in-fact are coupled with an interest and are irrevocable and shall not be affected by the disability or incompetence of Borrower. Borrower specifically acknowledges and agrees that this power of attorney granted to Lender may be assigned by Lender to Lender's successors or assigns as holder of the Note (and the other Loan Documents). The foregoing powers conferred on Lender under this Section 14.03(c) shall not impose any duty upon Lender to exercise any such powers and shall not require Lender to incur any expense or take any action. Borrower hereby ratifies and confirms all that such attorney-in-fact may do or cause to be done by virtue of any provision of this Loan Agreement and any other Loan Documents.

Notwithstanding the foregoing provisions, Lender shall not exercise its rights as set forth in this Section 14.03(c) unless: (A) an Event of Default has occurred and is continuing, or (B) Lender determines, in its discretion, that exigent circumstances exist or that such exercise is necessary or prudent in order to protect and preserve the Mortgaged Property, or Lender's lien priority and security interest in the Mortgaged Property.

**(d) Borrower Waivers.**

If more than one Person signs this Loan Agreement as Borrower, each Borrower, with respect to any other Borrower, hereby agrees that Lender, in its discretion, may:

(1) bring suit against Borrower, or any one or more of Borrower, jointly and severally, or against any one or more of them;

(2) compromise or settle with any one or more of the persons constituting Borrower, for such consideration as Lender may deem proper;

(3) release one or more of the persons constituting Borrower, from liability; or

(4) otherwise deal with Borrower, or any one or more of them, in any manner, and no such action shall impair the rights of Lender to collect from any Borrower the full amount of the Indebtedness.

#### **Section 14.04 Waiver of Marshaling.**

Notwithstanding the existence of any other security interests in the Mortgaged Property held by Lender or by any other party, Lender shall have the right to determine the order in which any or all of the Mortgaged Property shall be subjected to the remedies provided in this Loan Agreement, any other Loan Document or applicable law. Lender shall have the right to determine the order in which all or any part of the Indebtedness is satisfied from the proceeds realized upon the exercise of such remedies. Borrower and any party who now or in the future acquires a security interest in the Mortgaged Property and who has actual or constructive notice of this Loan Agreement waives any and all right to require the marshaling of assets or to require that any of the Mortgaged Property be sold in the inverse order of alienation or that any of the Mortgaged Property be sold in parcels or as an entirety in connection with the exercise of any of the remedies permitted by applicable law or provided in this Loan Agreement or any other Loan Documents.

Lender shall account for any moneys received by Lender in respect of any foreclosure on or disposition of collateral hereunder and under the other Loan Documents provided that Lender shall not have any duty as to any collateral, and Lender shall be accountable only for amounts that it actually receives as a result of the exercise of such powers. NONE OF LENDER OR ITS AFFILIATES, OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, OR REPRESENTATIVES SHALL BE RESPONSIBLE TO BORROWER (a) FOR ANY ACT OR FAILURE TO ACT UNDER ANY POWER OF ATTORNEY OR OTHERWISE, EXCEPT IN RESPECT OF DAMAGES ATTRIBUTABLE SOLELY TO THEIR OWN GROSS NEGLIGENCE OR WILLFUL MISCONDUCT AS FINALLY DETERMINED PURSUANT TO A FINAL, NON-APPEALABLE COURT ORDER BY A COURT OF COMPETENT JURISDICTION, OR (b) FOR ANY PUNITIVE, EXEMPLARY, INDIRECT OR CONSEQUENTIAL DAMAGES.

### **ARTICLE 15 - MISCELLANEOUS**

#### **Section 15.01 Governing Law; Consent to Jurisdiction and Venue.**

##### **(a) Governing Law.**

This Loan Agreement and any other Loan Document which does not itself expressly identify the law that is to apply to it, shall be governed by the laws of the Property Jurisdiction without regard to the application of choice of law principles.

##### **(b) Venue.**

Any controversy arising under or in relation to this Loan Agreement or any other Loan Document shall be litigated exclusively in the Property Jurisdiction without regard to conflicts of laws principles. The state and federal courts and authorities with jurisdiction in the Property Jurisdiction shall have exclusive jurisdiction over all controversies which shall arise under or in

relation to this Loan Agreement or any other Loan Document. Borrower irrevocably consents to service, jurisdiction, and venue of such courts for any such litigation and waives any other venue to which it might be entitled by virtue of domicile, habitual residence, or otherwise.

**Section 15.02 Notice.**

**(a) Process of Serving Notice.**

Except as otherwise set forth herein or in any other Loan Document, all notices under this Loan Agreement and any other Loan Document shall be:

- (1) in writing and shall be:
  - (A) delivered, in person;
  - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
  - (C) sent by overnight courier; or
  - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at Borrower's Notice Address and Lender's Notice Address, as applicable; and
- (3) deemed given on the earlier to occur of:
  - (A) the date when the notice is received by the addressee; or
  - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or such express courier service.

**(b) Change of Address.**

Any party to this Loan Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified on the Summary of Loan Terms in accordance with this Section 15.02.

**(c) Default Method of Notice.**

Any required notice under this Loan Agreement or any other Loan Document which does not specify how notices are to be given shall be given in accordance with this Section 15.02.

**(d) Receipt of Notices.**

Neither Borrower nor Lender shall refuse or reject delivery of any notice given in accordance with this Loan Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

**Section 15.03 Successors and Assigns Bound; Sale of Mortgage Loan.**

**(a) Binding Agreement.**

This Loan Agreement shall bind, and the rights granted by this Loan Agreement shall inure to, the successors and assigns of Lender and the permitted successors and assigns of Borrower. However, a Transfer not permitted by this Loan Agreement shall be an Event of Default and shall be void ab initio.

**(b) Sale of Mortgage Loan; Change of Servicer.**

Nothing in this Loan Agreement shall limit Lender's (including its successors and assigns) right to sell or transfer the Mortgage Loan or any interest in the Mortgage Loan. The Mortgage Loan or a partial interest in the Mortgage Loan (together with this Loan Agreement and the other Loan Documents) may be sold one or more times without prior written notice to Borrower. A sale may result in a change of the Loan Servicer.

**Section 15.04 Counterparts.**

This Loan Agreement may be executed in any number of counterparts with the same effect as if the parties hereto had signed the same document and all such counterparts shall be construed together and shall constitute one instrument.

**Section 15.05 Joint and Several (or Solidary) Liability.**

If more than one Person signs this Loan Agreement as Borrower, the obligations of such Persons shall be joint and several (solidary instead for purposes of Louisiana law).

**Section 15.06 Relationship of Parties; No Third Party Beneficiary.**

**(a) Solely Creditor and Debtor.**

The relationship between Lender and Borrower shall be solely that of creditor and debtor, respectively, and nothing contained in this Loan Agreement shall create any other relationship between Lender and Borrower. Nothing contained in this Loan Agreement shall constitute Lender as a joint venturer, partner, or agent of Borrower, or render Lender liable for any debts, obligations, acts, omissions, representations, or contracts of Borrower.

**(b) No Third Party Beneficiaries.**

No creditor of any party to this Loan Agreement and no other Person shall be a third party beneficiary of this Loan Agreement or any other Loan Document or any account created or contemplated under this Loan Agreement or any other Loan Document. Nothing contained in this Loan Agreement shall be deemed or construed to create an obligation on the part of Lender to any third party nor shall any third party have a right to enforce against Lender any right that Borrower may have under this Loan Agreement. Without limiting the foregoing:

(1) any Servicing Arrangement between Lender and any Loan Servicer shall constitute a contractual obligation of such Loan Servicer that is independent of the obligation of Borrower for the payment of the Indebtedness;

(2) Borrower shall not be a third party beneficiary of any Servicing Arrangement; and

(3) no payment by the Loan Servicer under any Servicing Arrangement will reduce the amount of the Indebtedness.

**Section 15.07 Severability; Entire Agreement; Amendments.**

The invalidity or unenforceability of any provision of this Loan Agreement or any other Loan Document shall not affect the validity or enforceability of any other provision of this Loan Agreement or of any other Loan Document, all of which shall remain in full force and effect, including the Guaranty. This Loan Agreement contains the complete and entire agreement among the parties as to the matters covered, rights granted, and the obligations assumed in this Loan Agreement. This Loan Agreement may not be amended or modified except by written agreement signed by the parties hereto.

**Section 15.08 Construction.**

(a) The captions and headings of the sections of this Loan Agreement and the Loan Documents are for convenience only and shall be disregarded in construing this Loan Agreement and the Loan Documents.

(b) Any reference in this Loan Agreement to an “Exhibit” or “Schedule” or a “Section” or an “Article” shall, unless otherwise explicitly provided, be construed as referring, respectively, to an Exhibit or Schedule attached to this Loan Agreement or to a Section or Article of this Loan Agreement.

(c) Any reference in this Loan Agreement to a statute or regulation shall be construed as referring to that statute or regulation as amended from time to time.

(d) Use of the singular in this Loan Agreement includes the plural and use of the plural includes the singular.

(e) As used in this Loan Agreement, the term “including” means “including, but not limited to” or “including, without limitation,” and is for example only and not a limitation.

(f) Whenever Borrower’s knowledge is implicated in this Loan Agreement or the phrase “to Borrower’s knowledge” or a similar phrase is used in this Loan Agreement, Borrower’s knowledge or such phrase(s) shall be interpreted to mean to the best of Borrower’s knowledge after reasonable and diligent inquiry and investigation.

(g) Unless otherwise provided in this Loan Agreement, if Lender’s approval, designation, determination, selection, estimate, action, or decision is required, permitted, or contemplated hereunder, such approval, designation, determination, selection, estimate, action, or decision shall be made in Lender’s sole and absolute discretion.

(h) All references in this Loan Agreement to a separate instrument or agreement shall include such instrument or agreement as the same may be amended or supplemented from time to time pursuant to the applicable provisions thereof.

(i) “Lender may” shall mean at Lender’s discretion, but shall not be an obligation.

(j) If the Mortgage Loan proceeds are disbursed on a date that is later than the Effective Date, as described in Section 2.02(a)(1), the representations and warranties in the Loan Documents with respect to the ownership and operation of the Mortgaged Property shall be deemed to be made as of the disbursement date.

### **Section 15.09 Mortgage Loan Servicing.**

All actions regarding the servicing of the Mortgage Loan, including the collection of payments, the giving and receipt of notice, inspections of the Mortgaged Property, inspections of books and records, and the granting of consents and approvals, may be taken by the Loan Servicer unless Borrower receives notice to the contrary. If Borrower receives conflicting notices regarding the identity of the Loan Servicer or any other subject, any such written notice from Lender shall govern. The Loan Servicer may change from time to time (whether related or unrelated to a sale of the Mortgage Loan). If there is a change of the Loan Servicer, Borrower will be given written notice of the change.

### **Section 15.10 Disclosure of Information.**

Lender may furnish information regarding Borrower, Key Principal, or Guarantor, or the Mortgaged Property to third parties with an existing or prospective interest in the servicing, enforcement, evaluation, performance, purchase, or securitization of the Mortgage Loan, including trustees, master servicers, special servicers, rating agencies, and organizations maintaining databases on the underwriting and performance of multifamily mortgage loans. Borrower irrevocably waives any and all rights it may have under applicable law to prohibit such disclosure, including any right of privacy.

**Section 15.11 Waiver; Conflict.**

No specific waiver of any of the terms of this Loan Agreement shall be considered as a general waiver. If any provision of this Loan Agreement is in conflict with any provision of any other Loan Document, the provision contained in this Loan Agreement shall control.

**Section 15.12 No Reliance.**

Borrower acknowledges, represents, and warrants that:

(a) it understands the nature and structure of the transactions contemplated by this Loan Agreement and the other Loan Documents;

(b) it is familiar with the provisions of all of the documents and instruments relating to such transactions;

(c) it understands the risks inherent in such transactions, including the risk of loss of all or any part of the Mortgaged Property;

(d) it has had the opportunity to consult counsel; and

(e) it has not relied on Lender for any guidance or expertise in analyzing the financial or other consequences of the transactions contemplated by this Loan Agreement or any other Loan Document or otherwise relied on Lender in any manner in connection with interpreting, entering into, or otherwise in connection with this Loan Agreement, any other Loan Document, or any of the matters contemplated hereby or thereby.

**Section 15.13 Subrogation.**

If, and to the extent that, the proceeds of the Mortgage Loan are used to pay, satisfy, or discharge any obligation of Borrower for the payment of money that is secured by a pre-existing mortgage, deed of trust, or other lien encumbering the Mortgaged Property, such Mortgage Loan proceeds shall be deemed to have been advanced by Lender at Borrower's request, and Lender shall be subrogated automatically, and without further action on its part, to the rights, including lien priority, of the owner or holder of the obligation secured by such prior lien, whether or not such prior lien is released.

**Section 15.14 Counting of Days.**

Except where otherwise specifically provided, any reference in this Loan Agreement to a period of "days" means calendar days, not Business Days. If the date on which Borrower is required to perform an obligation under this Loan Agreement is not a Business Day, Borrower shall be required to perform such obligation by the Business Day immediately preceding such date; provided, however, in respect of any Payment Date, or if the Maturity Date is other than a Business Day, Borrower shall be obligated to make such payment by the Business Day immediately following such date.



**Section 15.15 Revival and Reinstatement of Indebtedness.**

If the payment of all or any part of the Indebtedness by Borrower, Guarantor, or any other Person, or the transfer to Lender of any collateral or other property should for any reason subsequently be declared to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Insolvency Laws relating to a Voidable Transfer, and if Lender is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of its counsel, then the amount of such Voidable Transfer or the amount of such Voidable Transfer that Lender is required or elects to repay or restore, including all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection therewith, and the Indebtedness shall be automatically revived, reinstated, and restored by such amount and shall exist as though such Voidable Transfer had never been made.

**Section 15.16 Time is of the Essence.**

Borrower agrees that, with respect to each and every obligation and covenant contained in this Loan Agreement and the other Loan Documents, time is of the essence.

**Section 15.17 Final Agreement.**

THIS LOAN AGREEMENT ALONG WITH ALL OF THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES WITH RESPECT TO THE SUBJECT MATTER HEREOF AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS, OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES. All prior or contemporaneous agreements, understandings, representations, and statements, oral or written, are merged into this Loan Agreement and the other Loan Documents. This Loan Agreement, the other Loan Documents, and any of their provisions may not be waived, modified, amended, discharged, or terminated except by an agreement in writing signed by the party against which the enforcement of the waiver, modification, amendment, discharge, or termination is sought, and then only to the extent set forth in that agreement.

**Section 15.18 WAIVER OF TRIAL BY JURY.**

TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER AND LENDER (a) COVENANTS AND AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS LOAN AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR THE RELATIONSHIP BETWEEN THE PARTIES AS BORROWER AND LENDER, THAT IS TRIABLE OF RIGHT BY A JURY, AND (b) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower and Lender have signed and delivered this Loan Agreement under seal (where applicable) or have caused this Loan Agreement to be signed and delivered under seal (where applicable) by their duly authorized representatives. Where applicable law so provides, Borrower and Lender intend that this Loan Agreement shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**NORTHGATE PRESERVATION, L.P.**  
a New York limited partnership

By: Northgate Preservation GP, LLC  
a New York limited liability company  
its General Partner

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

Name: Matthew Finkle  
Title: Vice President

**LENDER:**

**REGIONS BANK,**  
an Alabama banking corporation

By: \_\_\_\_\_  
Name: David A. Kahn  
Title: Managing Director

**SCHEDULE 1**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Definitions Schedule**  
**(Interest Rate Type – Fixed Rate)**

Capitalized terms used in the Loan Agreement have the meanings given to such terms in this Definitions Schedule.

“**Accrued Interest**” means unpaid interest, if any, on the Mortgage Loan that has not been added to the unpaid principal balance of the Mortgage Loan pursuant to Section 2.02(b) (Capitalization of Accrued But Unpaid Interest) of the Loan Agreement.

“**Additional Lender Repairs**” means repairs of the type listed on the Required Repair Schedule but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair (ordinary wear and tear excepted) and in good marketable condition or to prevent deterioration of the Mortgaged Property.

“**Additional Lender Replacements**” means replacements of the type listed on the Required Replacement Schedule but not otherwise identified thereon that are determined advisable by Lender to keep the Mortgaged Property in good order and repair (ordinary wear and tear excepted) and in good marketable condition or to prevent deterioration of the Mortgaged Property.

“**Affiliate**” means as to any particular Person, any Person directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with Person or Persons in question.

“**Amortization Period**” has the meaning set forth in the Summary of Loan Terms.

“**Amortization Type**” has the meaning set forth in the Summary of Loan Terms.

“**Bank Secrecy Act**” means the Bank Secrecy Act of 1970, as amended (e.g., 31 U.S.C. Sections 5311-5330).

“**Bankruptcy Event**” means any one or more of the following:

- (a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Borrower;
- (b) the acknowledgment in writing by Borrower (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
- (c) the making of a general assignment for the benefit of creditors by Borrower;

(d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Borrower; or

(e) the appointment of a receiver (other than a receiver appointed at the direction or request of Lender under the terms of the Loan Documents), liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Borrower or any substantial part of the assets of Borrower;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of (1) Borrower, Guarantor, or Key Principal, (2) any Person Controlling Borrower, Guarantor, or Key Principal, or (3) any Person Controlled by or under common Control with Borrower, Guarantor, or Key Principal (in which event such case or proceeding shall be a Bankruptcy Event immediately).

**“Borrower”** means, individually (and jointly and severally (solidarily instead for purposes of Louisiana law) if more than one), the entity (or entities) identified as “Borrower” in the first paragraph of the Loan Agreement.

**“Borrower Affiliate”** means, as to Borrower, Guarantor or Key Principal:

(a) any Person that owns any direct ownership interest in Borrower, Guarantor or Key Principal;

(b) any Person that indirectly owns, with the power to vote, twenty percent (20%) or more of the ownership interests in Borrower, Guarantor or Key Principal;

(c) any Person Controlled by, under common Control with, or which Controls, Borrower, Guarantor or Key Principal;

(d) any entity in which Borrower, Guarantor or Key Principal directly or indirectly owns, with the power to vote, twenty percent (20%) or more of the ownership interests in such entity; or

(e) any other individual that is related (to the third degree of consanguinity) by blood or marriage to Borrower, Guarantor or Key Principal.

**“Borrower Requested Repairs”** means repairs not listed on the Required Repair Schedule requested by Borrower to be reimbursed from the Repairs Escrow Account and determined advisable by Lender to keep the Mortgaged Property in good order and repair and in a good marketable condition or to prevent deterioration of the Mortgaged Property.

**“Borrower Requested Replacements”** means replacements not listed on the Required Replacement Schedule requested by Borrower to be reimbursed from the Replacement Reserve

Account and determined advisable by Lender to keep the Mortgaged Property in good order and repair and in a good marketable condition or to prevent deterioration of the Mortgaged Property.

**“Borrower’s General Business Address”** has the meaning set forth in the Summary of Loan Terms.

**“Borrower’s Notice Address”** has the meaning set forth in the Summary of Loan Terms.

**“Business Day”** means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

**“Collateral Account Funds”** means, collectively, the funds on deposit in any or all of the Collateral Accounts, including the Reserve/Escrow Account Funds.

**“Collateral Accounts”** means any account designated as such by Lender pursuant to a Collateral Agreement or as established pursuant to this Loan Agreement, including the Reserve/Escrow Account.

**“Collateral Agreement”** means any separate agreement between Borrower and Lender and any other party for the establishment of any other fund, reserve or account affecting the Mortgage Loan.

**“Completion Period”** has the meaning set forth in the Summary of Loan Terms.

**“Condemnation Action”** has the meaning set forth in the Security Instrument.

**“Control”** (including with correlative meanings, such as “Controlling,” “Controlled by” and “under common Control with”) means, as applied to any entity, the possession, directly or indirectly, of the power to direct or cause the direction of the management and operations of such entity, whether through the ownership of voting securities or other ownership interests, by contract or otherwise.

**“Credit Score”** means a numerical value or a categorization derived from a statistical tool or modeling system used to measure credit risk and predict the likelihood of certain credit behaviors, including default.

**“Debt Service Amounts”** means the Monthly Debt Service Payments and all other amounts payable under the Loan Agreement, the Note, the Security Instrument or any other Loan Document.

**“Default Rate”** means an interest rate equal to the lesser of:

- (a) the sum of the Interest Rate plus four (4) percentage points; or

(b) the maximum interest rate which may be collected from Borrower under applicable law.

“**Definitions Schedule**” means this Schedule 1 (Definitions Schedule) to the Loan Agreement.

“**Economic Sanctions**” means any economic or financial sanction administered or enforced by the United States Government (including, without limitation, those administered by OFAC at <http://www.treasury.gov/about/organizational-structure/offices/Pages/Office-of-Foreign-Assets-Control.aspx>), the U.S. Department of Commerce, or the U.S. Department of State.

“**Effective Date**” has the meaning set forth in the Summary of Loan Terms.

“**Employee Benefit Plan**” means a plan described in Section 3(3) of ERISA, regardless of whether the plan is subject to ERISA.

“**Enforcement Costs**” has the meaning set forth in the Security Instrument.

“**Environmental Indemnity Agreement**” means that certain Environmental Indemnity Agreement dated as of the Effective Date made by Borrower to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented, or otherwise modified from time to time.

“**Environmental Inspections**” has the meaning set forth in the Environmental Indemnity Agreement.

“**Environmental Laws**” has the meaning set forth in the Environmental Indemnity Agreement.

“**ERISA**” means the Employee Retirement Income Security Act of 1974, as amended.

“**ERISA Affiliate**” shall mean, with respect to Borrower, any entity that, together with Borrower, would be treated as a single employer under Section 414(b) or (c) of the Internal Revenue Code, or Section 4001(a)(14) of ERISA, or the regulations thereunder.

“**ERISA Plan**” means any employee pension benefit plan within the meaning of Section 3(2) of ERISA (or related trust) that is subject to the requirements of Title IV of ERISA, Sections 430 or 431 of the Internal Revenue Code, or Sections 302, 303, or 304 of ERISA, which is maintained or contributed to by Borrower or its ERISA Affiliates.

“**Event of Default**” means the occurrence of any event listed in Section 14.01 (Events of Default) of the Loan Agreement.

“**Exceptions to Representations and Warranties Schedule**” means that certain Schedule 7 (Exceptions to Representations and Warranties Schedule) to the Loan Agreement.

“**First Payment Date**” has the meaning set forth in the Summary of Loan Terms.

**“First Principal and Interest Payment Date”** has the meaning set forth in the Summary of Loan Terms, if applicable.

**“Fixed Rate”** has the meaning set forth in the Summary of Loan Terms.

**“Fixtures”** has the meaning set forth in the Security Instrument.

**“Force Majeure”** shall mean acts of God, acts of war, civil disturbance, governmental action (including the revocation or refusal to grant licenses or permits, where such revocation or refusal is not due to the fault of Borrower), strikes, lockouts, fire, unavoidable casualties or any other causes beyond the reasonable control of Borrower (other than lack of financing), and of which Borrower shall have notified Lender in writing within ten (10) days after its occurrence.

**“Foreclosure Event”** means:

- (a) foreclosure under the Security Instrument;
- (b) any other exercise by Lender of rights and remedies (whether under the Security Instrument or under applicable law, including Insolvency Laws) as holder of the Mortgage Loan and/or the Security Instrument, as a result of which Lender (or its designee or nominee) or a third party purchaser becomes owner of the Mortgaged Property;
- (c) delivery by Borrower to Lender (or its designee or nominee) of a deed or other conveyance of Borrower’s interest in the Mortgaged Property in lieu of any of the foregoing; or
- (d) in Louisiana, any dation en paiement.

**“Goods”** has the meaning set forth in the Security Instrument.

**“Governmental Authority”** means any court, board, commission, department or body of any municipal, county, state or federal governmental unit, or any subdivision of any of them, that has or acquires jurisdiction over Borrower or the Mortgaged Property or the use, operation or improvement of the Mortgaged Property.

**“Guarantor”** means, individually and collectively, any guarantor of the Indebtedness or any other obligation of Borrower under any Loan Document.

**“Guarantor Bankruptcy Event”** means any one or more of the following:

- (a) the commencement, filing or continuation of a voluntary case or proceeding under one or more of the Insolvency Laws by Guarantor;
- (b) the acknowledgment in writing by Guarantor (other than to Lender in connection with a workout) that it is unable to pay its debts generally as they mature;
- (c) the making of a general assignment for the benefit of creditors by Guarantor;



(d) the commencement, filing or continuation of an involuntary case or proceeding under one or more Insolvency Laws against Guarantor; or

(e) the appointment of a receiver, liquidator, custodian, sequestrator, trustee or other similar officer who exercises control over Guarantor or any substantial part of the assets of Guarantor, as applicable;

provided, however, that any proceeding or case under (d) or (e) above shall not be a Guarantor Bankruptcy Event until the ninetieth (90th) day after filing (if not earlier dismissed) so long as such proceeding or case occurred without the consent, encouragement or active participation of (1) Borrower, Guarantor or Key Principal, (2) any Person Controlling Borrower, Guarantor or Key Principal, or (3) any Person Controlled by or under common Control with Borrower, Guarantor or Key Principal (in which event such case or proceeding shall be a Guarantor Bankruptcy Event immediately).

“**Guarantor’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Guarantor’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Guaranty**” means, individually and collectively, any Payment Guaranty, Non-Recourse Guaranty or other guaranty executed by Guarantor in connection with the Mortgage Loan.

“**Immediate Family Members**” means a child, stepchild, grandchild, spouse, sibling, or parent, each of whom is not a Prohibited Person.

“**Imposition Deposits**” has the meaning set forth in the Security Instrument.

“**Impositions**” has the meaning set forth in the Security Instrument.

“**Improvements**” has the meaning set forth in the Security Instrument.

“**Indebtedness**” has the meaning set forth in the Security Instrument.

“**Initial Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Insolvency Laws**” means the United States Bankruptcy Code, 11 U.S.C. Section 101, et seq., together with any other federal or state law affecting debtor and creditor rights or relating to the bankruptcy, insolvency, reorganization, arrangement, moratorium, readjustment of debt, dissolution, liquidation or similar laws, proceedings, or equitable principles affecting the enforcement of creditors’ rights, as amended from time to time.

“**Insolvent**” means:

(a) that the sum total of all of a specified Person’s liabilities (whether secured or unsecured, contingent or fixed, or liquidated or unliquidated) is in excess of the value of such

Person's non-exempt assets, i.e., all of the assets of such Person that are available to satisfy claims of creditors; or

(b) such Person's inability to pay its debts as they become due.

**"Intended Prepayment Date"** means the date upon which Borrower intends to make a prepayment on the Mortgage Loan, as set forth in the Prepayment Notice.

**"Interest Accrual Method"** has the meaning set forth in the Summary of Loan Terms.

**"Interest Only Term"** has the meaning set forth in the Summary of Loan Terms.

**"Interest Rate"** means the Fixed Rate.

**"Interest Rate Type"** has the meaning set forth in the Summary of Loan Terms.

**"Internal Revenue Code"** means the Internal Revenue Code of 1986, as amended.

**"Investor"** means any Person to whom Lender intends to (a) sell, transfer, deliver or assign the Mortgage Loan in the secondary mortgage market, or (b) sell an MBS backed by the Mortgage Loan.

**"Key Principal"** means, collectively:

(a) the natural person(s) or entity that Controls Borrower that Lender determines is critical to the successful operation and management of Borrower and the Mortgaged Property, as identified as such in the Summary of Loan Terms; or

(b) any natural person or entity who becomes a Key Principal after the date of the Loan Agreement and is identified as such in an assumption agreement, or another amendment or supplement to the Loan Agreement.

**"Key Principal's General Business Address"** has the meaning set forth in the Summary of Loan Terms.

**"Key Principal's Notice Address"** has the meaning set forth in the Summary of Loan Terms.

**"Land"** means the land described in Exhibit A to the Security Instrument.

**"Last Interest Only Payment Date"** has the meaning set forth in the Summary of Loan Terms, if applicable.

**"Late Charge"** means an amount equal to the delinquent amount then due under the Loan Documents multiplied by five percent (5%).

**"Leases"** has the meaning set forth in the Security Instrument.

“**Lender**” means the entity identified as “Lender” in the first paragraph of the Loan Agreement and its transferees, successors and assigns, or any subsequent holder of the Note.

“**Lender’s General Business Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lender’s Notice Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lender’s Payment Address**” has the meaning set forth in the Summary of Loan Terms.

“**Lien**” has the meaning set forth in the Security Instrument.

“**Loan Agreement**” means the Multifamily Loan and Security Agreement dated as of the Effective Date executed by and between Borrower and Lender to which this Definitions Schedule is attached, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Loan Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Loan Application**” means the application for the Mortgage Loan submitted by Borrower to Lender.

“**Loan Documents**” means the Note, the Loan Agreement, the Security Instrument, the Environmental Indemnity Agreement, the Guaranty, all guaranties, all indemnity agreements, all Collateral Agreements, all O&M Plans, and any other documents now or in the future executed by Borrower, Guarantor, Key Principal, any other guarantor or any other Person in connection with the Mortgage Loan, as such documents may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Loan Servicer**” means the entity that from time to time is designated by Lender to collect payments and deposits and receive notices under the Note, the Loan Agreement, the Security Instrument and any other Loan Document, and otherwise to service the Mortgage Loan for the benefit of Lender. Unless Borrower receives notice to the contrary, the Loan Servicer shall be the Lender originally named on the Summary of Loan Terms.

“**Loan Term**” has the meaning set forth in the Summary of Loan Terms.

“**Loan Year**” has the meaning set forth in the Summary of Loan Terms.

“**Material Commercial Lease**” means:

(a) any Lease that comprises five percent (5%) or more of the total gross income at the Mortgaged Property on an annualized basis; or

(b) regardless of the percentage of the total gross income at the Mortgaged Property that it comprises, any Lease relating to:

- (1) solar power, thermal power generation, or co-power generation, or for the installation of solar panels or any other electrical power generation equipment, and any related power purchase agreement;
- (2) mineral rights or rights relating to subsurface oil and/or natural gas;
- (3) telecommunications or a cell tower; or
- (4) any dwelling unit at the Mortgaged Property leased to Guarantor, Key Principal, or another Borrower Affiliate.

“**Maturity Date**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Inspection Fee**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Repair Cost**” shall be the amount(s) set forth in the Required Repair Schedule, if any.

“**Maximum Repair Disbursement Interval**” has the meaning set forth in the Summary of Loan Terms.

“**Maximum Replacement Reserve Disbursement Interval**” has the meaning set forth in the Summary of Loan Terms.

“**MBS**” means an investment security that represents an undivided beneficial interest in a pool of mortgage loans or participation interests in mortgage loans held in trust pursuant to the terms of a governing trust document.

“**Mezzanine Debt**” means a loan to a direct or indirect owner of Borrower secured by a pledge of such owner’s interest in an entity owning a direct or indirect interest in Borrower.

“**Minimum Repairs Disbursement Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Minimum Replacement Reserve Disbursement Amount**” has the meaning set forth in the Summary of Loan Terms.

“**Monthly Debt Service Payment**” has the meaning set forth in the Summary of Loan Terms.

“**Monthly Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

“**Mortgage Loan**” means the mortgage loan made by Lender to Borrower in the principal amount of the Note made pursuant to the Loan Agreement, evidenced by the Note and secured by the Loan Documents that are expressly stated to be security for the Mortgage Loan.

“**Mortgaged Property**” has the meaning set forth in the Security Instrument.

“**Multifamily Project**” has the meaning set forth in the Summary of Loan Terms.

“**Multifamily Project Address**” has the meaning set forth in the Summary of Loan Terms.

“**Net Cash Flow**” means, for any specified period, the total of (a) the net rental income for the Mortgaged Property, plus (b) other allowable income for the Mortgaged Property, if any, minus (c) operating expenses for the Mortgaged Property, minus (d) the full amount underwritten for the Replacement Reserve Account (regardless of whether deposits have been or will be waived or reduced), and as adjusted for economic vacancy and other factors by Lender for the specific asset class or loan type.

“**Non-Recourse Guaranty**” means, if applicable, that certain Guaranty of Non-Recourse Obligations of even date herewith executed by Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Note**” means that certain Multifamily Note of even date herewith in the original principal amount of the stated Loan Amount made by Borrower in favor of Lender, and all schedules, riders, allonges and addenda attached thereto, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**O&M Plan**” has the meaning set forth in the Environmental Indemnity Agreement.

“**OFAC**” means the United States Treasury Department, Office of Foreign Assets Control, and any successor thereto.

“**Payment Date**” means the First Payment Date and the first day of each month thereafter until the Mortgage Loan is fully paid.

“**Payment Guaranty**” means, if applicable, that certain Guaranty (Payment) of even date herewith executed by Guarantor to and for the benefit of Lender, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Permitted Encumbrance**” has the meaning set forth in the Security Instrument.

“**Permitted Mezzanine Debt**” means Mezzanine Debt incurred by a direct or indirect owner or owners of Borrower where the exercise of any of the rights and remedies by the holder or holders of the Mezzanine Debt would not in any circumstance cause (a) a change in Control in Borrower, Key Principal, or Guarantor, or (b) a Transfer of a direct or indirect Restricted Ownership Interest in Borrower, Key Principal, or Guarantor.

“**Permitted Preferred Equity**” means Preferred Equity that does not (a) require mandatory dividends, distributions, payments or returns (including at maturity or in connection with a redemption), or (b) provide the Preferred Equity owner with rights or remedies on account of a

failure to receive any preferred dividends, distributions, payments or returns (or, if such rights are provided, the exercise of such rights do not violate the Loan Documents or are otherwise exercised with the prior written consent of Lender in accordance with Article 11 (Liens, Transfers and Assumptions) of the Loan Agreement and the payment of all applicable fees and expenses as set forth in Section 11.03(g) (Further Conditions to Transfers and Assumption) of the Loan Agreement).

**“Permitted Prepayment Date”** means the last Business Day of a calendar month.

**“Person”** means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

**“Personal Property”** means the Goods, accounts, choses of action, chattel paper, documents, general intangibles (including Software), payment intangibles, instruments, investment property, letter of credit rights, supporting obligations, computer information, source codes, object codes, records and data, all telephone numbers or listings, claims (including claims for indemnity or breach of warranty), deposit accounts and other property or assets of any kind or nature related to the Land or the Improvements, including operating agreements, surveys, plans and specifications and contracts for architectural, engineering and construction services relating to the Land or the Improvements, and all other intangible property and rights relating to the operation of, or used in connection with, the Land or the Improvements, including all governmental permits relating to any activities on the Land.

**“Personalty”** has the meaning set forth in the Security Instrument.

**“Preferred Equity”** means a direct or indirect equity ownership interest in, economic interests in, or rights with respect to, Borrower that provide an equity owner preferred dividend, distribution, payment, or return treatment relative to other equity owners.

**“Prepayment Lockout Period”** has the meaning set forth in the Summary of Loan Terms.

**“Prepayment Notice”** means the written notice that Borrower is required to provide to Lender in accordance with Section 2.03 (Lockout/Prepayment) of the Loan Agreement in order to make a prepayment on the Mortgage Loan, which shall include, at a minimum, the Intended Prepayment Date.

**“Prepayment Premium”** means the amount payable by Borrower in connection with a prepayment of the Mortgage Loan, as provided in Section 2.03 (Lockout/Prepayment) of the Loan Agreement and calculated in accordance with the Prepayment Premium Schedule.

**“Prepayment Premium Period End Date”** or **“Yield Maintenance Period End Date”** has the meaning set forth in the Summary of Loan Terms.

**“Prepayment Premium Period Term”** or **“Yield Maintenance Period Term”** has the meaning set forth in the Summary of Loan Terms.

**“Prepayment Premium Schedule”** means that certain Schedule 4 (Prepayment Premium Schedule) to the Loan Agreement.

**“Prohibited Person”** means:

(a) any Person with whom Lender or Fannie Mae is prohibited from doing business pursuant to any law, rule, regulation, judicial proceeding or administrative directive; or

(b) any Person identified on the United States Department of Housing and Urban Development’s “Limited Denial of Participation, HUD Funding Disqualifications and Voluntary Abstentions List,” or on the General Services Administration’s “System for Award Management (SAM)” exclusion list, each of which may be amended from time to time, and any successor or replacement thereof; or

(c) any Person that is determined by Fannie Mae to pose an unacceptable credit risk due to the aggregate amount of debt of such Person owned or held by Fannie Mae; or

(d) any Person that has caused any unsatisfactory experience of a material nature with Fannie Mae or Lender, such as a default, fraud, intentional misrepresentation, litigation, arbitration or other similar act.

**“Property Jurisdiction”** has the meaning set forth in the Security Instrument.

**“Property Square Footage”** has the meaning set forth in the Summary of Loan Terms.

**“Publicly-Held Corporation”** means a corporation, the outstanding voting stock of which is registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

**“Publicly-Held Trust”** means a real estate investment trust, the outstanding voting shares or beneficial interests of which are registered under Sections 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended.

**“Related Controlled Entity”** means one or more of any entity Controlled by: (i) Stephen M. Ross, (ii) Jeff T. Blau, (iii) Bruce A. Beal, Jr., (iv) Matthew Finkle, (v) David Pearson (vi) the Key Principal, or (vii) administrators, executors and heirs of any of the persons identified in (i) through (vii); provided however that any one or more of Stephen M. Ross, Jeff T. Blau, Bruce A. Beal, Jr., Matthew Finkle, David Pearson or their administrators, executors and heirs own a Restricted Ownership Interest in such entity.

**“Rents”** has the meaning set forth in the Security Instrument.

**“Repair Threshold”** has the meaning set forth in the Summary of Loan Terms.

**“Repairs”** means, individually and collectively, the Required Repairs, Borrower Requested Repairs, and Additional Lender Repairs.

**“Repairs Escrow Account”** means the account established by Lender into which the Repairs Escrow Deposit is deposited to fund the Repairs.

**“Repairs Escrow Account Administrative Fee”** has the meaning set forth in the Summary of Loan Terms.

**“Repairs Escrow Deposit”** has the meaning set forth in the Summary of Loan Terms.

**“Replacement Reserve Account”** means the account established by Lender into which the Replacement Reserve Deposits are deposited to fund the Replacements.

**“Replacement Reserve Account Administration Fee”** has the meaning set forth in the Summary of Loan Terms.

**“Replacement Reserve Account Interest Disbursement Frequency”** has the meaning set forth in the Summary of Loan Terms.

**“Replacement Reserve Deposits”** means the Initial Replacement Reserve Deposit, Monthly Replacement Reserve Deposits and any other deposits to the Replacement Reserve Account required by the Loan Agreement.

**“Replacement Threshold”** has the meaning set forth in the Summary of Loan Terms.

**“Replacements”** means, individually and collectively, the Required Replacements, Borrower Requested Replacements and Additional Lender Replacements.

**“Required Repair Schedule”** means that certain Schedule 6 (Required Repair Schedule) to the Loan Agreement.

**“Required Repairs”** means those items listed on the Required Repair Schedule.

**“Required Replacement Schedule”** means that certain Schedule 5 (Required Replacement Schedule) to the Loan Agreement.

**“Required Replacements”** means those items listed on the Required Replacement Schedule.

**“Reserve/Escrow Account Funds”** means, collectively, the funds on deposit in the Reserve/Escrow Accounts.

**“Reserve/Escrow Accounts”** means, together, the Replacement Reserve Account and the Repairs Escrow Account.

**“Residential Lease”** means a Lease of an individual dwelling unit.



**“Restoration”** means restoring and repairing the Mortgaged Property to the equivalent of its physical condition immediately prior to the casualty or to a condition approved by Lender following a casualty.

**“Restricted Ownership Interest”** means, with respect to any entity, the following:

- (a) if such entity is a general partnership or a joint venture, fifty percent (50%) or more of all general partnership or joint venture interests in such entity;
- (b) if such entity is a limited partnership:
  - (1) the interest of any general partner; or
  - (2) fifty percent (50%) or more of all limited partnership interests in such entity;
- (c) if such entity is a limited liability company or a limited liability partnership:
  - (1) the interest of any managing member or the contractual rights of any non-member manager; or
  - (2) fifty percent (50%) or more of all membership or other ownership interests in such entity;
- (d) if such entity is a corporation (other than a Publicly-Held Corporation) with only one class of voting stock, fifty percent (50%) or more of voting stock in such corporation;
- (e) if such entity is a corporation (other than a Publicly-Held Corporation) with more than one class of voting stock, the amount of shares of voting stock sufficient to have the power to elect the majority of directors of such corporation; or
- (f) if such entity is a trust (other than a land trust or a Publicly-Held Trust), the power to Control such trust vested in the trustee of such trust or the ability to remove, appoint or substitute the trustee of such trust (unless the trustee of such trust after such removal, appointment or substitution is a trustee identified in the trust agreement approved by Lender).

**“Review Fee”** means the non-refundable fee of \$3,000 payable to Lender.

**“Sanctioned Country”** means a country subject to either a targeted or comprehensive country-wide sanctions program administered and enforced by OFAC, which list is updated from time to time.

**“Sanctioned Person”** means (a) a Person named on the list of “Specially Designated Nationals and Blocked Persons” maintained by OFAC, available at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>, or as otherwise published from time to time; (b) (1) an agency of the government of a Sanctioned Country, (2) an organization controlled by a

Sanctioned Country, or (3) a Person resident in a Sanctioned Country, to the extent any Person described in clauses (1), (2) or (3) is the subject of a sanctions program administered by OFAC; and, (c) a Person whose property and interests in property are blocked pursuant to an Executive Order or regulations administered by OFAC consistent with the guidance issued by OFAC.

“**Schedule of Interest Rate Type Provisions**” means that certain Schedule 3 (Schedule of Interest Rate Type Provisions) to the Loan Agreement.

“**Security Instrument**” means that certain multifamily mortgage, deed to secure debt or deed of trust executed and delivered by Borrower as security for the Mortgage Loan and encumbering the Mortgaged Property, including all riders or schedules attached thereto, as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time.

“**Senior Management**” means shall mean individually and collectively, an Affiliate of the Key Principal (ii) Stephen M. Ross, Jeff T. Blau, Bruce A. Beal, Jr., Matthew Finkle, Jeffrey Brodsky, or David Pearson.

“**Servicing Arrangement**” means any arrangement between Lender and the Loan Servicer for loss sharing or interim advancement of funds.

“**Summary of Loan Terms**” means that certain Schedule 2 (Summary of Loan Terms) to the Loan Agreement.

“**Taxes**” has the meaning set forth in the Security Instrument.

“**TDHCA Subordinate Obligations**” means the obligations of Borrower under the Financing Agreement dated as of [June \_\_\_\_, 2019] by and among Borrower, Lender, The Bank of New York Mellon Trust Company, N.A., and Regions Bank, as secured by a subordinate lien deed of trust.

“**Title Policy**” means the mortgagee’s loan policy of title insurance issued in connection with the Mortgage Loan and insuring the lien of the Security Instrument as set forth therein, as approved by Lender.

“**Total Parking Spaces**” has the meaning set forth in the Summary of Loan Terms.

“**Total Residential Units**” has the meaning set forth in the Summary of Loan Terms.

“**Transfer**” means:

(a) a sale, assignment, transfer or other disposition (whether voluntary, involuntary, or by operation of law), other than Residential Leases, Material Commercial Leases or non-Material Commercial Leases permitted by this Loan Agreement;

(b) a granting, pledging, creating or attachment of a lien, encumbrance or security interest (whether voluntary, involuntary, or by operation of law);

- (c) an issuance or other creation of a direct or indirect ownership interest;
- (d) a withdrawal, retirement, removal or involuntary resignation of any owner or manager of a legal entity; or
- (e) a merger, consolidation, dissolution or liquidation of a legal entity.

**“Transfer Fee”** means a fee equal to one percent (1%) of the unpaid principal balance of the Mortgage Loan payable to Lender.

**“UCC”** has the meaning set forth in the Security Instrument.

**“UCC Collateral”** has the meaning set forth in the Security Instrument.

**“Voidable Transfer”** means any fraudulent conveyance, preference or other voidable or recoverable payment of money or transfer of property.

**“Yield Maintenance Period End Date”** or **“Prepayment Premium Period End Date”** has the meaning set forth in the Summary of Loan Terms.

**“Yield Maintenance Period Term”** or **“Prepayment Premium Period Term”** has the meaning set forth in the Summary of Loan Terms.

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Borrower Initials

**SCHEDULE 2**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Summary of Loan Terms**  
**(Interest Rate Type - Fixed Rate)**

<b>I. GENERAL PARTY AND MULTIFAMILY PROJECT INFORMATION</b>	
<b>Borrower</b>	<b>NORTHGATE PRESERVATION, L.P.</b>
<b>Lender</b>	<b>REGIONS BANK</b>
<b>Key Principal</b>	<b>THE RELATED COMPANIES, L.P.</b>
<b>Guarantor</b>	<b>THE RELATED COMPANIES, L.P.</b>
<b>Multifamily Project</b>	Northgate Village
<b>ADDRESSES</b>	
<b>Borrower's General Business Address</b>	c/o Related Companies 60 Columbus Circle, 18 <sup>th</sup> Floor New York, NY 10023 Attn: Matthew Finkle
<b>Borrower's Notice Address</b>	c/o Related Companies 60 Columbus Circle New York, NY 10023 Attn: Matthew Finkle Email: _____  With a copy to: Levitt & Boccio, LLP 423 W. 55 <sup>th</sup> St., 8 <sup>th</sup> Floor New York, NY 10019 Attn: David S. Boccio, Esq.
<b>Multifamily Project Address</b>	12303 Plano Road Dallas, TX 75243

<b>Multifamily Project County</b>	Dallas
<b>Key Principal's General Business Address</b>	c/o Related Companies 60 Columbus Circle New York, NY 10023 Attn: Matthew Finkle
<b>Key Principal's Notice Address</b>	c/o Related Companies 60 Columbus Circle New York, NY 10023 Attn: Matthew Finkle Email: _____ With a copy to: Levitt & Boccio, LLP 423 W. 55 <sup>th</sup> St., 8 <sup>th</sup> Floor New York, NY 10019 Attn: David S. Boccio, Esq.
<b>Guarantor's General Business Address</b>	c/o Related Companies 60 Columbus Circle New York, NY 10023 Attn: Matthew Finkle
<b>Guarantor's Notice Address</b>	c/o Related Companies 60 Columbus Circle New York, NY 10023 Attn: Matthew Finkle Email: _____ With a copy to: Levitt & Boccio, LLP 423 W. 55 <sup>th</sup> St., 8 <sup>th</sup> Floor New York, NY 10019 Attn: David S. Boccio, Esq.
<b>Lender's General Business Address</b>	1180 West Peachtree Street, NW, Suite 1400 Atlanta, Georgia 30309
<b>Lender's Notice Address</b>	1180 West Peachtree Street, NW, Suite 1400 Atlanta, Georgia 30309 Email:[David.Kahn@regions.com]
<b>Lender's Payment Address</b>	Regions Bank C/O Berkadia Commercial Mortgage Lockbox # 9067 – P.O. Box 8500 Philadelphia, PA 19195-5310

	LIB-A Loan # 194004148
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<b>II. MULTIFAMILY PROJECT INFORMATION</b>	
<b>Property Square Footage</b>	573,325
<b>Total Parking Spaces</b>	396
<b>Total Residential Units</b>	168
<b>Affordable Housing Property</b>	<input type="checkbox"/> Yes <input checked="" type="checkbox"/> No

<b>III. MORTGAGE LOAN INFORMATION</b>	
<b>Amortization Period</b>	420 months
<b>Amortization Type</b>	<input checked="" type="checkbox"/> Amortizing <input type="checkbox"/> Full Term Interest Only <input type="checkbox"/> Partial Interest Only
<b>Effective Date</b>	[June __], 2019.
<b>First Payment Date</b>	The first day of [August], 2019.
<b>Fixed Rate</b>	_____ %
<b>Interest Accrual Method</b>	<input type="checkbox"/> 30/360 (computed on the basis of a three hundred sixty (360) day year consisting of twelve (12) thirty (30) day months). or <input checked="" type="checkbox"/> Actual/360 (computed on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Mortgage Loan by the Interest Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month).
<b>Interest Only Term</b>	0 months
<b>Interest Rate</b>	The Fixed Rate
<b>Interest Rate Type</b>	Fixed Rate
<b>Loan Amount</b>	[\$19,000,000.00]



<b>Loan Term</b>	204 months
<b>Loan Year</b>	<p>The period beginning on the Effective Date and ending on the last day of [June, 2020], and each successive twelve (12) month period thereafter.</p> <p><i>[Insert the month and year which is twelve (12) full calendar months after the Effective Date. For example, if the Effective Date is July 1, 2015, then the month and year to insert is June, 2016, but if the Effective Date is any day from the 2nd through the 31st in July, 2015, then the month and year to insert is July, 2016.]</i></p>
<b>Maturity Date</b>	The first day of [July], 2036, or any earlier date on which the unpaid principal balance of the Mortgage Loan becomes due and payable by acceleration or otherwise.

**Monthly Debt Service Payment**

\$ \_\_\_\_\_

<b>Prepayment Lockout Period</b>	The 0 Loan Year of the term of the Mortgage Loan.
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<b>IV. YIELD MAINTENANCE/PREPAYMENT PREMIUM INFORMATION</b>	
<b>Yield Maintenance Period End Date</b>  <i>or</i> <b>Prepayment Premium Period End Date</b>	The last day of [July], 2029.
<b>Yield Maintenance Period Term</b>  <i>or</i> <b>Prepayment Premium Period Term</b>	120 months

<b>V. RESERVE INFORMATION</b>	
<b>Completion Period</b>	Within six (6) months after the Effective Date or as otherwise shown on the Required Repair Schedule.
<b>Initial Replacement Reserve Deposit</b>	\$0.00
<b>Maximum Inspection Fee</b>	Reasonable and Customary
<b>Maximum Repair Disbursement Interval</b>	one time per calendar month
<b>Maximum Replacement Reserve Disbursement Interval</b>	one time per calendar month
<b>Minimum Repairs Disbursement Amount</b>	\$5,000.00

<b>Minimum Replacement Reserve Disbursement Amount</b>	\$5,000.00
<b>Monthly Replacement Reserve Deposit</b>	\$2,800.00
<b>Repair Threshold</b>	\$5,000.00
<b>Repairs Escrow Account Administrative Fee</b>	Reasonable and customary, per request
<b>Repairs Escrow Deposit</b>	\$0.00
<b>Replacement Reserve Account Administration Fee</b>	Reasonable and customary, per request
<b>Replacement Reserve Account Interest Disbursement Frequency</b>	Not applicable
<b>Replacement Threshold</b>	\$5,000.00

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Borrower Initials

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS  
(Section 8 HAP Contract)**

<b>VI. SECTION 8 HAP CONTRACT</b>	
<b>HAP Contract Number</b>	[TX160011029]
<b>HAP Contract Recording Information</b>	N/A
<b>HUD Project Number</b>	N/A
<b>HAP Contract Documents Delivered</b>	[Basic Renewal Contract effective February 1, 2015 through January 31, 2020; 20-Year Renewal Contract effective _____, 2019 through _____, 2039]

\_\_\_\_\_  
Borrower Initials

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS  
(Tax Credit Properties)**

<b>VII. TAX CREDIT PROPERTIES</b>		
<b>Borrower Partner/Manager</b>	<b>General</b>	<b>Northgate Preservation GP, LLC</b> , a New York limited liability company
<b>Equity Investor</b>		<b>RAH Investor 226 LLC</b> , a Mississippi limited liability company
<b>Equity Investor Partner/Manager</b>	<b>General</b>	
<b>Equity Investor Notice Address</b>		
<b>IRS Filing Deadline</b>		
<b>Minimum Set-Aside Test</b>		40-60 Set-Aside Test
<b>Tax Credit Amount</b>		[\$10,389,000]

\_\_\_\_\_  
Borrower Initials

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS  
(Rent Restriction Agreement – Scorecard Exclusions for Affordable Housing)**

<b>VIII. Rent Restriction Agreement – Scorecard Exclusions for Affordable Housing</b>			
<b>Type of Rent Restriction Agreement:</b>	<b>Regulatory Agreement/ Recorded Use Restriction Document Name, each attached hereto as Exhibit A:</b>	<b>Agency:</b>	<b>Dated:</b>
<input checked="" type="checkbox"/> “Regulatory Agreement” OR <input type="checkbox"/> “Recorded Use Restriction”	<b>Section 8 Use Agreement</b>	<b>Secretary of Housing and Urban Development (HUD)</b>	<b>[June __], 2019</b>
<input checked="" type="checkbox"/> “Regulatory Agreement” OR <input type="checkbox"/> “Recorded Use Restriction”	<b>Declaration of Land Use Restrictive Covenants Land Use Restriction Agreement For Low Income Housing Tax Credits</b>	<b>Texas Department of Housing and Community Affairs</b>	<b>To be recorded in the land records following completion of the rehabilitation work provided for on Exhibit [D] of the Loan Agreement (Moderate Rehabilitation) and when property is placed in service.</b>
<input checked="" type="checkbox"/> “Regulatory Agreement” OR <input type="checkbox"/> “Recorded Use Restriction”	<b>Regulatory And Land Use Restriction Agreement</b>	<b>Texas Department of Housing and Community Affairs</b>	<b>[June __], 2019</b>



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Borrower Initials

**EXHIBIT A TO ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS  
(Rent Restriction Agreement – Scorecard Exclusions for Affordable Housing)**

1. See attached Section 8 Use Agreement, and Regulatory and Land Use Restriction Agreement; and
2. Borrower will deliver to Lender a copy of the recorded Declaration of Land Use Restrictive Covenants/Land Use Restriction Agreement for Low Income Housing Tax Credits within thirty (30) days of recording in the land records of Dallas County, Texas to be attached hereto.

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS  
(Rehabilitation Reserve – Moderate Rehabilitation)**

<b>IX. Rehabilitation Reserve</b>	
<b>Maximum Rehabilitation Reserve Disbursement Interval</b>	
<b>Minimum Rehabilitation Reserve Disbursement Amount</b>	\$ _____
<b>Rehabilitation Completion Period</b>	_____ months from the Effective Date, unless otherwise set forth on the Rehabilitation Work Schedule attached as <u>Schedule [8]</u>
<b>Rehabilitation Reserve Account Administrative Fee</b>	\$ _____
<b>Rehabilitation Reserve Account Interest Disbursement Frequency</b>	
<b>Rehabilitation Reserve Deposit</b>	\$ _____
<b>Rehabilitation Work Item Cost Threshold</b>	\$ _____

\_\_\_\_\_  
Borrower Initials

**MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**ADDENDA TO SCHEDULE 2 – SUMMARY OF LOAN TERMS  
(Replacement Reserve Deposits – Deposits Partially or Fully Waived)**

<b>X REPLACEMENT RESERVE – DEPOSITS PARTIALLY OR FULLY WAIVED</b>	
<b>Reduced Monthly Replacement Reserve Deposit</b>	\$0.00

\_\_\_\_\_  
Borrower Initials

**SCHEDULE 3**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Schedule of Interest Rate Type Provisions**  
**(Fixed Rate)**

**1. Defined Terms.**

Capitalized terms not otherwise defined in this Schedule have the meanings given to such terms in the Definitions Schedule to the Loan Agreement.

**2. Interest Accrual.**

Except as otherwise provided in the Loan Agreement, interest shall accrue at the Interest Rate until fully paid.

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Borrower Initials

**SCHEDULE 4**  
**TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Prepayment Premium Schedule**  
**(Standard Yield Maintenance – Fixed Rate)**

**1. Defined Terms.**

All capitalized terms used but not defined in this Prepayment Premium Schedule shall have the meanings assigned to them in the Loan Agreement.

**2. Prepayment Premium.**

Any Prepayment Premium payable under Section 2.03 (Lockout/Prepayment) of the Loan Agreement shall be computed as follows:

(a) If the prepayment is made at any time after the Effective Date and before the Yield Maintenance Period End Date, the Prepayment Premium shall be the greater of:

(1) one percent (1%) of the amount of principal being prepaid; or

(2) the product obtained by multiplying:

(A) the amount of principal being prepaid,

*by*

(B) the difference obtained by subtracting from the Fixed Rate on the Mortgage Loan, the Yield Rate (as defined below) on the twenty-fifth (25th) Business Day preceding (i) the Intended Prepayment Date, or (ii) the date Lender accelerates the Mortgage Loan or otherwise accepts a prepayment pursuant to Section 2.03(d) (Application of Collateral) of the Loan Agreement,

*by*

(C) the present value factor calculated using the following formula:

$$\frac{1 - (1 + r)^{-n/12}}{r}$$

[r = Yield Rate

n = the number of months remaining between (i) either of the following: (x) in the case of a voluntary prepayment, the last day of the month in which the prepayment is made, or (y) in any other case, the date on which Lender accelerates the

unpaid principal balance of the Mortgage Loan and (ii) the Yield Maintenance Period End Date.

For purposes of this clause (2), the “**Yield Rate**” means the yield calculated by interpolating the yields for the immediately shorter and longer term U.S. “Treasury constant maturities” (as reported in the Federal Reserve Statistical Release H.15 Selected Interest Rates (the “**Fed Release**”) under the heading “U.S. government securities”) closest to the remaining term of the Yield Maintenance Period Term, as follows (rounded to three (3) decimal places):

$$\left( \frac{(a - b)}{(x - y)} \times (z - y) \right) + b$$

$a$  = the yield for the longer U.S. Treasury constant maturity

$b$  = the yield for the shorter U.S. Treasury constant maturity

$x$  = the term of the longer U.S. Treasury constant maturity

$y$  = the term of the shorter U.S. Treasury constant maturity

$z$  = “ $n$ ” (as defined in the present value factor calculation above) divided by twelve (12).

Notwithstanding any provision to the contrary, if “ $z$ ” equals a term reported under the U.S. “Treasury constant maturities” subheading in the Fed Release, the yield for such term shall be used, and interpolation shall not be necessary. If publication of the Fed Release is discontinued by the Federal Reserve Board, Lender shall determine the Yield Rate from another source selected by Lender. Any determination of the Yield Rate by Lender will be binding absent manifest error.]

(b) If the prepayment is made on or after the Yield Maintenance Period End Date but before the last calendar day of the thirteenth (13th) month prior to the month in which the Maturity Date occurs, the Prepayment Premium shall be one percent (1%) of the amount of principal being prepaid.



(c) Notwithstanding the provisions of Section 2.03 (Lockout/Prepayment) of the Loan Agreement, no Prepayment Premium shall be payable with respect to any prepayment made on or after the last calendar day of the thirteenth (13th) month prior to the month in which the Maturity Date occurs.

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Borrower Initials

**SCHEDULE 5 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Required Replacement Schedule**

**[INSERT PROPERTY CONDITION ASSESSMENT REPLACEMENT SCHEDULE]**

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Borrower Initials

**SCHEDULE 6 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Required Repair Schedule**

**[IF NO REPAIRS ARE REQUIRED, INSERT NONE.]**

*[DRAFTING NOTE: THIS SCHEDULE MUST BE COMPLETED IF ANY REPAIRS ARE REQUIRED, EVEN IF FUNDING OF THE REPAIRS ESCROW ACCOUNT IS WAIVED]*

<b>Repair Description</b>	<b>Estimated Cost</b>	<b>Maximum Repair Cost</b>	<b>Completion Date</b>
		Estimated Cost x [125][150]%	

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Borrower Initials

**SCHEDULE 7 TO  
MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Exceptions to Representations and Warranties Schedule**

**[IF NONE, SO STATE]**

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Borrower Initials



**SCHEDULE 8 TO MULTIFAMILY LOAN AND SECURITY AGREEMENT**

**Rehabilitation Work Schedule**

*[Attach a list of Required Rehabilitation Work, estimated cost of Required Rehabilitation Work and the completion date of any Required Rehabilitation Work with a completion date other than by the end of the Rehabilitation Completion Period.]*

<b>Work</b>	<b>Estimated Cost</b>	<b>Completion Date</b>

\_\_\_\_\_  
Borrower Initials

**SCHEDULE 9 TO**  
**MULTIFAMILY LOAN AND SECURITY AGREEMENT**  
**(Rehabilitation Work Certificate)**

Borrower hereby certifies that the Rehabilitation Work set forth in Schedule 8 to the Multifamily Loan and Security Agreement between Borrower and Lender dated as of [June \_\_, 2019] has been completed in accordance with the terms of such Agreement.

Date: \_\_\_\_\_

CONSENTED TO BY:

**REGIONS BANK,**  
an Alabama banking corporation

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

Name: David A. Kahn  
Title: Managing Director

[BORROWER INITIALS APPEAR ON FOLLOWING PAGE]

Borrower Initials

## EXHIBIT A

### MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (Section 8 HAP Contract)

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

2. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Assignment of HAP Contract**” means that certain Assignment of Housing Assistance Payments Contract dated as of the Effective Date from Borrower to Lender and Fannie Mae.

“**HAP Contract**” means that certain Housing Assistance Payments Contract by and between Borrower and HUD more particularly identified on the Summary of Loan Terms, and as collaterally assigned to Lender and Fannie Mae pursuant to the Assignment of HAP Contract.

“**HUD**” means the United States Department of Housing and Urban Development.

3. Section 3.02(a) (Personal Liability Based on Lender’s Loss) of the Loan Agreement is hereby amended by adding the following provisions at the end thereof:

(8) in the event that the HAP Contract documents delivered to Lender are not complete or do not include fully executed copies of all renewals, replacements, extensions and modifications of the original HAP Contract issued by HUD in connection with the Mortgaged Property (any missing documents are referred to herein, collectively, as the “**Missing HAP Contracts**”); any adverse impact to Lender that results from HUD’s exercise of its rights relating to any surviving covenants, conditions or requirements contained in the Missing HAP Contracts (that are not otherwise contained in the HAP Contract documents delivered to Lender);

(9) any payments made to Borrower under the HAP Contract to the extent such payments are not made to Lender as provided for under that certain Assignment of HAP Contract; or

(10) the occurrence of any default, event of default, or breach (however such terms may be defined) caused by the gross negligence or willful misconduct of the Borrower under the HAP Contract or the Assignment of HAP Contract that results in a reduction, suspension or

termination of the payments under the HAP Contract, which results in Borrower's actual failure to pay debt service payments.

4. The final paragraph of Section 3.02(a) (Personal Liability Based on Lender's Loss) of the Loan Agreement is hereby deleted and replaced with the following:

Notwithstanding the foregoing, Borrower shall not have personal liability under clauses (1), (3), (5) or (9) above to the extent that Borrower lacks the legal right to direct the disbursement of the applicable funds due to an involuntary Bankruptcy Event that occurs without the consent, encouragement, or active participation of (A) Borrower, Guarantor, or Key Principal, (B) any Person Controlling Borrower, Guarantor, or Key Principal or (C) any Person Controlled by or under common Control with Borrower, Guarantor, or Key Principal.

5. Section 14.01(a) (Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended by adding the following provision at the end thereof:

(12) any default, event of default, or breach (however such terms may be defined) under the HAP Contract or the Assignment of HAP Contract.

6. The following article is hereby added to the Loan Agreement as Article 16 (HAP Contracts):

## **ARTICLE 16 – HAP CONTRACTS**

### **Section 16.01 Representations and Warranties.**

The representations and warranties made by Borrower to Lender in this Section 16.01 are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

Borrower is a party to the HAP Contract, has at all times been and is in full compliance with the HAP Contract, and has not in the past defaulted and is not in default under the HAP Contract. Except as disclosed to Lender, Borrower has provided to Lender a complete, fully executed copy of the HAP Contract, including all renewals, replacements, extensions, and modifications of the original HAP Contract.

### **Section 16.02 Covenants.**

Borrower shall at all times remain a party to, and in full compliance with, the HAP Contract.

**Section 16.03 Protection of Security Interest.**

Any costs, damages or other amounts, including reasonable attorneys' fees incurred by Lender as a result of any default by Borrower under the HAP Contract or Assignment of HAP Contract, including amounts paid to cure any default, event of default or breach under the HAP Contract or under the Assignment of HAP Contract, shall be an obligation of Borrower and become a part of the Indebtedness secured by the Security Instrument and this Loan Agreement.

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Borrower Initials

## EXHIBIT B

### MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (Tax Credit Properties)

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.
2. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

**“Affiliate”** means, as to any particular Person, any Person directly or indirectly, through one or more intermediaries, Controlling, Controlled by or under common Control with the Person or Persons in question.

**“Borrower General Partner/Manager”** means, individually and collectively, any general partner, managing member, manager (if non-member managed) or Controlling shareholder(s) of Borrower. Each Borrower General Partner/Manager as of the Effective Date is identified on the Summary of Loan Terms.

**“Equity Investor”** means a Person that holds a minimum interest of ninety-nine percent (99%) in Borrower as a limited partner (if Borrower is a limited partnership) or as an investor member (if Borrower is a limited liability company) and to whom are allocated (a) Tax Credits, tax losses, depreciation or other federal income tax benefits or (b) any state or local tax credits or other state or local tax benefits of any kind, in each case attributable to use of the Mortgaged Property as a “qualified low-income housing project” within the meaning of Section 42(g) of the Internal Revenue Code. Borrower’s Equity Investor as of the Effective Date is identified on the Summary of Loan Terms.

**“Equity Investor General Partner/Manager”** means, individually and collectively, any general partner(s), managing member(s) or Controlling shareholder(s) of the Equity Investor. Equity Investor General Partner/Manager as of the Effective Date is identified on the Summary of Loan Terms.

**“Extended Use Agreement”** has the meaning set forth in the Security Instrument.

**“Initial Owners”** means, with respect to any entity, the Person or Person(s) that, on the Effective Date, own, directly or indirectly, in the aggregate one hundred percent (100%) of the ownership interests in such entity.

**“IRS Filing Deadline”** means the date set forth on the Summary of Loan Terms.

**“Minimum Set-Aside Test”** means the set-aside test elected by Borrower pursuant to Section 42(g)(1)(A) or (B) of the Internal Revenue Code with respect to the percentage of units built or to be built upon the Mortgaged Property to be occupied by tenants with incomes equal to no more than the designated percentage of area median income. Borrower’s election of either the 40-60 Set-Aside Test (as provided in Section 42(g)(1)(B) of the Internal Revenue Code) or the 20-50 Set-Aside Test as the Minimum Set-Aside Test (as provided in Section 42(g)(1)(A) of the Internal Revenue Code) for the Mortgaged Property is indicated on the Summary of Loan Terms.

**“Permitted Affiliate”** means an entity that is (a) Equity Investor’s General Partner/Manager; (b) an Affiliate of Equity Investor General Partner/Manager; or (c) an Affiliate of Equity Investor, including a special limited partner in Borrower.

**“Rent Restriction Test”** means the rent restrictions imposed on the low-income units in the Mortgaged Property pursuant to Section 42(g)(2) of the Internal Revenue Code, whereby the gross rent charged to tenant(s) of the low-income units cannot exceed thirty percent (30%) of the imputed income limitation of the applicable units based upon the Minimum Set-Aside Test elected by the Borrower.

**“Tax Credits”** means the tax credits allocated to Borrower pursuant to Section 42 of the Internal Revenue Code in connection with the Mortgaged Property’s operation as a “qualified low-income housing project” within the meaning of Section 42(g)(1) of the Internal Revenue Code. The Tax Credits projected as of the Effective Date is the amount identified on the Summary of Loan Terms.

**“Tax Credit Agency”** means the state housing credit agency having responsibility for monitoring compliance of the Mortgaged Property with the requirements of (a) Section 42 of the Internal Revenue Code and (b) the Extended Use Agreement.

3. Section 11.03 (Liens, Transfers, and Assumptions - Mortgage Loan Administration Matters Regarding Liens, Transfers and Assumptions) is hereby amended by adding the following provisions to the end thereof:

**(i) Tax Credit Transfers.**

**(1) Approved Transfers.**

Notwithstanding anything in this Loan Agreement to the contrary, provided that (a) the Person identified as “Borrower” on the Summary of Loan Terms owns the Mortgaged Property and remains Borrower under the Note and this Loan Agreement, (b) the Person identified as “Borrower General Partner/Manager” on the Schedule of Loan Terms is the sole general partner or is the managing general partner of Borrower (if Borrower is a limited partnership) or is the managing member or sole manager (if Borrower is a limited liability company), (c) the Person identified as



“Equity Investor” on the Schedule of Loan Terms or its Permitted Affiliate continues to maintain its rights to receive the allocation of Tax Credits available to Borrower with respect to the Mortgaged Property, substantially as allocated as of the Effective Date, and (d) the provisions of Section 11.03[(\_\_)](2) (Tax Credit Transfers - Additional Conditions on Transfers) regarding additional conditions on Transfer(s) are satisfied, the Transfer of an interest by a Key Principal, Guarantor or Borrower as described in Section 11.02(b)(2) (Covenants – Transfers – Interests in Borrower, Key Principal, or Guarantor) resulting from any of the following Transfers shall not constitute an Event of Default:

(A) the removal of Borrower General Partner/Manager as general partner, managing general partner, sole manager or managing member (as applicable) of Borrower and its replacement as general partner, managing general partner, sole manager or managing member (as applicable) by a Permitted Affiliate in accordance with the terms of the limited partnership agreement or operating agreement (as applicable) of Borrower, provided that, Equity Investor must identify a substitute Key Principal and Guarantor in accordance with subsection (C) of this Section 11.03(i)(1), such that, upon Lender’s approval of the substitute Key Principal and Guarantor, the Guarantor named herein shall be released from the Guaranty pursuant to Fannie Mae’s then-current form of Assumption and Release Agreement in form and content acceptable to Lender and executed by the Guarantor named herein and such substitute Guarantor;

(B) a Transfer of limited partner interests or investor member interests of Equity Investor to a Permitted Affiliate, provided that if such Transfer is of less than the Equity Investor’s entire interest in Borrower, the Equity Investor General Partner/Manager must remain the sole general partner, managing general partner, managing member or sole manager (as applicable) of Equity Investor; or

(C) a Transfer of any of Key Principal’s or Guarantor’s interest in Borrower provided that, upon written notice from Lender to Borrower and Equity Investor, Equity Investor shall identify a Person satisfactory to Lender to serve as substitute Key Principal or Guarantor and such Person is substituted as Key Principal or Guarantor under this Loan Agreement within ten (10) days following the receipt by the Equity Investor of Lender’s approval of such substitute Key Principal or Guarantor.

**(2) Additional Conditions on Transfers.**

The Transfers described in Section 11.03 (i)(1) (Tax Credit Transfers – Approved Transfers) shall only be permitted if:

(A) Lender shall have received not less than ten (10) days' prior written notice of the Transfer, together with copies of (i) the documents transferring such entity's interest to the Permitted Affiliate; (ii) the organizational documents of the Permitted Affiliate; (iii) an organizational diagram showing the new ownership structure and relationships among the resulting owners and Borrower;

(B) at the time of the proposed Transfer, no Event of Default shall have occurred and be continuing (and no event that with the giving of notice or passage of time, or both, would constitute an Event of Default shall have occurred and be continuing);

(C) the proposed transferee is not a Prohibited Person; and

(D) the proposed transferee otherwise complies with the requirements of Section 4.02(b) (Economic Sanctions, Anti-Money Laundering, and Anti-Corruption).

If the conditions set forth in this Section 11.03(i)(2) (Tax Credit Transfers - Additional Conditions on Transfers) are satisfied, the Transfer Fee shall be waived for any Transfer made pursuant to Section 11.03(i)(1) (Tax Credit Transfers – Approved Transfers). Borrower shall pay the Review Fee and out-of-pocket costs set forth in Section 11.03(g) (Further Conditions to Transfers and Assumption).

**(3) Other Removal of Borrower General Partner/Manager.**

If Borrower General Partner/Manager is removed as a general partner, managing general partner, managing member or sole manager (as applicable) of Borrower, in accordance with the terms of the limited partnership agreement or operating agreement (as applicable) of Borrower, and is replaced by another Person that is not a Permitted Affiliate (to the extent that a Transfer of an interest by Key Principal, Guarantor or Borrower as described in this Article 11 (Liens, Transfers, and Assumptions) is accomplished thereby), the transferor and transferee shall be required to comply with all requirements of this Article 11 (Liens, Transfers, and Assumptions), including payment of the fees set forth in Section 11.03(g) (Further Conditions to Transfers and Assumption).

4. Section 14.01(a) (Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

(13) any default, event of default, or breach (however such terms may be defined in the Extended Use Agreement) after the expiration of any deadline for performance and applicable notice or cure periods, if any, under the Extended Use Agreement.

5. Section 15.02 (Notice) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

(e) Lender agrees that effective notice to Borrower under this Loan Agreement and the other Loan Documents shall require delivery of a copy of any such notice to Equity Investor and Special Limited Partner. Equity Investor's and Special Limited Partner's notice address is included in the Summary of Loan Terms.

6. The following article is hereby added to the Loan Agreement as Article 17 (Items Related to Tax Credit Properties):

#### **ARTICLE 17 – ITEMS RELATED TO TAX CREDIT PROPERTIES**

##### **Section 17.01 Recourse Liability.**

Notwithstanding any provision in this Loan Agreement to the contrary, the provisions of Section 3.02(b)(1) and Section 3.02(b)(2) (Personal Liability of Borrower (Exceptions to Non-Recourse Provision - Full Personal Liability for Mortgage Loan) of this Loan Agreement, as they relate to Events of Default described in Section 14.01(a)(3) and Section 14.01(a)(6) (Events of Default – Automatic Events of Default) of this Loan Agreement, shall be operative only after the Equity Investor and Special Limited Partner have been given notice of the applicable Event of Default described in Section 14.01(a)(3) and Section 14.01(a)(6) (Events of Default – Automatic Events of Default) of this Loan Agreement, together with an opportunity to remedy such Event of Default within thirty (30) days. Further, Lender agrees that, notwithstanding its rights to invoke the remedies permitted by the Loan Documents, upon the breach of any covenant or agreement by Borrower in the Loan Documents (including the covenants to pay the Indebtedness when due), so long as Equity Investor maintains its ownership interest in Borrower, a Foreclosure Event shall not occur until such time as Equity Investor and Special Limited Partner have first been given thirty (30) days' written notice of such default and has failed to cure such default within such thirty (30) day period; provided, however, that (a) during such thirty (30) day period Lender shall be entitled to accelerate the Note and to pursue its remedies (provided that a Foreclosure Event shall not occur), and (b) no notice or grace period shall apply in the case of any Event of Default where a failure by Lender to exercise a right or

remedy under this Loan Agreement, in Lender's judgment could result in harm to Lender, impairment of Lender's rights and remedies under the Extended Use Agreement or this Loan Agreement or any other security given under any other Loan Document.

### **Section 17.02 Annual LIHTC Reporting Requirements.**

Borrower must submit to Lender, each year on or before the IRS Filing Deadline at the time of annual submission of Borrower's financial analysis of operations, a copy of Borrower's federal income tax information return (Internal Revenue Service Form 1065, or any successor form designated by the Internal Revenue Service) and all attached schedules, forms and elections, including Internal Revenue Forms 8586 and 8609-A (and, with the Internal Revenue Service Form 1065 for the first year of the Mortgaged Property's "Credit Period" (within the meaning of Section 42(f)(1) of the Internal Revenue Code), a copy of each fully completed and signed IRS Form 8609 for the Mortgaged Property), which must reflect the total Tax Credits allocated to the Mortgaged Property and the Tax Credits claimed for the Mortgaged Property in the preceding year.

### **Section 17.03 Annual Compliance.**

Borrower shall submit to Lender on an annual basis, evidence that the Mortgaged Property is in ongoing compliance with all income, occupancy and rent restrictions under the Extended Use Agreement relating to the Mortgaged Property. Such submissions shall be made contemporaneously with Borrower's reports required to be made to the Tax Credit Agency under the Extended Use Agreement. If the Tax Credit Agency issues an Internal Revenue Service Form 8823, Borrower shall provide to Lender a copy of each such form within five (5) Business Days of Borrower's receipt of such form(s) from the Tax Credit Agency.

### **Section 17.04 Tax Credit Representations and Warranties.**

All representations and warranties made by Borrower to Lender in this Section 17.04 (Tax Credit Representations and Warranties) are made as of the Effective Date, and are true and correct except as disclosed on the Exceptions to Representations and Warranties Schedule.

(a) There are no restrictions on the sale or refinancing of the Mortgaged Property, other than the restrictions set forth in this Loan Agreement and the Extended Use Agreement.

(b) Borrower and the Mortgaged Property satisfies all restrictions and requirements, including tenant income and rent restrictions and record-keeping and retention requirements, applicable to projects generating Tax Credits under Section 42 of the Internal Revenue Code.

(c) Borrower and the Mortgaged Property satisfies all covenants and restrictions set forth in the Extended Use Agreement.

(d) The only tenant eligibility requirements or rent restrictions applicable to the Mortgaged Property or Borrower are those that apply to residential units pursuant to the Minimum Set-Aside Test elected by Borrower for the low-income units in the Mortgaged Property or as set forth in the Extended Use Agreement.

(e) Neither the Extended Use Agreement nor any other document, instrument or agreement to which Borrower is a party restricts, limits or waives the right of Lender to cause a termination of the Extended Use Agreement in accordance with Internal Revenue Code Section 42(h)(6)(E)(i)(I).

#### **Section 17.05 Tax Credit Covenants.**

(a) Borrower and the Mortgaged Property shall continue to satisfy all restrictions and requirements, including tenant income and rent restrictions and record-keeping and retention requirements, applicable to projects generating Tax Credits under Section 42 of the Internal Revenue Code.

(b) Borrower and the Mortgaged Property shall continue to satisfy all covenants and restrictions set forth in the Extended Use Agreement.

(c) The only tenant eligibility requirements or rent restrictions applicable to the Mortgaged Property or Borrower shall be those that apply to residential units pursuant to the Minimum Set-Aside Test elected by Borrower for the low-income units in the Mortgaged Property or as set forth in the Extended Use Agreement.

(d) Neither the Extended Use Agreement nor any other document, instrument or agreement to which Borrower is a party shall restrict, limit or waive the right of Lender to cause a termination of the Extended Use Agreement in accordance with Internal Revenue Code Section 42(h)(6)(E)(i)(I).

(e) All requirements that are necessary to achieve and maintain (1) compliance with the Minimum Set-Aside Test, the Rent Restriction Test, and any other requirements necessary to initially qualify, and to continue to qualify, for Tax Credits, including all applicable requirements set forth in the Extended Use Agreement, (2) issuance and completion of each required IRS Form 8609 for the Mortgaged Property in a timely fashion and in compliance with Section 42(l) of the Internal Revenue Code, and (3) issuance of all necessary permanent, unconditional certificates of occupancy, including all governmental approvals required to permit occupancy of all the units, shall be met at all times during which such requirements are required to be met to qualify for the full amount of the anticipated Tax Credits.

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Borrower Initials

## EXHIBIT C

### **MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (Rent Restriction Agreement – Scorecard Exclusions for Affordable Housing – M.TEB)**

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

2. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Agency**” means, with respect to a Rent Restriction Agreement, the applicable governmental unit, agency, authority or other public body identified as “Agency” on the Summary of Loan Terms.

“**Bonds**” means the [Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019].

“**Rent Restriction Agreement**” means, individually and collectively, the “Regulatory Agreement(s)” or “Recorded Use Restriction(s)” between Borrower and the Agency (or otherwise enforceable by the Agency) and identified on the Summary of Loan Terms that restrict(s) all or a portion of the residential units at the Mortgaged Property for occupancy by tenants with limited incomes and which restrict(s) the rents that can be charged for such units.

“**Trust Indenture**” has the meaning set forth in the Security Instrument.

3. Section 3.02(a) (Personal Liability Based on Lender’s Loss) of the Loan Agreement is hereby amended by adding the following subsection to the end thereof:

(12) any failure of Borrower to comply with Section 20.03(a) (Compliance with Rent Restriction Agreement) that constitutes an Event of Default under Section 14.01(b)(5) (Events of Default Subject to a Specified Cure Period) of this Loan Agreement and results from the gross negligence or willful misconduct of Borrower.

4. Section 3.03 (Personal Liability for Indemnity Obligations) of the Loan Agreement is hereby amended as follows:

“Borrower shall be personally and fully liable to Lender for Borrower’s indemnity obligations under Section 13.01(e) of this Loan Agreement, the Environmental Indemnity

Agreement, and any other express indemnity obligations provided by Borrower under any Loan Document (other than Section 15.19 for which Borrower shall have no such personal liability and which shall not constitute an obligation under the Guaranty, notwithstanding anything to the contrary contained in the Guaranty). Borrower's liability for such indemnity obligations shall not be limited by the amount of the Indebtedness, the repayment of the Indebtedness, or otherwise, provided that Borrower's liability for such indemnities shall not include any loss caused by the gross negligence or willful misconduct of Lender as determined by a court of competent jurisdiction pursuant to a final non-appealable court order."

5. Section 14.01(b) (Events of Default Subject to a Specified Cure Period) of the Loan Agreement is hereby amended by adding the following provision to the end thereof:

(5) any failure by Borrower to comply with Section 20.03(a) of this Loan Agreement, which failure continues beyond the expiration of any applicable cure period under the Rent Restriction Agreement; or

(6) any default beyond the expiration of any applicable cure period under (i) the Trust Indenture, (ii) any other bond documents or agreements entered into in connection with the Bonds that impact the use, operations or monitoring of the Mortgaged Property, and (iii) the subordinate bond documents.

6. ARTICLE 15. (MISCELLANEOUS) of the Loan Agreement is hereby amended by adding the following Section 15.19 to the end thereof:

**Section 15.19 Indemnification.**

(a) In addition to any and all rights of reimbursement, indemnification, subrogation or any other rights pursuant hereto or under law or equity, Borrower hereby agrees to indemnify and hold harmless Lender from and against any and all claims, damages, losses, liabilities, reasonable costs or expenses whatsoever (including reasonable attorneys' fees) which Lender may incur (or which may be claimed against Lender by any person or entity whatsoever) by reason of or in connection with:

(i) the failure of the Bonds to be paid; or

(ii) any losses directly or indirectly related to the Bonds or the documents executed in connection with the Bonds;

provided that the Borrower shall not be required to indemnify Lender for any claims, damages, losses, liabilities, costs or expenses in connection with the foregoing to the extent, but only to the extent, caused by (a) Lender's willful misconduct or gross negligence, as determined by a court of competent jurisdiction



pursuant to a final non-appealable court order, or (b) Lender's willful failure to pay or its gross negligence, as determined by a court of competent jurisdiction pursuant to a final non-appealable court order, in not paying any payments due in respect of the mortgage-backed security issued in connection with the Loan ("MBS"). If any proceeding shall be brought or threatened against Lender by reason of or in connection with the indemnified matters described in this Section 15.19, Lender shall promptly notify the Borrower in writing and the Borrower shall assume the defense thereof, including the employment of legal counsel and the payment of all costs of litigation. Notwithstanding the preceding sentence, Lender shall have the right to employ its own legal counsel, at its own expense and to determine its own defense of such action in any such case, at Borrower's expense.

(b) Lender shall be responsible to Borrower, to the extent of any direct damages suffered by Borrower which Borrower proves were caused by Lender's willful failure to pay or its gross negligence, as determined by a court of competent jurisdiction pursuant to a final non-appealable court order, in not paying any payments due in respect of the MBS; provided, however, that in no event shall Lender be liable to Borrower or to any other Person for damages in excess of the amount due in respect of the MBS as such amount is reduced from time to time. Lender shall not be liable for any consequential, indirect, special or punitive damages, all of which Borrower waives.

7. The following article is hereby added to the Loan Agreement as Article 20 (Items Related to the Rent Restriction Agreement):

## **ARTICLE 20 – ITEMS RELATED TO THE RENT RESTRICTION AGREEMENT**

### **Section 20.01 Representations Regarding Rent Restriction Agreement.**

Borrower represents and warrants that the Rent Restriction Agreement is the only agreement, contract, or arrangement (recorded or unrecorded), other than the HAP Contract, affecting the Mortgaged Property or Borrower that (a) restricts all or a portion of the residential units for occupancy by tenants with limited income, and (b) restricts rents that can be charged for those units, including restrictions developed in accordance with the affordability requirements of any state or local zoning regulation, real estate tax abatement program, loan program, or similar state or local program. True, correct, and complete copies of each Rent Restriction Agreement, including all amendments thereto, are attached to the Summary of Loan Terms.

**Section 20.02 Notice of Default Under Rent Restriction Agreement.**

Within three (3) Business Days after Borrower's receipt, Borrower shall provide Lender with a copy of any default notice, warning letter, or similar communication from any Agency or designee of such Agency with respect to the Rent Restriction Agreement and shall identify the manner in which Borrower or the Mortgaged Property is alleged to be non-compliant.

**Section 20.03 Compliance with Rent Restriction Agreement.**

(a) Borrower covenants and agrees to comply with all Borrower requirements of the Rent Restriction Agreement.

(b) In the event that any Rent Restriction Agreement requires Borrower to provide evidence of compliance to the Agency (or its designee), Borrower covenants and agrees to provide Lender with copies of all such reports, certifications, and documents within five (5) Business Days after submitting the same to the applicable Agency (or its designee).

**Section 20.04 No Amendment of Rent Restriction Agreement.**

No Rent Restriction Agreement may be amended, modified, or terminated without the prior written consent of Lender.

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Borrower Initials

## EXHIBIT D

### MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (Rehabilitation Reserve – Moderate Rehabilitation (MAH)(Staged Funding))

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.
2. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

**“Additional Cost Item”** means (a) a disbursement from the Rehabilitation Reserve Account to pay for or reimburse Borrower for labor or materials other than Rehabilitation Work specified on the Rehabilitation Work Schedule, or (b) any Rehabilitation Work Item the cost of which exceeds the limitations set forth in Section 18.02(a)(5) (Disbursements for Rehabilitation Work) of this Loan Agreement.

**“Bond Rehabilitation Reserve Account”** means the account or accounts held by Bond Trustee, pursuant to the Trust Indenture, within which the Borrower has deposited, or caused to be deposited, the Bond Initial Deposit.

**“Bond Trustee”** means The Bank of New York Mellon Trust Company, N.A., as trustee under the Trust Indenture.

**“Borrower Requested Rehabilitation Work”** means rehabilitation work not listed on the Rehabilitation Work Schedule requested by Borrower to be paid or reimbursed from the Rehabilitation Reserve Account and determined advisable by Lender to keep the Mortgaged Property in good order and repair and in a good and marketable condition, or to prevent deterioration of the Mortgaged Property.

**“Initial Deposit”** means a portion of the Rehabilitation Reserve Deposit equal to \$[\_\_\_\_\_], to be held by the Bond Trustee under the Trust Indenture, which amount shall be deposited with the Bond Trustee on the Effective Date (the **“Bond Initial Deposit”**).

**“Maximum Rehabilitation Reserve Disbursement Interval”** has the meaning set forth on the Summary of Loan Terms.

**“Minimum Rehabilitation Reserve Disbursement Amount”** has the meaning set forth on the Summary of Loan Terms.

**“Partnership Agreement”** means that certain Amended and Restated Agreement of Limited Partnership of Borrower dated as of \_\_\_\_\_ by and among NORTHGATE PRESERVATION GP, LLC, a New York limited liability company, NORTHGATE CLASS B MEMBER, LLC, a New York limited liability company, the Class B Limited Partner, and RAH INVESTOR 226 LLC, a Mississippi limited liability company, as “Investment Limited Partner”.

**“Permitted Rehabilitation Disbursement Amount”** means the amount equal to the Rehabilitation Completion Percentage multiplied by the original amount of the Rehabilitation Reserve Deposit.

**“Rehabilitation Completion Percentage”** means the percentage of the Rehabilitation Work completed as of the date of the disbursement request.

**“Rehabilitation Completion Period”** has the meaning set forth on the Summary of Loan Terms.

**“Rehabilitation Reserve Account”** means a custodial account as required by Lender from time to time and shall include the Bond Rehabilitation Reserve Account.

**“Rehabilitation Reserve Account Administrative Fee”** has the meaning set forth on the Summary of Loan Terms.

**“Rehabilitation Reserve Account Funds”** means collectively the Rehabilitation Reserve Deposit and all other funds from time to time held in the Rehabilitation Reserve Account.

**“Rehabilitation Reserve Account Interest Disbursement Frequency”** has the meaning set forth on the Summary of Loan Terms.

**“Rehabilitation Reserve Deposit”** has the meaning set forth on the Summary of Loan Terms, which Rehabilitation Reserve Deposit shall be in an amount equal to a portion of the estimated cost in accordance with the Rehabilitation Work Schedule. References to the “Repair Escrow Deposit” in this Loan Agreement shall mean the Rehabilitation Reserve Deposit.

**“Rehabilitation Work”** means, individually and collectively, the Required Rehabilitation Work, and the Borrower Requested Rehabilitation Work.

**“Rehabilitation Work Certificate”** has the meaning set forth in Section 18.02(a)(11).

**“Rehabilitation Work Item”** means any portion of the Rehabilitation Work.

“**Rehabilitation Work Item Cost Threshold**” has the meaning set forth on the Summary of Loan Terms.

“**Rehabilitation Work Schedule**” means the Schedule 9 (Rehabilitation Work Schedule) to the Loan Agreement which is attached hereto and hereby made a part of the Loan Agreement.

“**Required Rehabilitation Work**” means the repairs and improvements to the Mortgaged Property listed on the Rehabilitation Work Schedule.

“**Trust Indenture**” has the meaning set forth in the Security Instrument.

4. The following article is hereby added to the Loan Agreement as Article 18 (Rehabilitation Reserve):

## **ARTICLE 18 – REHABILITATION RESERVE**

### **Section 18.01 Covenants.**

#### **(a) Deposits to Rehabilitation Reserve Account.**

On the Effective Date, Borrower shall (i) Borrower shall deposit or cause to be deposited with the Bond Trustee, the portion of the Initial Deposit consisting of the Bond Initial Deposit into the Bond Rehabilitation Reserve Account under the Trust Indenture, and (ii) Borrower shall deposit with Lender the portion of the Initial Deposit consisting of the Borrower Initial Deposit into the Rehabilitation Reserve Account. Following the Effective Date, the Borrower shall pay or cause to be paid to Lender the Rehabilitation Reserve Deposit (less the Initial Deposit) for deposit into the Rehabilitation Reserve Account, at times and in amounts that are in substantial conformance with each of the Required Rehabilitation Work timeline and Rehabilitation Reserve Account funding schedule reviewed and approved by Lender as of the Effective Date.

#### **(b) Agreement to Complete Work.**

Borrower shall commence the Rehabilitation Work as follows:

(1) with respect to any Required Rehabilitation Work, immediately following the Effective Date (or as soon thereafter as weather reasonably shall permit) and shall at all times thereafter diligently pursue the funding and completion of all Rehabilitation Work. Borrower shall complete all Required Rehabilitation Work within the Rehabilitation Completion Period;

(2) Intentionally Deleted.

**(c) Payment for Rehabilitation Work.**

Borrower shall:

(1) pay all invoices for the Rehabilitation Work, regardless of whether funds on deposit in the Rehabilitation Reserve Account (together with the remaining portion of the Rehabilitation Reserve Deposit scheduled to be deposited therein) are sufficient, prior to any request for disbursement from the Rehabilitation Reserve Account (unless Lender has agreed to make disbursements as provided in Section 5 or to issue joint checks in connection with a particular Rehabilitation Work Item);

(2) pay all applicable fees and charges of any Governmental Authority on account of the Rehabilitation Work; and

(3) provide evidence satisfactory to Lender of completion of (A) the Required Rehabilitation Work within the Rehabilitation Completion Period, and (B) any Borrower Requested Rehabilitation Work by the date specified by Lender for any such Borrower Requested Rehabilitation Work.

**(d) Assignment of Contracts for Replacements and Repairs.**

Borrower shall collaterally assign to Lender as additional security any contract or subcontract for Rehabilitation Work, upon Lender's written request, on a form of assignment approved by Lender.

**(e) Indemnification.**

If Lender elects to exercise its rights under Section 14.03 due to Borrower's failure to timely commence or complete any Rehabilitation Work, Borrower shall indemnify and hold Lender harmless from and against any and all actions, suits, claims, demands, liabilities, losses, damages, obligations and costs or expenses, including litigation costs and reasonable attorneys' fees, arising from or in any way connected with the performance by Lender of the Rehabilitation Work or the investment of the Rehabilitation Reserve Account Funds; provided that Borrower shall have no indemnity obligation if such actions, suits, claims, demands, liabilities, losses, damages, obligations and costs or expenses, including litigation costs and reasonable attorneys' fees, arise as a result of the willful misconduct or gross negligence of Lender, Lender's agents, employees or representatives as determined by a court of competent jurisdiction pursuant to a final non-appealable court order.

**(f) Amendments to Loan Documents.**

Subject to Section 5.02, Borrower shall execute and deliver to Lender, upon written request, an amendment to this Loan Agreement, the Security Instrument, and any other Loan Document deemed necessary or desirable to perfect Lender's lien upon any portion of the Mortgaged Property for which Rehabilitation Reserve Account Funds were expended.

**(g) Administrative Fees and Expenses.**

Borrower shall pay to Lender:

(1) by the date specified in the applicable invoice, the Rehabilitation Reserve Account Administrative Fee for Lender's services in administering the Rehabilitation Reserve Account and investing the funds on deposit in the Rehabilitation Reserve Account;

(2) upon demand, a reasonable inspection fee, not exceeding the Maximum Inspection Fee, for each inspection of the Mortgaged Property by Lender in connection with a Rehabilitation Work Item, plus all other reasonable costs and out-of-pocket expenses relating to such inspections; and

(3) upon demand, all reasonable fees charged by any engineer, architect, inspector or other person inspecting the Mortgaged Property on behalf of Lender for each inspection of the Mortgaged Property in connection with a Rehabilitation Work Item, plus all other reasonable costs and out-of-pocket expenses relating to such inspections.

**Section 18.02 Mortgage Loan Administration Matters Regarding Rehabilitation Reserve Account.**

**(a) Accounts, Deposits and Disbursements.**

**(1) Custodial Account.**

The Rehabilitation Reserve Account shall be deemed a Collateral Account under this Loan Agreement and any Rehabilitation Reserve Account Funds shall be deemed part of the Collateral Account Funds under this Loan Agreement, regardless of whether the Rehabilitation Reserve Account funds are held by Lender or the Bond Trustee. The Rehabilitation Reserve Account shall be an interest-bearing account that meets the standards for custodial accounts as required by Lender from time to time. Lender shall not be responsible for any losses resulting from the investment of the Rehabilitation Reserve Account Funds or for obtaining any specific

level or percentage of earnings on such investment. All interest earned on the Rehabilitation Reserve Account Funds shall be added to and become part of such Rehabilitation Reserve Account; provided, however, if applicable law requires, and so long as no Event of Default has occurred and is continuing under any of the Loan Documents, Lender shall pay to Borrower the interest earned on the Rehabilitation Reserve Account not less frequently than the Rehabilitation Reserve Account Interest Disbursement Frequency. In no event shall Lender be obligated to disburse funds from the Rehabilitation Reserve Account or authorize the disbursement of funds from the Bond Rehabilitation Reserve Account, if an Event of Default has occurred and is continuing.

**(2) Disbursements to be Authorized or Distributed by Lender Only.**

Only Lender or a designated representative of Lender may make disbursements or authorize disbursements of funds from the Rehabilitation Reserve Account. Except as provided in Section 18.02(a)(8) (Joint Checks for Periodic Disbursements), disbursements shall only be made upon Borrower request and after satisfaction of all conditions for disbursement.

**(3) Adjustment to Deposits.**

In connection with any Transfer of the Mortgaged Property, or any Transfer of an ownership interest in Borrower, Guarantor or Key Principal that requires Lender's consent (except as set forth in Section 11.03(b), (c) and (h), Lender may review the amounts on deposit and scheduled to be deposited, if any, in the Rehabilitation Reserve Account and the likely Rehabilitation Work required by the Mortgaged Property, and the related contingencies which may arise during the remaining Loan Term. Based upon that review, Lender may require an additional deposit to the Rehabilitation Reserve Account as a condition to Lender's consent to such Transfer. In all events, the transferee shall be required to assume Borrower's duties and obligations under this Loan Agreement.

**(4) Insufficient Funds.**

Lender may, upon thirty (30) days prior written notice to Borrower, require an additional deposit(s) to the Rehabilitation Reserve Account if Lender determines that the amounts on deposit in the Rehabilitation Reserve Account (together with the remaining portion of the Rehabilitation Reserve Deposit scheduled to be deposited therein) are not sufficient to cover the costs for the Required Rehabilitation Work, or, pursuant to the terms of Section 18.02(a)(9) (Disbursements for Other than Required Rehabilitation Work; Excess Costs), are not sufficient to cover the costs for Borrower



Requested Rehabilitation Work. Borrower's agreement to complete the Rehabilitation Work as required by this Loan Agreement shall not be affected by the insufficiency of any balance in the Rehabilitation Reserve Account.

**(5) Disbursements for Rehabilitation Work.**

Disbursement requests may only be made after completion of the applicable Rehabilitation Work and only to pay for or reimburse Borrower for the actual approved costs of the Rehabilitation Work, or as otherwise directed by Borrower in writing. Lender shall not be required to disburse any amounts which would: (A) cause the total amount disbursed to date to exceed the Permitted Rehabilitation Disbursement Amount; or (B) cause the amount of funds remaining in the Rehabilitation Reserve Account after any disbursement (other than with respect to the final disbursement), when added to the remaining portion of the Rehabilitation Reserve Deposit scheduled to be deposited in the Rehabilitation Reserve Account, to be less than the then current estimated cost of completing all remaining Rehabilitation Work. Further, in no event shall Lender be obligated to disburse or authorize disbursement of Rehabilitation Reserve Account Funds if: (i) all equity contributions from Borrower's investors/partners scheduled to be deposited in the Rehabilitation Reserve Account as of the date of the requested disbursement hereunder have not been so deposited in the Rehabilitation Reserve Account (excluding equity contributions properly applied in accordance with the terms of the Partnership Agreement); or (ii) an Event of Default has occurred and is continuing. Lender shall not disburse or authorize disbursement from the Replacement Reserve Account or the Repairs Escrow Account for costs of Rehabilitation Work. Lender shall not disburse from the Rehabilitation Reserve Account the costs of routine maintenance to the Mortgaged Property or for costs which are to be reimbursed from any Reserve/Escrow Account. Disbursement from the Rehabilitation Reserve Account shall not be made more frequently than the Maximum Rehabilitation Reserve Disbursement Interval. Other than in connection with a final request for disbursement, disbursements from the Rehabilitation Reserve Account shall not be less than the Minimum Rehabilitation Reserve Disbursement Amount. Notwithstanding anything herein to the contrary, Lender shall not authorize disbursement from the Lender-held portion of the Rehabilitation Reserve Account until such time as all amounts on deposit in the Bond Rehabilitation Reserve Account have been authorized to be disbursed pursuant to the terms hereof.

**(6) Disbursement Requests.**

Each request by Borrower for disbursement from the Rehabilitation Reserve Account must be in writing and must:

(A) specify the Rehabilitation Work for which reimbursement is requested; provided that for any Borrower Requested Rehabilitation Work, Lender shall have approved the use of the Rehabilitation Reserve Account Funds for such replacements or repairs pursuant to the terms of Section 18.02(a)(9) (Disbursements for Other than Rehabilitation Work; Excess Costs);

(B) if applicable, specify the quantity and price of the items or materials purchased, grouped by type or category;

(C) if applicable, specify the cost of all contracted labor or other services, including architectural services, involved in the Rehabilitation Work for which such request for disbursement is made;

(D) if applicable, include copies of invoices for all items or materials purchased and all contracted labor or services provided;

(E) include evidence of payment of such Rehabilitation Work satisfactory to Lender (unless Lender has agreed to issue joint checks or otherwise pay for the Rehabilitation Work in connection with a particular Rehabilitation Work Item as provided in this Loan Agreement);

(F) if applicable, contain a certification by Borrower that the Rehabilitation Work has been completed lien free or conditionally lien free, subject only to payment of the applicable invoice, and in a good and workmanlike manner, in accordance with any plans and specifications previously approved by Lender (if applicable) and in compliance with all applicable laws, ordinances, rules and regulations of any Governmental Authority having jurisdiction over the Mortgaged Property, and otherwise in accordance with the provisions of this Loan Agreement;

(G) if applicable, include evidence that any certificates of occupancy required by local law or authorities have been issued; and

(H) have the written consent of the Equity Investor, or if a request for such written request of Equity Investor has been submitted to Equity Investor and Equity Investor has failed to

respond to such request within a reasonable period of time, which in any event, shall not exceed ten (10) business days from the submission of such request.

**(7) Conditions to Disbursement.**

Lender may require any or all of the following at the expense of Borrower as a condition to disbursement of funds from the Rehabilitation Reserve Account; provided that for any Borrower Requested Rehabilitation Work, Lender shall have approved the use of the Rehabilitation Reserve Account Funds for such replacements or repairs pursuant to the terms of Section 18.02(a)(9) (Disbursements for Other than Required Rehabilitation Work; Excess Costs):

(A) an inspection by Lender of the Mortgaged Property and the applicable Rehabilitation Work Item if the Rehabilitation Work Item is in excess of \$50,000;

(B) an inspection or certificate of completion by an appropriate independent qualified professional (such as an architect, engineer or property inspector, depending on the nature of the Rehabilitation Work) selected by Lender if the Rehabilitation Work Item is in excess of \$50,000;

(C) either:

(i) a search of title to the Mortgaged Property effective to the date of disbursement; or

(ii) a “date-down” endorsement to Lender’s Title Policy extending the effective date of such policy to the date of disbursement, and showing no Liens other than (1) Permitted Encumbrances, (2) liens which Borrower is diligently contesting in good faith that have been bonded off to the satisfaction of Lender, or (3) mechanics’ or materialmen’s liens which attach automatically under the laws of the Governmental Authority upon the commencement of any work upon, or delivery of any materials to, the Mortgaged Property but for which Borrower is not delinquent in the payment for any such services or materials; and

(D) an acknowledgement of payment, waiver of claims and release of lien for work performed and materials supplied from each contractor, subcontractor, or materialman in accordance with

the requirements of applicable law and covering all work performed and materials supplied (including equipment and fixtures) for the Mortgaged Property by that contractor, subcontractor or materialman through the date covered by the disbursement request (or, in the event that payment to such contractor, subcontractor or materialman is to be made by a joint check, the release of lien shall be effective through the date covered by the previous disbursement).

**(8) Joint Checks for Periodic Disbursements.**

Lender may issue joint checks, or authorize the issuance of joint checks payable to Borrower and the applicable supplier, materialman, mechanic, contractor, subcontractor or other similar party, if:

(A) the cost of the Rehabilitation Work Item exceeds the Rehabilitation Work Item Cost Threshold, and the contractor performing such Rehabilitation Work requires periodic payments pursuant to the terms of the applicable written contract;

(B) the contract for such Rehabilitation Work requires payment upon completion of the applicable portion of the work;

(C) Borrower makes the disbursement request after completion of the applicable portion of the work required to be completed under such contract;

(D) the materials for which the request for disbursement has been made are on site at the Mortgaged Property and are properly secured or installed;

(E) Lender determines that the remaining funds in the Rehabilitation Reserve Account (together with the remaining portion of the Rehabilitation Reserve Deposit scheduled to be deposited therein) designated for such Replacement are sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, any other Borrower Requested Rehabilitation Work that has been previously approved by Lender;

(F) each supplier, materialman, mechanic, contractor, subcontractor or other similar party receiving payments shall have provided, if requested in writing by Lender, a waiver of liens with respect to amounts which have been previously paid to them; and

(G) all other conditions for disbursement have been satisfied.

**(9) Disbursements for Other than Required Rehabilitation Work; Excess Costs.**

(A) Borrower Requested Rehabilitation Work.

In the event Borrower requests a disbursement from the Rehabilitation Reserve Account to reimburse Borrower for any Borrower Requested Rehabilitation Work, such request shall be in writing and explain the reason for the request. Lender shall make or shall authorize disbursements for Borrower Requested Rehabilitation Work, if:

(i) it is of the type intended to be covered by the Rehabilitation Reserve Account;

(ii) the costs are commercially reasonable;

(iii) the amount of funds in the Rehabilitation Reserve Account (together with the remaining portion of the Rehabilitation Reserve Deposit scheduled to be deposited therein) is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, any other Borrower Requested Rehabilitation Work that has been previously approved by Lender; and

(iv) all conditions for disbursement from the Rehabilitation Reserve Account have been satisfied.

Nothing in this Loan Agreement shall limit Lender's right to require an additional deposit to the Rehabilitation Reserve Account in connection with any such Borrower Requested Rehabilitation Work.

(B) Intentionally omitted.

(10) Excess Costs.

In the event any Rehabilitation Work Item exceeds the approved cost set forth on the Rehabilitation Work Schedule for such Rehabilitation Work Item, Borrower may submit a disbursement request to pay for or reimburse Borrower for such excess cost. The disbursement request must

be in writing and include an explanation for such request. Lender shall make disbursements from the Rehabilitation Reserve Account if:

(A) the excess cost is commercially reasonable;

(B) the amount of funds in the Rehabilitation Reserve Account (together with the remaining portion of the Rehabilitation Reserve Deposit scheduled to be deposited therein) is sufficient to pay such costs and the then-current estimated cost of completing all remaining Required Rehabilitation Work and, as applicable, any other Borrower Requested Rehabilitation Work that has been previously approved by Lender; and

(C) all conditions for disbursement from the Rehabilitation Reserve Account have been satisfied.

**(11) Final Disbursements.**

(A) Upon completion of all Rehabilitation Work in accordance with this Loan Agreement on or before the expiration of the Rehabilitation Completion Period and so long as no Event of Default has occurred and is continuing, Lender shall disburse or authorize the disbursement to Borrower any amounts then remaining in the Rehabilitation Reserve Account, if

(i) all conditions for disbursements set forth in Section 18.02(a)(7) (Conditions to Disbursement) have been satisfied; and

(ii) Lender has received and accepted the Rehabilitation Work Certificate from Borrower, in the form attached hereto as Schedule 9 (the "Rehabilitation Work Certificate")..

(B) Upon payment in full of the Indebtedness and release by Lender of the lien of the Security Instrument, Lender shall disburse to Borrower any and all amounts then remaining in the Rehabilitation Reserve Account (if not previously released).

**(b) Approvals of Contracts; Assignment of Claims.**

Lender retains the right to approve all contracts or work orders with materialmen, mechanics, suppliers, subcontractors, contractors or other parties providing labor or materials in connection with the Rehabilitation Work. Notwithstanding Borrower's assignment (in the Security Instrument) of its rights

and claims against all persons or entities supplying labor or materials in connection with the Rehabilitation Work, Lender will not pursue any such right or claim unless an Event of Default has occurred and is continuing or as otherwise provided in Section 14.03.

**(c) Delays and Workmanship.**

If any Rehabilitation Work Item has not timely commenced, has not been timely performed in a workmanlike manner, or has not been timely completed in a workmanlike manner, Lender may, with notice to Borrower and following a period of 30 days from such notice to Borrower for Borrower to cure such default:

- (1) withhold disbursements from the Rehabilitation Reserve Account for such unsatisfactory Rehabilitation Work Item;
- (2) proceed under existing contracts or contract with third parties to make or complete such Rehabilitation Work Item;
- (3) apply the funds in the Rehabilitation Reserve Account toward the labor and materials necessary to make or complete such Rehabilitation Work Item; or
- (4) exercise any and all other remedies available to Lender under this Loan Agreement or any other Loan Document, including any remedies otherwise available upon the occurrence of an Event of Default.

To facilitate Lender's completion or making of such Rehabilitation Work Item, Lender shall have the right during normal business hours to enter onto the Mortgaged Property and perform any and all work and labor necessary to make or complete the Rehabilitation Work Item and employ watchmen to protect the Mortgaged Property from damage. All funds so expended by Lender shall be deemed to have been advanced to Borrower shall be part of the Indebtedness and shall be secured by the Security Instrument and this Loan Agreement.

**(d) Lender as Attorney-In-Fact.**

Borrower hereby authorizes and appoints Lender, upon the occurrence of an Event of Default, as attorney-in-fact pursuant to Section 14.03(c) (Appointment of Lender as Attorney-In-Fact).

**(e) No Lender Obligation.**

Nothing in this Loan Agreement shall:

- (1) make Lender responsible for making or completing the Rehabilitation Work;
- (2) require Lender to expend funds from the Rehabilitation Reserve Account to make or complete any Rehabilitation Work;
- (3) obligate Lender to proceed with the Rehabilitation Work; or
- (4) obligate Lender to demand from Borrower additional sums to make or complete any Rehabilitation Work.

**(f) No Lender Warranty.**

Lender's approval of any plans for any Rehabilitation Work, release of funds from the Rehabilitation Reserve Account, inspection of the Mortgaged Property by Lender or Lender's agents, or other acknowledgment of completion of any Rehabilitation Work in a manner satisfactory to Lender shall not be deemed an acknowledgment or warranty to any person that the Rehabilitation Work has been completed in accordance with applicable building, zoning or other codes, ordinances, statutes, laws, regulations or requirements of any governmental agency, such responsibility being at all times exclusively that of Borrower.

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Borrower Initials



## EXHIBIT E

### MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (Replacement Reserve – Deposits Partially or Fully Waived)

The foregoing Loan Agreement is hereby modified as follows:

1. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

2. The Definitions Schedule is hereby amended by adding the following new definition in the appropriate alphabetical order:

“**Reduced Monthly Replacement Reserve Deposit**” has the meaning set forth in the Summary of Loan Terms.

3. Section 13.01(b) (Monthly Replacement Reserve Deposits) of the Loan Agreement is hereby amended by adding the following provisions to the end thereof:

**(1) Partial or Full Waiver of Monthly Replacement Reserve Deposit.**

Notwithstanding the foregoing or anything in this Loan Agreement to the contrary, on the Effective Date, Lender has agreed to partially reduce, defer or fully waive Borrower’s obligation to make full Monthly Replacement Reserve Deposits. Subject to the provisions of Section 13.01(b)(2) (Reinstatement of Monthly Replacement Reserve Deposit), Borrower shall deposit the applicable Reduced Monthly Replacement Reserve Deposit into the Replacement Reserve Account on each Payment Date.

**(2) Reinstatement of Monthly Replacement Reserve Deposit.**

In the event that (A) at any time during the Loan Term Lender provides written notice to Borrower that the Mortgaged Property is not being maintained in accordance with the requirements set forth in the Loan Documents, or (B) an Event of Default has occurred and is continuing under any of the Loan Documents, **or upon the expiration of the Rehabilitation Completion Period**, then upon the earlier of (i) the date specified by Lender in such written notice to Borrower or (ii) the first day of the first calendar month after the occurrence of such Event of Default, Borrower shall commence paying the full Monthly Replacement Reserve Deposits throughout the remaining Loan Term.

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Borrower Initials

## EXHIBIT F

### MODIFICATIONS TO MULTIFAMILY LOAN AND SECURITY AGREEMENT (First Lien – Permitted Subordinate Debt with Cross Default)

The foregoing Loan Agreement is hereby modified as follows:

7. Capitalized terms used and not specifically defined herein have the meanings given to such terms in the Loan Agreement.

8. The Definitions Schedule is hereby amended by adding the following new definitions in the appropriate alphabetical order:

“**Subordinate Instrument**” has the meaning set forth in the Security Instrument.

“**Subordinate Loan Agreement**” has the meaning set forth in the Security Instrument.

“**Subordinate Note**” has the meaning set forth in the Security Instrument.

9. Section 13.01 (Replacement Reserves and Repairs – Covenants) of the Loan Agreement is hereby amended by adding the following provision at the end thereof:

(h) Borrower hereby assigns to Lender all amounts in the Replacement Reserve Account as additional security for all of Borrower’s obligations under the Subordinate Note, the Subordinate Loan Agreement and the Subordinate Instrument.

10. Section 14.01(a) (Events of Default – Automatic Events of Default) of the Loan Agreement is hereby amended by adding the following provision at the end thereof:

(14) any default, event of default, or breach (however such terms may be defined) under any loan document evidencing or securing a subordinate loan, including the Subordinate Note, the Subordinate Instrument, the Subordinate Loan Agreement or any other loan document executed in connection with the indebtedness evidenced by the Subordinate Note, which remains uncured after the applicable cure period, if any.

11. The following article is hereby added to the Loan Agreement as Article 19 (Subordinate Instrument):

## **ARTICLE 19– SUBORDINATE DEBT**

### **Section 19.01 Consent to Subordinate Debt.**

Notwithstanding any provisions of this Loan Agreement or any other Loan Document to the contrary, it is understood and agreed that Lender has consented to additional financing on the Mortgaged Property as evidenced by the Subordinate Note and the Subordinate Loan Agreement and secured by the Subordinate Instrument.

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Borrower Initials



**TAX EXEMPTION CERTIFICATE AND AGREEMENT**

Dated as of

[June] 1, 2019

among

**TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,**  
as Issuer

and

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

and

**NORTHGATE PRESERVATION, L.P.,**  
as Borrower

regarding

**\$19,000,000**  
**Texas Department of Housing and Community Affairs**  
**Multifamily Housing Revenue Bonds**  
**(Pass-Through – Northgate Village)**  
**Series 2019**

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## TAX EXEMPTION CERTIFICATE AND AGREEMENT

THIS TAX EXEMPTION CERTIFICATE AND AGREEMENT (this “Agreement”) dated as of [June] 1, 2019, but effective as of the Closing Date (as defined in the Indenture described below) is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer”), a public and official agency of the State (as defined herein), **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, as Trustee under the hereinafter defined Indenture (together with any successor Trustee under Indenture described below and their respective successors and assigns, the “Trustee”), and **NORTHGATE PRESERVATION, L.P.**, a New York limited partnership (together with its permitted successors and assigns, the “Borrower”) and is entered into in connection with the issuance of the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through -- Northgate Village) Series 2019 (the “Bonds”) being issued in the original principal amount of \$19,000,000. The representations of facts and circumstances and the covenants of the Issuer made herein are made in part for purposes of fulfilling the requirements set forth in section 1.148-2(b)(2) of the Regulations (as defined herein).

### RECITALS

WHEREAS, the Governing Board of the Issuer has determined to authorize the issuance of the Bonds pursuant to and in accordance with the terms of an Indenture (as defined herein) by and among the Issuer and the Trustee for the purpose of obtaining funds to finance the Project (as defined herein), all under and in accordance with the Constitution and laws of the State (as defined herein); and

WHEREAS, the Issuer desires to use the Proceeds (as defined herein) of the Bonds to fund a mortgage loan to the Borrower (i.e., the Mortgage Loan, as defined herein) upon the terms and conditions set forth in the Financing Agreement (as defined herein) in order to finance the cost of acquisition, rehabilitation and equipping of the Project; and

WHEREAS, the Issuer and the Borrower desire that interest on the Bonds be excludable from gross income for federal income tax purposes under the Code (as defined herein); and

WHEREAS, the purpose of executing this Agreement is to set forth various facts, certifications, covenants, representations, and warranties regarding the Bonds and the Project and to establish the expectations of the Issuer, the Borrower, and the Trustee as to future events regarding the Bonds, the Project, and the use and investment of Proceeds of the Bonds.

NOW THEREFORE, in consideration of the premises and the mutual representations, covenants and undertakings set forth herein, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the undersigned do hereby certify, covenant, represent, and agree on behalf of the Issuer, the Borrower, and the Trustee (but not in their individual capacities), respectively, as follows:

1. Definitions. Each capitalized term used in this Agreement has the meaning ascribed to such term below or has the meaning or is the amount, as the case may be, specified for such term in this Agreement or in Exhibits to this Agreement and for all purposes hereof has the

meaning or is in the amount therein specified. All capitalized terms used but not defined herein, to the extent that such terms are defined in the Indenture, the Financing Agreement, or the Regulatory Agreement for all purposes hereof have the meanings therein specified. All such terms defined in the Code or Regulations that are not defined herein will for all purposes hereof have the same meanings as given to those terms in the Code and Regulations unless the context clearly requires otherwise.

**“Bond Counsel”** means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially shall mean Bracewell LLP.

**“Bond Fund”** means the “Bond Fund” established pursuant to the Indenture.

**“Bond Year”** means each one-year period that ends on the day selected by the Borrower in a certificate provided to the Issuer and the Trustee. The first and last bond years may be short periods. If no day is selected by the Borrower before the earlier of the final Maturity Date of the Bonds or the date that is five years after the Issue Date of the Bonds, a bond year will end on each anniversary of the Issue Date of the Bonds and on the final Maturity Date of the Bonds.

**“Code”** means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference is deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

**“Collateral Security Fund”** means the “Collateral Security Fund” established pursuant to the Indenture, with the Collateral Security Interest Account and the Collateral Security Principal Account created therein.

**“Computation Date”** means each Installment Computation Date and the Final Computation Date.

**“Costs of Issuance”** means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

**“Costs of Issuance Fund”** means the “Costs of Issuance Fund” established pursuant to the Indenture.

**“Fannie Mae”** means Fannie Mae, a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C. § 1716 et. seq., and its successors.

“**Fannie Mae Guarantee Fee**” means the enhancement fee paid to Fannie Mae in connection with the Pass-Through Certificate backed by the Mortgage Loan in the amount of 0.615 percent of outstanding amount of the Pass-Through Certificate issued in connection with the Mortgage Loan.

“**Favorable Opinion of Bond Counsel**” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability from gross income for federal income tax purposes of interest payable on the Bonds under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient thereof).

“**Final Computation Date**” means the date on which the final payment in full of the Bonds is made.

“**Financial Advisor**” means George K. Baum & Company.

“**Financing Agreement**” means the Financing Agreement among the Issuer, the Lender, the Trustee, and the Borrower, dated as of [June] 1, 2019.

“**Form 8038**” means IRS Form 8038, Information Return for Tax-Exempt Private Activity Bond Issues.

“**Gross Proceeds**” means any Proceeds and any Replacement Proceeds.

“**Indenture**” means the Indenture by and between the Issuer and the Trustee, dated as of [June] 1, 2019.

“**Installment Computation Date**” means the last day of the fifth Bond Year and each succeeding fifth Bond Year.

“**Investment Proceeds**” has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from investing Proceeds.

“**IRS**” means the Internal Revenue Service.

“**Issue Date**” means, with respect to an issue of obligations, the first date on which an issuer receives the purchase price in exchange for delivery of the evidence of indebtedness representing any obligation (i.e., the Closing Date).

“**Issue Price**” has the meaning ascribed to it in section 1.148-1(f) of the Regulations.

“**Lender**” means Regions Bank.

“**Maturity Date**” means [\_\_\_\_\_, 20\_\_]. The final payment of principal with respect to the Pass-Through Certificate will be made on [\_\_\_\_\_, 20\_\_] or the next Business Day and will be passed through to the Bondholders on the Final Payment Date.

**“Median Gross Income for the Area”** means, with respect to the Project, the median income for the households in the area which includes the standard metropolitan statistical area in which the Project is located, as determined from time to time by the Secretary of HUD, under Section 8 of the Housing Act (or if such program is terminated, median income determined under the program in effect immediately before such termination), in each case as adjusted for family size.

**“Minor Portion”** means that portion of the Gross Proceeds of the Bonds that does not exceed in the aggregate \$100,000.

**“Mortgage Loan”** means the mortgage loan made by the Issuer to the Borrower pursuant to the Financing Agreement in the aggregate principal amount of \$19,000,000 and evidenced by a multifamily note.

**“Net Proceeds”** means Sale Proceeds, less the portion of any Sale Proceeds invested in a reasonably required reserve or replacement fund.

**“Nonpurpose Investment”** means any “investment property,” within the meaning of section 148(b) of the Code, that is not a purpose investment acquired to carry out the governmental purpose of the Bonds.

**“Official Intent Date”** means February 21, 2019.

**“Operating Fund”** means the “Operating Fund” established pursuant to the Indenture.

**“Original Issue Discount”** means the excess of the Stated Redemption Price at Maturity over the Issue Price.

**“Original Issue Premium”** means the excess of the Issue Price over the Stated Redemption Price at Maturity.

**“Permitted Investments”** has the meaning set forth in the Indenture.

**“Placed in Service”** has the meaning set forth in section 1.150-2(c) of the Regulations and means the date on which, based on all the facts and circumstances, (a) a facility reaches a degree of completion that will permit its operation at substantially its design level, and (b) a facility is, in fact, in operation at such level.

**“Pre-Issuance Accrued Interest”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means amounts representing interest that accrued on an obligation for a period not greater than one year before its Issue Date but only if those amounts are paid within one year after the Issue Date.

**“Preliminary Expenditures”** are described in section 1.150-2(f)(2) of the Regulations and include architectural, engineering, surveying, soil testing, reimbursement bond issuance and similar costs that are incurred prior to commencement of acquisition, rehabilitation or rehabilitation of a project, but do not include land acquisition, site preparation and similar costs incident to the commencement of rehabilitation.

**“Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, means any Sale Proceeds and Investment Proceeds.

**“Project”** means an approximately 168-unit (including one superintendent unit) multifamily housing development known as Northgate Village Apartments, located at 12303 North Plano Road, Dallas, Dallas County, Texas 75243.

**“Project Costs”** means, to the extent authorized by the Act, any and all costs incurred by the Borrower with respect to the acquisition, rehabilitation, and equipping, as the case may be, of the Project, whether paid or incurred prior to or after the Issue Date of the Bonds, including, without limitation, costs for site preparation, the planning of housing and improvements, the removal or demolition of existing structures, and all other work in connection therewith, and all costs of financing, including, without limitation, the cost of consultant, accounting and legal services, other expenses necessary or incident to determining the feasibility of the Project, contractors’ and Borrower’s overhead and supervisor’s fees and costs directly allocable to the Project, and administrative and other expenses necessary or incident to the Project and the financing thereof.

**“Qualified Administrative Costs”** are those costs of issuing, carrying or repaying the Bonds, and any underwriter’s discount. Qualified Administrative Costs do not include the costs of issuing, carrying or repaying the Mortgage Loan.

**“Qualified Project Costs”** means Project Costs that meet the following requirements:

(a) The costs are chargeable to a capital account with respect to the Project for federal income tax purposes, or would be so chargeable either with a proper election by the Borrower or but for the proper election by the Borrower to deduct those amounts; provided, however, that only such portion of the interest accrued on the Bonds during, and fees for a “qualified guarantee” (within the meaning of section 1.148-4 of the Regulations) attributable to the period of, the rehabilitation of the Project will constitute Qualified Project Costs as bear the same ratio to all such interest or fees, as applicable, as the Qualified Project Costs bear to all Project Costs.

(b) If any portion of the Project is being rehabilitated by the Borrower or a Related Person to the Borrower (whether as a general contractor or a subcontractor), such costs include only (i) the actual out-of-pocket costs incurred by the Borrower or such Related Person in rehabilitating the Project (or any portion thereof), (ii) any reasonable fees for supervisory services actually rendered by the Borrower or such Related Person (but excluding any profit component) and (iii) any overhead expenses incurred by the Borrower or such Related Person that are directly attributable to the work performed on the Project and do not include, for example, intercompany profits resulting from members of an affiliated group (within the meaning of section 1504 of the Code) participating in the rehabilitation of the Project or payments received by such Related Person due to early completion of the Project (or any portion thereof).

(c) The costs are not Costs of Issuance.

(d) (i) The costs were paid no earlier than 60 days prior to the Official Intent Date and (ii) the reimbursement allocation is made no later than 18 months after the later of (A) the date the expenditure was paid and (B) the date the Project is Placed in Service or abandoned, but in no event more than three years after the original expenditure is paid; provided that such limitations do not apply to any amount not in excess of \$100,000 or to Preliminary Expenditures that do not exceed 20 percent of the Sale Proceeds of the Bonds.

**“Qualified Project Period”** means, with respect to the Project, the period beginning on the first day on which 10 percent of the Units are occupied (which date may be the Closing Date) and ending on the latest of (a) the date that is 15 years after the date on which 50 percent of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Project is outstanding for federal income tax purposes or, (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

**“Qualifying Tenant”** means a tenant whose Annual Income is 60 percent or less of Median Gross Income for the Area, as determined under sections 142(d)(2)(B) and (E) of the Code. If all the occupants of a Unit are students (as defined under section 152(f)(2) of the Code), no one of whom is entitled to file a joint return under section 6013 of the Code, such occupants are not Qualifying Tenants, unless such students meet the qualifications under section 42(i)(3)(D) of the Code.

**“Rebate Amount”** has the meaning set forth in section 1.148-3(b) of the Regulations and, generally, means the excess, as of any date, of the future value of all receipts on Nonpurpose Investments over the future value of all payments on Nonpurpose Investments all as determined in accordance with section 1.148-3 of the Regulations.

**“Rebate Analyst”** means a Person that is (a) qualified and experienced in the calculation of rebate payments under section 148 of the Code, (b) chosen by the Borrower, and (c) engaged for the purpose of determining the amount of required deposits, if any, to the Rebate Fund.

**“Rebate Fund”** means the “Rebate Fund” established pursuant to the Indenture.

**“Regulations”** means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

**“Regulatory Agreement”** means the Regulatory and Land Use Restriction Agreement, among the Issuer, the Trustee, and the Borrower, dated as of [June] 1, 2019.

**“Rehabilitation Account”** means the “Rehabilitation Account” created within the Proceeds Fund.

**“Related Party”** means, in reference to a governmental unit or a 501(c)(3) organization, any member of the same controlled group, and, in reference to a person that is not a governmental unit or a 501(c)(3) organization, a Related Person.

**“Related Person”** has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 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” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Proceeds”** has the meaning set forth in section 1.148-1(c) of the Regulations and, generally, consist of amounts that have a sufficiently direct nexus to an issue of obligations or the governmental purpose of an issue of obligations to conclude that the amounts would have been used for that governmental purpose if the Proceeds were not used or to be used for that governmental purpose.

**“Sale Proceeds”** has the meaning set forth in section 1.148-1(b) of the Regulations and, generally, consist of any amounts actually or constructively received from the sale (or other disposition) of any obligation, including amounts used to pay underwriters’ discount or compensation and accrued interest other than Pre-Issuance Accrued Interest. Sale Proceeds also include amounts derived from the sale of a right that is associated with any obligation and that is described in section 1.148-4(b)(4) of the Regulations.

**“State”** means the State of Texas.

**“Stated Redemption Price at Maturity”** means the amount fixed by the last modification of the purchase agreement and includes interest and other amounts payable at that time (other than any interest based on a fixed rate and payable unconditionally at fixed periodic intervals of one year or less during the entire term of the debt instrument).

**“Underwriter”** means RBC Capital Markets, LLC, the underwriter of the Bonds.

**“Unit”** means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation; provided that, a residential accommodation will not fail to be treated as a “Unit” merely because it is a single-room occupancy unit (within the meaning of section 42 of the Code).

**“Weighted Average Maturity”** means the sum of the products of the Issue Price and the number of years to maturity (taking into account mandatory redemptions) of an obligation, divided by the aggregate Sale Proceeds of such obligation.

**“Yield”** on (a) an issue of obligations has the meaning set forth in section 1.148-4 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments of principal, interest and fees for qualified guarantees to be paid on the obligation produces an amount equal to the Issue Price of such issue and (b) any investment has the meaning set forth in section 1.148-5 of the Regulations and, generally, is the discount rate that when used in computing the present value of all payments to be received on the investment produces an amount equal to all payments for the investment.

**“Yield Reduction Payments”** means amounts paid in accordance with section 1.148-5(c) of the Regulations that are treated as payments that reduce the Yield on an investment.

“**40-60 Test**” means the requirement set forth in section 142(d)(1)(B) of the Code providing that 40 percent or more of Units in the Project be occupied by individuals whose income is 60 percent or less of the Median Gross Income for the Area.

2. Authorized Representatives.

(a) Issuer. The undersigned representative of the Issuer represents that such representative (i) is charged, along with others, with the responsibility for the Bonds and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Issuer to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Issuer personnel and consultants to the Issuer, the undersigned representative of the Issuer has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(b) Borrower. The undersigned representative of the Borrower represents that such representative (i) is a duly chosen, qualified and acting officer or other representative of the Borrower, which will be the owner of the Project and, as such, the undersigned is familiar with the facts herein certified and is authorized on behalf of the Borrower to execute and deliver this Agreement and (ii) is aware of the provisions of sections 103 and 142 through 150, inclusive, of the Code. To the extent that the representations, expectations, certifications, covenants and warranties set forth herein are based on information and data accumulated and analyzed by Borrower personnel and consultants to the Borrower, the undersigned representative of the Borrower has reviewed such representations, expectations, certifications, covenants and warranties with such personnel and consultants to confirm their completeness and accuracy.

(c) Trustee. The undersigned representative of the Trustee represents that such representative is a duly chosen, qualified and acting officer or other representative of the Trustee and is authorized on behalf of the Trustee to execute and deliver this Agreement.

3. Reasonable Expectations. The Issuer and the Borrower hereby affirm that the facts and estimates that are set forth in this Agreement are accurate and the expectations that are set forth in this Agreement are reasonable in light of such facts and estimates. There are no other facts or estimates that would materially change such expectations. The Issuer has also relied, to the extent appropriate, on the (a) Certificate of the RBC Capital Markets, LLC attached hereto as Exhibit A, (b) Certificate of Lender attached hereto as Exhibit B, and (c) Certificate of Financial Advisor attached hereto as Exhibit C. The undersigned representatives of the Issuer and the Borrower are aware of no fact, estimate or circumstance that would create any doubt regarding the accuracy or reasonableness of all or any portion of the representations set forth in such certificates.

4. Reliance on Borrower’s Representations and Covenants. Except as otherwise indicated in this Agreement, the representations, expectations, certifications, covenants and warranties of the Issuer concerning the use and investment of the Proceeds of the Bonds and certain other matters described in this Agreement are based solely upon representations, expectations,



certifications, covenants and warranties of the Borrower, as set forth in this Agreement or in the Exhibits attached hereto. In relying upon such representations, expectations, certifications, covenants and warranties of the Borrower, the Issuer has not made any independent investigations of the matters pertaining thereto. The Issuer is not aware of any facts or circumstances that would cause it to question the accuracy or reasonableness of any representation, expectations, certifications, covenants and warranties of the Borrower made in this Agreement or in the Exhibits attached hereto.

5. Completeness of Borrower Information. The Borrower has supplied or caused to be supplied to Bond Counsel all documents, instruments and written information requested by Bond Counsel, and all such documents, instruments and written information supplied by or on behalf of the Borrower at the request of Bond Counsel, which have been reasonably relied upon by Bond Counsel in rendering its opinion with respect to the excludability from gross income for federal income tax purposes of the interest on the Bonds, are true and correct in all material respects, do not contain any untrue statement of a material fact and do not omit to state any material fact necessary to be stated therein to make the information provided therein, in light of the circumstances under which such information was provided, not misleading, and the Borrower is not aware of any other pertinent information for which Bond Counsel has not asked. After due investigation, there is no information not obtained, or any investigation or inspection not heretofore pursued, that would be relevant or material to the certifications set forth below.

6. General Requirements Relating to Issuance of the Bonds. The Issuer and the Borrower, as applicable, hereby represent, covenant and agree as follows:

(a) Governmental Purpose. The Borrower has applied to the Issuer and been approved for the Mortgage Loan to be made from the Proceeds of the Bonds. The proceeds of the Mortgage Loan (and, thus, the Proceeds of the Bonds) will be used to finance a portion of the Project Costs and Costs of Issuance of the Bonds.

(b) Public Hearing and Approval. A public hearing with respect to the Bonds was conducted by the Issuer on April 2, 2019, in Dallas, Texas, as required under section 147(f) of the Code. Written notice of the applicable date, hour, place and subject of such public hearing was published no less than 7 days before the date such public hearing was held, in the newspaper of general circulation available to persons residing within such geographic locality. The Attorney General of the State approved the issuance of the Bonds as required under section 147(f) of the Code.

(c) Volume Cap. The Issuer has received from the Texas Bond Review Board a reservation of State private activity bond volume cap in an amount no less than the aggregate principal amount of the Bonds (or if greater, the Issue Price of the Bonds) for the purpose of issuing the Bonds to finance the acquisition, rehabilitation and equipping of the Project.

(d) Issue. There are no other obligations that (i) are sold at substantially the same time as the Bonds (i.e., less than 15 days apart), (ii) are sold pursuant to the same plan of financing with the Bonds, and (iii) will be paid out of substantially the same source of funds as the Bonds.

(e) Form 8038. The Borrower has examined the completed Form 8038 with respect to the Bonds, including accompanying schedules and statements, and, to the best of the Borrower's knowledge and belief, the information in Parts IV and V, which was furnished by the Borrower, is true, correct, and complete. The Issuer will cause Form 8038 with respect to the Bonds to be filed timely with the IRS.

(f) Substantial User. Neither the Borrower nor any Related Person (within the meaning of section 147(a)(2) of the Code) to the Borrower was a "substantial user" (within the meaning of section 1.103-11 of the Regulations) of the Project at any time during the five year period before the Issue Date of the Bonds.

(g) Program Covenant. Neither the Borrower nor any Related Party of the Borrower is, or will be, a party to any agreement, formal or informal, pursuant to which it will purchase any of the Bonds in an amount related to the amount of the Mortgage Loan made to the Borrower unless the Borrower or such Related Party provides a Favorable Opinion of Bond Counsel to the Issuer.

(h) No Federal Guarantee. Neither the Issuer nor the Borrower will take any action that would result in all or any portion of the Bonds being treated as federally guaranteed within the meaning of section 149(b)(2) of the Code.

7. Sale Proceeds of the Bonds. The amount of Sale Proceeds received by the Issuer from the sale of the Bonds is \$[\_\_\_\_\_], which represents the Stated Redemption Price at Maturity of the Bonds. The Sale Proceeds of the Bonds will be loaned to the Borrower and deposited as follows:

(a) The amount of \$[\_\_\_\_\_] will be deposited in the Proceeds Fund and used to pay a portion of the Project Costs. The aggregate amount of Project Costs is anticipated to exceed such amount. Any Project Costs not financed out of Proceeds of the Bonds will be financed out of the Borrower's available funds.

(b) The amount of \$[\_\_\_\_\_] will be deposited in the Collateral Security Interest Account of the Collateral Security Fund. It is expected that, after the Purchase Date (as defined in the Indenture), the balance of such amount, if any, will be transferred to the Rehabilitation Account and used to pay a portion of the Project Costs.

(c) The amount of \$[\_\_\_\_\_] will be deposited in the Proceeds Fund and used to pay a portion of the Costs of Issuance of the Bonds.

8. Pre-Issuance Accrued Interest. The Issuer will also receive from the Underwriter Pre-Issuance Accrued Interest from the dated date of the Bonds through the Issue Date of the Bonds, in the amount of \$[\_\_\_\_\_]. Such amount will be deposited in the Collateral Security Interest Account of the Collateral Security Fund as provided in Section 5.13 of the Indenture and either applied by the Trustee to purchase the Pass-Through Certificate on the Purchase Date or to pay interest on the Bonds.

9. Use of Proceeds of the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) Qualified Project Costs. At least 95 percent of the Net Proceeds of the Bonds actually expended will be used to pay or reimburse Qualified Project Costs. Not more than five percent of the Net Proceeds of the Bonds will be expended for or allocated to Project Costs that are not Qualified Project Costs.

For purposes of this subparagraph (a) the Project includes only: (i) those portions of buildings included in the Project that are (A) separate and complete facilities for living, sleeping, eating, cooking and sanitation that will be used on other than a transient basis by one or more persons and that will be available on a regular basis for use by members of the general public and will be rented, or available for rental, on a continuous basis during the longer of the term of the Bonds or the Qualified Project Period, and (B) facilities in building areas that are functionally related and subordinate thereto, such as centrally located machinery and equipment and common areas in a typical apartment building (but not including any health club facilities, except a facility that will be available only to tenants and their guests with no separate fee to be paid for the use of such facility); and (ii) land and other facilities that are properly allocable to such living facilities, such as parking areas and recreational areas for occupants of the living facilities.

Further, all of the allocable functionally related and subordinate land areas, facilities, and building areas taken into account in determining Qualified Project Costs under this subparagraph (a) are of a character and size commensurate with the number and size of the living facilities and are not functionally related and subordinate to, or properly allocable to, any other facilities.

(b) Additional Limitations.

(i) Costs of Issuance. The Sale Proceeds of the Bonds, for purposes of the limit on Costs of Issuance payable from Proceeds of the Bonds set forth in section 147(g) of the Code, is not less than \$19,000,000. Costs of Issuance financed out of Net Proceeds of the Bonds are not expected to exceed in the aggregate two percent of the Sale Proceeds of the Bonds (i.e., \$380,000). In no event will Costs of Issuance paid from Proceeds of the Bonds exceed two percent of the Sale Proceeds of the Bonds, and any Costs of Issuance in excess of two percent of Sale Proceeds of the Bonds will be paid by the Borrower from sources other than Net Proceeds of the Bonds.

(ii) Acquisition of Existing Property. No portion of the Net Proceeds of the Bonds will be used to pay or reimburse the cost of acquiring any property or an interest therein unless, (i) the first use of such property is pursuant to such acquisition, except for land, or (ii) the rehabilitation expenditures with respect to any building and the equipment therefor equal or exceed 15 percent of the portion of the cost of acquiring such building and equipment financed with the Net Proceeds of the Bonds (with respect to structures other than buildings, this clause shall be applied by substituting 100 percent for 15 percent). For purposes of the preceding sentence, the term “rehabilitation expenditures” shall have the meaning set forth in section 147(d)(3) of the Code. If the Project has two or more buildings,

the provisions regarding rehabilitation expenditures are to be applied on a Project-wide basis.

(iii) Limitation on Land Acquisition. Less than 25 percent of the Net Proceeds of the Bonds will be used (directly or indirectly) to acquire land (or an interest therein) and no portion of the Net Proceeds of the Bonds will be used (directly or indirectly) for farming purposes. For this purpose, an amount is considered used for the acquisition of land (or an interest therein) to the extent of that portion of the acquisition cost of the Project that is properly allocable for all federal income tax purposes to the land component (including interests in land) of the Project.

(iv) Prohibited Facilities. None of the Proceeds of the Bonds will be used to acquire, construct, or equip, and no portion of the Project will be, an airplane, a skybox or any other type of luxury box, a health club facility, a facility primarily used for gambling, or a store the principal business of which is the sale of alcoholic beverages for consumption off premises; provided that, any fitness room functionally related to and subordinate to the Project for use by tenants of the Project or their guest is not considered a health club facility for purposes of this subparagraph.

(v) Payments to Related Persons. Any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower will not exceed an arm's-length charge that is the amount that would be charged to a person other than the Borrower. Further, any amount of Proceeds of the Bonds paid to a Related Person to the Borrower or any affiliated person that is not a Related Person to the Borrower would be paid under the same circumstances by a person other than the Borrower to such affiliated person or entity. Notwithstanding the foregoing, in no event will amounts of Proceeds of the Bonds that are paid to a Related Person to the Borrower be treated as spent until such amounts are spent on capital expenditures by such Related Person.

(vi) No Working Capital. Except for an amount that does not exceed five percent of the Sale Proceeds of the Bonds (and that is directly related to the Project), the Proceeds of the Bonds will only be expended for (A) costs that would be chargeable to the capital account of the Project if the Issuer's income were subject to federal income taxation; (B) interest on the Bonds in an amount that does not cause the aggregate amount of interest paid on the Bonds to exceed that amount of interest on the Bonds that is attributable to the period that commences on the Issue Date of the Bonds and ends on the later of (1) the date that is three years from the Issue Date of the Bonds or (2) the date that is one year after the date on which the Project is Placed in Service; and/or (C) fees for a qualified guarantee of the Bonds or payment for a qualified hedge on the Bonds.

(vii) No Pooling. The Issuer will not use the Proceeds of the Bonds directly or indirectly to make or finance loans to two or more ultimate unrelated borrowers.

(viii) Weighted Average Economic Life. The Weighted Average Maturity of the Bonds, as calculated by the Financial Advisor as set forth in Exhibit C hereto, is [WAM] years. The weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds is at least [WAM/1.2] years. Thus, the Weighted Average Maturity of the Bonds is not more than 120 percent of the weighted average reasonably expected economic life of the portion of the Project financed with Proceeds of the Bonds. Such weighted average estimated economic life is determined in accordance with the following assumptions: (A) the weighted average is determined by taking into account the respective costs of each asset, excluding land; (B) the reasonably expected economic life of an asset is determined as of the later of (1) the Issue Date of the Bonds or (2) the date on which such asset is originally Placed in Service (or expected to be Placed in Service); and (C) the economic lives for the itemized assets are the useful lives that would have been used for depreciation purposes under section 167 of the Code prior to the enactment of the ACRS system under section 168 of the Code (i.e., the mid-point lives under the Class Life Asset Depreciation Range System of section 167(m) of the Code where applicable and the guideline lives under Revenue Procedure 62-21, 1962-2 C.B. 418, in the case of structures). The Borrower hereby covenants not make any changes to the Project that would, at the time made, cause the remaining Weighted Average Maturity of the Bonds to be more than 120 percent of the remaining weighted average estimated economic life of the portion of the Project financed with Proceeds of the Bonds.

(c) Reimbursement. Other than (i) the amount of \$100,000 and/or (ii) Preliminary Expenditures up to an amount not in excess of 20 percent of the Issue Price of the Bonds, no portion of the Proceeds of the Bonds will be disbursed to reimburse the Issuer, the Borrower or any Related Person to the Borrower for any expenditures paid or incurred prior to the date that is 60 days before the Official Intent Date, which is the date on which the Issuer adopted a resolution describing the Project, stating the maximum principal amount of obligations expected to be issued for the Project and stating the Issuer's reasonable expectation that expenditures for costs of the Project would be reimbursed with Proceeds of an obligation. Such resolution was not an official intent declared as a matter of course or in an amount substantially in excess of the amount expected to be necessary for the Project. Neither the Issuer nor the Borrower has engaged in a pattern of failure to reimburse actual original expenditures covered by official intents. [The Borrower expects that it will use Proceeds of the Bonds in the amount of approximately \$[ ] to reimburse itself for expenditures paid prior to the Issue Date of the Bonds.] Such reimbursed portion will be treated as spent for purposes of the "Funds—Proceeds Fund" subparagraph herein and the "Compliance with Rebate Requirements; Rebate Fund" paragraphs herein.

(d) Allocations and Accounting. The Proceeds of the Bonds will be allocated to expenditures not later than 18 months after the later of the date the original expenditure

is made or the date the Project is Placed in Service, but in no event later than the date that is 60 days after the fifth anniversary of the Issue Date of the Bonds or the retirement of the Bonds, if earlier; provided that, if such allocation is made pursuant to a reimbursement expenditure described above, such reimbursement allocation will in no event be made later than the date that is three years after the date each such original expenditure is paid. The Borrower hereby elects to consistently allocate the expenditure of Proceeds of the Bonds to Qualified Project Costs of the Project. No Proceeds of the Bonds will be allocated to any expenditures to which Proceeds of any other tax-exempt obligations have heretofore been allocated.

10. Issue Price. In accordance with section 1.148-1(f)(2)(iv) of the Regulations, the Issuer hereby identifies in its books and records maintained for the Bonds the rule the Issuer will use to determine the Issue Price for each maturity of the Bonds as the rule set forth in the first sentence of section 1.148-1(f)(2)(i) of the Regulations, i.e. the Issue Price is the first price at which a substantial amount (i.e. 10%) is sold to the public. Based on the representations set forth in Exhibit A hereto, the aggregate Issue Price of the Bonds is \$[Issue Price]. The Issue Price of the Bonds represents the Stated Redemption Price at Maturity of the Bonds.

11. Yield on the Bonds. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Yield on the Bonds is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds, of all unconditionally payable payments of principal and interest and fees for qualified guarantees on the Bonds, produces an amount equal to the present value, using the same discount rate, of the aggregate Issue Price of the Bonds as of the Issue Date of the Bonds plus any Pre-Issuance Accrued Interest. The Issue Price of the Bonds is based upon the representations of the Underwriter set forth in Exhibit A hereto. No underwriter's discount, Costs of Issuance, or costs of carrying or repaying the Bonds is taken into account for purposes of computing the Yield on the Bonds.

(a) The Bonds are subject to mandatory redemption upon receipt of principal payments and prepayments received pursuant to the Pass-Through Certificate (as defined in the Indenture). Accordingly, the Yield on the Bonds is calculated by treating the outstanding stated principal amounts payable on the mandatory redemption date as payments on such dates because the Stated Redemption Price at Maturity of the Bonds does not exceed the Issue Price of the Bonds by more than one-fourth of one percent multiplied by the product of the Stated Redemption Price at Maturity and the number of years to the date of the Weighted Average Maturity (determined by taking into account the mandatory redemption schedule) of the Bonds.

(b) In accordance with section 1.148-4(f) of the Regulations, the Fannie Mae Guarantee Fee is a fee for a qualified guarantee of the Bonds and is treated as additional interest on Bonds because:

(i) As of the Issue Date of the Bonds, the present value of the Fannie Mae Guarantee Fee will be less than the present value of the expected interest

savings on the Bonds as a result of the guarantee, computed using the Yield on the Bonds (determined with regard to such guarantee payments) as the discount rate;

(ii) The Pass-Through Certificate creates a guarantee in substance because it imposes a secondary liability on Fannie Mae that unconditionally (except for reasonable procedural or administrative requirements) shifts substantially all of the credit risk for all or part of the payments on the Pass-Through Certificate backed by the Mortgage Loan financed with the Bonds to Fannie Mae;

(iii) Fannie Mae is not a co-obligor and does not expect to make any payments other than payments for which Fannie Mae will be reimbursed immediately;

(iv) Fannie Mae and any Related Person to Fannie Mae will not use more than ten percent of the Gross Proceeds of the Bonds that are guaranteed by Fannie Mae;

(v) The Fannie Mae Guarantee Fee does not exceed a reasonable arm's length charge for the transfer of credit risk;

(vi) The Fannie Mae Guarantee Fee does not include any payment for any direct or indirect services other than the transfer of credit risk (including fees for Fannie Mae's overhead and other costs relating to the transfer of credit risk);

(vii) The Fannie Mae Guarantee Fee does not include any payments for the costs of underwriting or remarketing the Bonds, the Mortgage Loan or the Pass-Through Certificate or for the cost of insurance for casualty to the Issuer's property;

(viii) No portion of the Fannie Mae Guarantee Fee is refundable upon prepayment of the Mortgage Loan (and, thus redemption of the Bonds) before the final maturity date in an amount that would exceed the portion of such enhancement fee that had not been earned;

(ix) Fannie Mae is reasonably assured that the Bonds will be repaid if the Project is not completed; and

(x) (i) all payments on the Pass-Through Certificate and the Mortgage Loan reasonably coincide with payments on the Bonds and the payments on the Pass-Through Certificate and the Mortgage Loan are unconditionally payable no more than six months before the corresponding interest payment and twelve months before the corresponding principal payments on the Bonds, and (ii) the Pass-Through Certificate is, in substance, a guarantee of the Bonds allocable to the Mortgage Loan that backs the Pass-Through Certificate and to no other bonds.

(c) As set forth in the Certificate of the Financial Advisor attached hereto as Exhibit C, the Yield on the Bonds, calculated in the manner set forth above, is [ ] percent.

(d) Neither the Issuer nor the Borrower has entered into any hedging transaction with respect to the Bonds, and each covenants not to enter into a hedging transaction with respect to the Bonds unless there is first received a Favorable Opinion of Bond Counsel.

12. Yield on the Mortgage Loan. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) The Mortgage Loan is allocated to the Bonds. The Yield on the Mortgage Loan is computed using the same compounding interval and financial conventions used to compute the Yield on the Bonds. For the purposes of this Agreement, the Yield on the Mortgage Loan is the discount rate that, when used in computing the present value as of the Issue Date of the Bonds of all receipts with respect to the Mortgage Loan, produces an amount equal to the present value, using the same discount rate, of the aggregate payments with respect to the Mortgage Loan as of the Issue Date of the Bonds. The aggregate payments made to the Borrower with respect to the Mortgage Loan include no payments other than the “purchase price” of the Mortgage Loan. The purchase price of the Mortgage Loan is the amount loaned to the Borrower by the Issuer on the Issue Date of the Bonds, i.e. \$19,000,000.

(b) The Mortgage Loan is a purpose investment that the Issuer intends to treat as a “program investment” within the meaning of section 1.148-1 of the Regulations, because it is part of a governmental program (i) that involves the origination or acquisition of purpose investments; (ii) in which at least 95 percent of the cost of the purpose investments acquired under the program represents one or more loans to a substantial number of persons representing the general public, states or political subdivisions, organizations exempt from tax under section 501(c)(3) of the Code, persons who provide housing and related facilities, or any combination of the foregoing; (iii) in which at least 95 percent of the receipts from the purpose investments are used to pay principal, interest, or redemption prices on issues that financed the program, to pay or reimburse administrative costs of those issues or of the program, to pay or reimburse anticipated future losses directly related to the program, to finance additional purpose investments for the same general purposes of the program, or to redeem and retire governmental obligations at the next earliest possible date of redemption; and (iv) in which the program documents prohibit any obligor on a purpose investment financed by the program or any “related party,” within the meaning of section 1.150-1(b) of the Regulations, to that obligor from purchasing bonds of an issue that finance the program in an amount related to the amount of the purpose investment acquired from that obligor. The Issuer has not waived the right to treat the Mortgage Loan as a program investment.

(c) The receipts from the Borrower with respect to the Mortgage Loan include interest and principal payments with respect to the Mortgage Loan and the Qualified Administrative Costs paid by the Borrower, and the Qualified Administrative Costs paid by the Borrower have been taken into account, as provided by 1.148-5(e) of the Regulations, for purposes of computing the Yield on the Mortgage Loan. Because the Issuer intends to treat the Mortgage Loan as a “program investment” within the meaning of section 1.148-1 of the Regulations, the Qualified Administrative Costs do not include



the costs or expenses paid, directly or indirectly, to purchase, carry, sell, or retire the Mortgage Loan, which amounts are set forth in Exhibit E hereto.

(d) As set forth in the Certificate of Financial Advisor attached hereto as Exhibit C, the Yield on the Loan, calculated in the manner set forth above, is [Loan Yield], which does not exceed than the Yield on the Bonds by more than 1.5 percentage points.

13. Investment of Proceeds Pending Expenditure; No Arbitrage. The Issuer and the Borrower hereby represent, covenant and agree as follows:

(a) Investment Proceeds. Amounts on deposit in the Proceeds Fund may be comprised of Proceeds of the Bonds and amounts that are not Proceeds of the Bonds or any tax-exempt obligation. If Proceeds of the Bonds and amounts that are not Proceeds of the Bonds are commingled, the Borrower will take into account for purposes of its covenant to comply with the arbitrage and rebate requirements that Proceeds of the Bonds and amounts that are not Proceeds of the Bonds have been commingled as an investment. Investment Proceeds resulting from the investment of any Proceeds of the Bonds pending expenditure of such Proceeds for Project Costs will be used to pay Qualified Project Costs or, if not used to pay Qualified Project Costs, such amounts will be treated as “bad costs.”

(b) Minor Portion and Yield Reduction Payments. All Gross Proceeds of the Bonds will be invested in accordance with the “Funds” paragraph herein. To the extent such amounts remain on hand following the periods set forth in the “Funds” paragraph herein or exceed the limits set forth in the “Funds” paragraph herein, such amounts will be invested at a restricted Yield as set forth in such paragraph; provided, however, that an amount not to exceed the Minor Portion may be invested at a Yield that is higher than the Yield on the Bonds and, provided further, that, if permitted by section 1.148-5(c) of the Regulations, the Yield restriction requirements may be satisfied by making Yield Reduction Payments to the federal government.

(c) Bonds Are Not Hedge Bonds. Not more than 50 percent of the Proceeds of the Bonds will be invested in a Nonpurpose Investments having a substantially guaranteed Yield for four years or more. Further, at least 85 percent of the spendable Proceeds of the Bonds are reasonably expected to be used to carry out the governmental purposes of the Bonds within the three-year period beginning on the Issue Date of the Bonds.

(d) No Arbitrage. On the basis of the facts, estimates and circumstances set forth in this Agreement, it is expected by the Issuer and the Borrower that the Gross Proceeds of the Bonds will not be used in a manner that would cause the Bonds to be “arbitrage bonds” within the meaning of section 148 of the Code. To the best of the knowledge and belief of the undersigned representatives of the Issuer and the Borrower, there are no other facts, estimates or circumstances that would materially change such expectations. Except as provided in the Indenture and the Financing Agreement, the Borrower will not pledge or otherwise encumber, or permit the pledge or encumbrance of, any money, investment, or investment property as security for payment of any amounts due under the Financing Agreement or the note relating to the Mortgage Loan, will not establish any segregated reserve or similar fund for such purpose and will not prepay any

such amounts in advance of the redemption date of an equal principal amount of the Bonds, unless in each case there will have been delivered a Favorable Opinion of Bond Counsel. The Borrower will not, at any time prior to the final maturity of the Bonds, direct or permit the Trustee to invest Gross Proceeds of the Bonds in any investment (or to use Gross Proceeds of the Bonds to replace money so invested), if as a result of such investment the Yield of all investments acquired with Gross Proceeds (or with money replaced thereby) on or prior to the date of such investment exceeds the Yield of the Bonds to stated maturity, except as permitted by section 148 of the Code. The Issuer and the Borrower further covenant and agree that each will comply with and will take all action reasonably required to ensure that the Trustee complies with all applicable requirements of section 148 of the Code relating to the Bonds and the interest thereon.

14. Covenants of Trustee Relating to Investment of Proceeds. The Trustee will invest funds held under the Indenture in accordance with the respective terms of the Indenture and this Agreement, which covenant will extend throughout the term of the Bonds, to all funds and accounts created under the Indenture and this Agreement and all moneys on deposit to the credit of any fund or account.

Should the Issuer or the Borrower deliver notice (in the manner required under the Indenture or the Financing Agreement, as applicable) to the Trustee (it being understood that neither the Issuer nor the Borrower has an obligation to so deliver) or should the Trustee receive an opinion of Bond Counsel to the effect that any proposed investment or other use of Proceeds of the Bonds would cause the Bonds to become “arbitrage bonds” within the meaning of section 148 of the Code, then the Trustee will comply with any written direction of the Borrower regarding such investment or use so as to prevent the Bonds from becoming an “arbitrage bond.”

The Issuer and the Borrower agree that, in complying with the provisions set forth under this subparagraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent the Trustee materially follows the written directions of the Borrower or the Issuer.

15. Compliance with Yield Reduction and Rebate Requirements; Rebate Fund.

(a) Covenant to Comply with Rebate Requirements. The Issuer and the Borrower covenant to comply with the requirement that (i) if Gross Proceeds of the Bonds have been invested at a Yield that is “materially higher” than the Yield on the Bonds and Yield Reduction Payments are permitted under section 1.148-5(c)(3) of the Regulations, Yield Reduction Payments be made to the federal government and (ii) “rebateable arbitrage earnings” on the investment of the Gross Proceeds of the Bonds, within the meaning of section 148(f) of the Code, be rebated to the federal government.

(b) Rebate Fund. The Indenture established the Rebate Fund which will be maintained and held in trust by the Trustee and which will be disbursed and applied only as herein authorized in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph. Notwithstanding anything herein to the contrary, all provisions of the Indenture relating to the general administration of the funds created thereunder will apply to the Rebate Fund, and the Trustee is afforded all the rights, protections and

immunities otherwise accorded to it thereunder as if the provisions set forth in this “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph were set forth in the Indenture.

(c) Delivery of Documents and Money by Borrower on Computation Dates.  
The Borrower will deliver to the Trustee and the Issuer, within 55 days after each Computation Date:

(i) a statement, signed by an officer or other authorized representative of the Borrower, stating the Rebate Amount as of such Computation Date and the amount of any Yield Reduction Payments due; and

(ii) (A) if such Computation Date is an Installment Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to at least 90 percent of the Rebate Amount and Yield Reduction Payments due as of such Installment Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations), made to the United States of America or (B) if such Computation Date is the Final Computation Date, an amount that, together with any amount then held for the credit of the Rebate Fund, is equal to the Rebate Amount and Yield Reduction Payments due as of such Final Computation Date, less any “previous rebate payments” (determined in accordance with section 1.148-3(f)(1) of the Regulations) made to the United States of America; and

(iii) an IRS Form 8038-T, Arbitrage Rebate, Yield Reduction and Penalty in Lieu of Arbitrage Rebate (“Form 8038-T”) properly signed and completed as of such Computation Date.

(d) Administration of Rebate Fund and Payment of Rebate.

(i) The Trustee will deposit or transfer to the credit of the Rebate Fund each amount delivered to the Trustee by the Borrower for deposit thereto and each amount directed by the Borrower to be transferred thereto. Within five days after each receipt or transfer of funds to the Rebate Fund, the Trustee will withdraw such funds from the Rebate Fund and pay such funds to the United States of America. The Trustee may conclusively rely on the instructions of the Borrower with regard to any actions to be taken by it pursuant to this paragraph and will have no liability for any consequences of any failure of the Borrower to perform its duties or obligations or to supply accurate or sufficient instructions. Except as specifically provided herein, the Trustee will have no duty or responsibility with respect to the Rebate Fund or the Borrower’s duties and responsibilities with respect thereto except to follow the Borrower’s specific written instructions related thereto.

(ii) Moneys and securities held by the Trustee in the Rebate Fund will not be deemed funds of the Bonds and are not pledged or otherwise subject to any security interest in favor of the owners of the Bonds to secure the Bonds or any other obligations.

(iii) Moneys in the Rebate Fund will be separately invested and reinvested by the Trustee, at the written direction of the Borrower, in Permitted Investments, subject to the Code. The Trustee will sell and reduce to cash a sufficient amount of such Permitted Investments whenever the cash balance in the Rebate Fund is insufficient for its purposes.

(iv) The Borrower will provide to the Trustee and the Trustee will keep such records of the results of the computations made pursuant to this paragraph for a period of three years after the last Bond and any tax-exempt obligation issued to refinance the Bonds is retired. The Trustee will keep and make available to the Issuer and the Borrower such records concerning the investments of Gross Proceeds of the Bonds and the investments of earnings from those investments as may be requested by the Issuer or the Borrower in order to enable the Borrower to make the computations required under section 148(f) of the Code.

(e) Correction of Underpayments. If the Borrower discovers or is notified as of any date that any amount required to be paid to the United States of America pursuant to this Agreement has not been paid as required or that any payment paid to the United States of America pursuant to this Agreement has failed to satisfy any requirement of section 148(f) of the Code or section 1.148-3 of the Regulations (whether or not such failure is due to any default by the Borrower, the Issuer, or the Trustee), the Borrower will (i) deliver to the Trustee (for deposit to the Rebate Fund) and cause the Trustee to pay to the United States of America from the Rebate Fund (A) the Rebate Amount or Yield Reduction Payments due that the Borrower failed to pay, plus any interest specified in section 1.148-3(h)(2) of the Regulations, if such correction payment is delivered to and received by the Trustee within 175 days after such discovery or notice, or (B) if such correction payment is not delivered to and received by the Trustee within 175 days after such discovery or notice, the amount determined in accordance with clause (A) of this subparagraph plus the 50 percent penalty required by section 1.148-3(h)(1) of the Regulations, and (ii) deliver to the Trustee and the Issuer a Form 8038-T completed as of such date. If such Rebate Amount or Yield Reduction Payments, together with any penalty and/or interest due, is not paid to the United States of America in the amount and manner and by the time specified in the Regulations, the Borrower will take such steps as are necessary to prevent the Bonds from becoming “arbitrage bonds” within the meaning of section 148 of the Code.

(f) Fees and Expenses. The Borrower agrees to pay all of the fees and expenses of Bond Counsel, the Rebate Analyst, and any other necessary consultant employed by the Borrower, the Trustee, or the Issuer in connection with computing the Rebate Amount and the Yield Reduction Payments.

(g) No Diversion of Rebatable Arbitrage. The Borrower will not indirectly pay any amount otherwise payable to the federal government pursuant to the foregoing requirements to any person other than the federal government by entering into any investment arrangement with respect to the Gross Proceeds of the Bonds that is not purchased at fair market value (as defined in section 1.148-5(d)(6)(iii) of the Regulations) or includes terms that the Borrower would not have included if the Bonds were not subject to section 148(f) of the Code.

(h) Rebate Not Required in Certain Circumstances.

(i) Notwithstanding the foregoing, the Borrower will not be required to perform the obligations set forth in this “Compliance with Rebate Requirements; Rebate Fund” paragraph, except for the obligation to retain accounting records and the payment of expenses as described herein, if (A) the Gross Proceeds of the Bonds have not been invested at a Yield that is “materially higher” than the Yield on the Bonds and therefore is not required to pay Yield Reduction Payments and/or (B) the Borrower has not earned any rebatable arbitrage and, therefore, is not subject to the rebate obligation set forth in section 148(f) of the Code. To the extent that the Borrower will not be required to perform such obligations, the Borrower will send written notice to the Trustee and the Issuer within 55 days after the applicable Computation Date.

(ii) Notwithstanding anything to the contrary in this Agreement requiring a payment to be made based on the Rebate Analyst’s calculations showing a rebate being due, no payment will be made by the Trustee to the United States of America if the Borrower furnishes to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. In such event, the Borrower will be entitled to withdraw funds from the Rebate Fund to the extent provided in such Favorable Opinion of Bond Counsel.

(i) Trustee Reliance on Written Directions. The Issuer and the Borrower agree that, in complying with the provisions set forth under this paragraph, the Trustee will be deemed to have complied with such provisions and will have no liability to the extent it materially follows the written directions of the Borrower, the Issuer, or the Rebate Analyst.

16. Funds.

(a) Proceeds Fund. All of the Proceeds of the Bonds in the Proceeds Fund are expected to be invested and disbursed as described in the Indenture to pay Project Costs. The Borrower (i) reasonably expects to allocate at least 85 percent of the Net Proceeds of the Bonds to expenditures on capital projects of the Project prior to the date that is three years after the Issue Date of the Bonds, (ii) has incurred, or reasonably expects to incur within six months after the Issue Date of the Bonds, a binding obligation to a third party that is not subject to any contingencies within the control of the Borrower pursuant to which the Borrower is obligated to expend at least five percent of the Net Proceeds of the Bonds on capital projects of the Project, and (iii) reasonably expects that the acquisition, construction or rehabilitation, and equipping of the Project will proceed with due diligence to completion and the Net Proceeds of the Bonds are reasonably expected to be expended on the Project with reasonable dispatch; therefore, all of such amounts may be invested without regard to Yield restriction. Any amounts not so expended prior to the applicable dates set forth in the preceding sentence will thereafter be invested at a Yield that is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(b) Bond Fund. Amounts on deposit in the Bond Fund will be used for the purposes set forth in Section 5.05 of the Indenture. The Bond Fund will be used primarily to achieve a proper matching of payments made pursuant to the Financing Agreement and debt service on the Bonds within each Bond Year. Any amounts in the Bond Fund held for longer than 13 months will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(c) Collateral Security Fund. Amounts on deposit in the Collateral Security Fund will be used for the purposes set forth in Section 5.13 of the Indenture. Any amounts held in the Collateral Security Fund will be invested in obligations the Yield on which is not “materially higher” than the Yield on the Bonds, except as set forth in the “Investment of Proceeds Pending Expenditure; No Arbitrage—Minor Portion and Yield Reduction Payments” subparagraph herein.

(d) Costs of Issuance Fund. Amounts on deposit in the Costs of Issuance Fund will be used for the purpose of paying Costs of Issuance. Amounts remaining in the Costs of Issuance Fund after the payment of all Costs of Issuance will be (i) to the extent allocable to Proceeds of the Bonds, transferred to the Proceeds Fund and (ii) to the extent allocable to amounts deposited therein from sources that are not Proceeds of the Bonds, returned to the Borrower. There is no assurance that amounts on deposit in the Costs of Issuance Fund will be available to pay debt service on the Bonds.

(e) Operating Fund. Amounts on deposit in the Operating Fund will be funded by the Borrower and used for the purposes and in the order set forth in Section 5.04 of the Indenture. There is no assurance that amounts on deposit in the Operating Fund will be available to pay debt service on the Bonds.

(f) Rebate Fund. The Rebate Fund will be used in the event the Borrower is required to pay rebatable arbitrage earnings to the federal government, as described in the “Compliance with Yield Reduction and Rebate Requirements; Rebate Fund” paragraph above. Amounts on deposit in the Rebate Fund are not subject to the lien of the Indenture; accordingly, there is no assurance that amounts on deposit, if any, in the Rebate Fund will be available to pay debt service on the Bonds.

17. Replacement Proceeds. The Issuer and the Borrower hereby represent as follows:

(a) No Sinking Funds. Other than the Bond Fund and the Collateral Security Fund, there is no debt service fund, redemption fund, reserve fund, replacement fund, or similar fund reasonably expected to be used directly or indirectly to pay principal or interest on the Bonds.

(b) No Pledged Funds. Other than amounts in the Bond Fund and the Collateral Security Fund, there is no amount that is directly or indirectly pledged to pay principal or interest on the Bonds, or to a guarantor of the Bonds, such that such pledge provides reasonable assurance that such amount will be available to pay principal or interest on the

Bonds if the Issuer encounters financial difficulty. For purposes of this certification, an amount is treated as so pledged if it is held under an agreement to maintain the amount at a particular level for the direct or indirect benefit of the holders or the guarantor of the Bonds.

(c) No Other Replacement Proceeds. There are no other Replacement Proceeds allocable to the Bonds because the Issuer reasonably expects that the term of the Bonds will not be longer than is reasonably necessary for the governmental purpose of the Bonds. Furthermore, even if the Bonds were outstanding longer than necessary for the purpose of the Bonds, no Replacement Proceeds will arise because the Issuer reasonably expects that no amounts will become available during the period that the Bonds remain outstanding longer than necessary based on the reasonable expectations of the Issuer as to the amounts and timing of future revenues. The Bonds would be issued to achieve the governmental purpose of the Bonds independent of any arbitrage benefit as evidenced by the expectation that the Bonds reasonably would have been issued if the interest on the Bonds were not excludable from gross income (assuming that the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate and that tax credits issued under section 42 of the Code would be available in connection therewith).

18. Not an Abusive Transaction. The Issuer and the Borrower hereby represent as follows:

(a) General. A device has not been and will not be employed in connection with the issuance of the Bonds to obtain a material financial advantage (based on arbitrage) apart from savings attributable to lower interest rates. Furthermore, no action taken in connection with the Bonds is or will be an abusive arbitrage device by having the effect of (i) enabling the Issuer or the Borrower to exploit, other than during an allowable temporary period, the difference between tax-exempt and taxable interest rates to obtain a material financial advantage (including as a result of an investment of any portion of the Gross Proceeds of the Bonds over any period of time, notwithstanding that, in the aggregate, the Gross Proceeds of the Bonds are not invested in higher yielding investments over the term of the Bonds) and (ii) overburdening the tax-exempt bond market by issuing more bonds, issuing bonds earlier or allowing bonds to remain outstanding longer than is otherwise reasonably necessary to accomplish the governmental purposes of the Bonds, based on all the facts and circumstances. Specifically, (A) the primary purpose of each transaction undertaken in connection with the issuance of the Bonds is a bona fide governmental purpose; (B) each action taken in connection with the issuance of the Bonds would reasonably be taken to accomplish the governmental purposes of the Bonds if the interest on the Bonds were not excludable from gross income for federal income tax purposes (assuming the hypothetical taxable interest rate would be the same as the actual tax-exempt interest rate on the Bonds); and (C) the Proceeds of the Bonds will not exceed by more than a Minor Portion the amount reasonably anticipated to be necessary to accomplish the governmental purposes of the Bonds and will in fact not be substantially in excess of the amount of Proceeds allocated to expenditures for the governmental purposes of the Bonds.

(b) No Sinking Fund. No portion of the Bonds has a term that has been lengthened primarily for the purpose of creating a sinking fund or similar fund with respect to the Bonds.

(c) No Window. No portion of the Bonds has been structured with maturity dates the primary purpose of which is to make available released revenues that will enable the Issuer to avoid transferred proceeds or to make available revenues that may be invested to be ultimately used to pay debt service on another issue of obligations.

(d) No Disposition. No portion of the Project is reasonably expected to be disposed of while the Bonds are outstanding.

19. The Project. The Borrower hereby represents and covenants as follows:

(a) The Project is and will be comprised of (i) Units, none of which will be owner-occupied other than any functionally related and subordinate Units used by management for the purpose of housing any resident managers, security personnel or maintenance personnel that is reasonably required for the Project, and (ii) facilities, all of which are functionally related and subordinate to the aforementioned Units (i.e., facilities that are of a size and character commensurate with the size and character of such Units). All Units in the Project will be rented to individuals or families for residential occupancy.

(b) There has been and will be no substantial deviation from the description and location of the Project and the Borrower, operator or manager set forth in the notice of hearing published with respect to the Bonds for purposes of satisfying the requirements of section 147(f) of the Code.

(c) The Project will be designed and equipped and will be owned, maintained and operated on a continuous basis in accordance with the Financing Agreement and the Regulatory Agreement. For purposes of this subparagraph, each of the enumerated types of facilities includes the interior furnishings of such facility (including the facility's plumbing, electrical and decorating costs) and the structural components required for the facility (including the facility's walls, ceilings and special enclosures). Each such enumerated type of facility includes only those normal components of the structure in which it is located, such as the structure's structural supports, to the extent that those components are required because of the facility. The recreational facilities, if any, included as part of the Project will be available only to residential tenants and their guests and no separate fee will be required for the use of such facilities.

(d) Except to the extent that any Unit is a single room occupancy unit under section 42 of the Code, each Unit will contain separate and complete facilities for living, sleeping, eating, cooking and sanitation. Specifically, each Unit will contain a living area, a sleeping area, bathing and sanitation facilities and cooking facilities equipped with a cooking range, full-size refrigerator and sink, all of which are separate and distinct from the facilities included in other Units.

(e) Parking spaces included in the Project are functionally related and subordinate to the Units included in the Project in that they are no greater in number than



is normally appropriate for a residential rental facility that is of the size of the Project. Only tenants, prospective tenants, guests of tenants, employees of the Borrower, and employees of the manager are expected to use these parking spaces.

(f) If the Project contains a clubhouse, exercise or similar recreational facility, such facility exists as a tenant amenity and may be used by any tenant free of any separate charge and will be constructed for the exclusive use of tenants of the Project and their guests. Such facility, if any, is of a character and size commensurate with the character and size of the Project and will not be open to the general public on a membership basis.

(g) The Project will not include any nonresidential or commercial space, including particularly, without limitation, any other space or facility not described in this paragraph.

(h) No continual or frequent skilled or unskilled nursing services will be available at the Project, although the tenants will be permitted to engage such services from providers that are not affiliated with the Borrower or the manager. Thus, neither the Borrower nor the manager, nor any Related Person to either the Borrower or the manager, will provide any assistance to any tenant in connection with his or her activities of daily living, other than concierge and valet services. The Project will not be licensed as a convalescent or nursing home, continuing care facility, personal care facility, special care facility or other assisted living facility under State law.

(i) On the Closing Date, at least 10 percent of the Units in the Project are occupied. It is expected that at least 10 percent of the Units in the Project will remain occupied throughout the rehabilitation of the Project.

20. Tenant Income Certifications. The Borrower hereby represents and covenants as follows:

(a) The Borrower will obtain and maintain tenant income certifications in a form that satisfies the requirements of section 1.103-8(b)(8) of the Regulations demonstrating that the 40-60 Test is met with respect to the occupied Units continuously throughout the Qualified Project Period; provided that, if applicable, compliance with such requirement will not be required during the twelve month “transition period” beginning on the Issue Date of the Bonds, as set forth in Revenue Procedure 2004-39, 2004 C.B. 49.

(b) The Borrower will ensure that each person who is intended to be a Qualifying Tenant will sign and deliver to the Borrower or a manager of the Project a tenant income certification in the form required by the Regulatory Agreement. In addition, the Borrower will ensure that such person will provide whatever other information, documents or certifications are deemed necessary to substantiate the tenant income certification.

(c) The Borrower will timely file, or take such actions as are necessary to cause any other person who is properly treated as the “operator” for purposes of section 142(d)(7) of the Code to file timely, the annual certifications described in section 142(d)(7) of the Code (currently, IRS Form 8703, Annual Certificate of Residential Rental Project).

(d) For a period of at least three years after the date the Bonds are retired, a tenant income certification in the form required by the Regulatory Agreement will at all times be maintained on file at the applicable location for the Project with respect to each Qualifying Tenant who resides or has resided in a Unit.

21. Form of Lease. The Borrower will ensure that the term of a lease of any Unit will be for a term of not less than six months, subject to the provision that any lease may be terminated if the tenant's physical condition no longer permits full-time residence in the Project; provided, however, that the form of lease to be utilized by the Borrower in renting any Units to a person who is intended to be a Qualifying Tenant will provide for termination of the lease and consent by such person to immediate eviction in accordance with applicable law for failure to qualify as a Qualifying Tenant as a result of any material misrepresentation made by such person with respect to the tenant income certification.

22. Change in Use. The Borrower acknowledges that any failure to satisfy the applicable requirements of sections 103 and 142 through 150, inclusive, of the Code, including the 40-60 Test, with respect to the Project will be treated as a change in use for purposes of section 150(b)(2) of the Code with the result that no deduction will be allowed for federal income tax purposes for interest paid by the Borrower with respect to the portion of the Mortgage Loan that is allocable to Proceeds of the Bonds that accrues during the period beginning on the first day of the taxable year in which the Project fails to meet such requirements and ending on the date that the Project meets such requirements.

On the earlier of (a) the date on which the Borrower reasonably determines that the Project will not be completed or (b) the date on which the Project is Placed in Service, the Borrower will identify the amount of unspent Net Proceeds of the Bonds, if any, and will use such amount to redeem or, if not permitted by the terms of the Bonds, defease the Bonds, all in accordance with the requirements of section 1.142-2 of the Regulations, the Indenture and the Financing Agreement, as applicable, including the requirement that, if a defeasance is necessary, timely written notice be provided to the IRS.

23. Cashflow Sufficiency. The Borrower reasonably expects that the cash flow from the Project on an annual basis (excluding cash generated from the investment of nonoperating funds or other investment funds maintained by the Borrower) will be sufficient to pay annual debt service on the Mortgage Loan during each year. Accordingly, the Borrower expects that debt service on the Mortgage Loan will not be paid, directly or indirectly, from non-operating or other investment funds maintained by the Borrower or any Related Person to the Borrower. Except for the funds described in the "Funds" paragraph above, the Borrower does not expect to create or establish, or otherwise set aside or dedicate, any fund or account that is expected to be used to pay principal of, or interest on, the Bonds or to be pledged, directly or indirectly, to the payment of principal of, or interest on, the Bonds. Investment Proceeds of the Bonds and amounts earned from the investment of such Investment Proceeds will not be commingled with other receipts or revenues of the Borrower.

24. Record Retention. The Issuer, the Borrower and the Trustee will retain or cause to be retained all pertinent and material records relating to the use of the Project, the investment, use and expenditure of the Proceeds of the Bonds and the Project and the calculation of rebate in

connection therewith until three years after the Bonds, including any tax-exempt obligations issued to refinance the Bonds, are redeemed or paid at maturity, or such shorter period as authorized by subsequent guidance issued by the Department of the Treasury, if applicable. All records will be kept in a manner that ensures their complete access throughout the retention period. For this purpose, it is acceptable that such records are kept either as hardcopy books and records or in an electronic storage and retrieval system, provided that such electronic system includes reasonable controls and quality assurance programs that assure the ability of the Issuer to retrieve and reproduce such books and records in the event of an examination of the Bonds by the IRS.

25. Examination by IRS. The Borrower acknowledges that, in the event of an examination by the IRS of the exclusion of interest on the Bonds from the gross income of the owners thereof for federal tax purposes, the Issuer will likely be treated as the “taxpayer”, and the Borrower agrees to respond in a commercially reasonable manner on behalf of, and at the direction of, the Issuer (and in consultation with the Trustee, who will have the right to participate in all related proceedings (including tax court challenges and appeals)) to such examination and to pay the costs of the counsel selected by the Issuer to provide a defense regarding the exclusion of the interest on the Bonds from the gross income of the owners thereof for federal income tax purposes. THE BORROWER WILL INDEMNIFY AND HOLD HARMLESS THE ISSUER AND THE TRUSTEE AGAINST ANY AND ALL COSTS, LOSSES, CLAIMS, DAMAGES, OR LIABILITY OF, OR RESULTING FROM, SUCH AN EXAMINATION AND THE SETTLEMENT THEREOF BY THE ISSUER AND THE TRUSTEE (INCLUDING THE COST OF THE ISSUER’S AND THE TRUSTEE’S LEGAL COUNSEL), EXCEPT AS A RESULT OF THE WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE ISSUER (WITH RESPECT TO INDEMNIFICATION OF THE ISSUER) OR THE GROSS NEGLIGENCE, WILLFUL MISCONDUCT, BAD FAITH, OR FRAUD OF THE TRUSTEE (WITH RESPECT TO INDEMNIFICATION OF THE TRUSTEE).

26. Post-Issuance Compliance Procedures. The Borrower has been provided with a copy of the Issuer’s written post-issuance compliance procedures regarding federal tax compliance that include provisions to ensure that all nonqualified bonds are remediated according to the requirements under the Code and Regulations and to monitor the requirements of section 148 of the Code. The Borrower has reviewed such written post-issuance compliance procedures and agrees to take such actions as required therein to maintain compliance with requirements in the Code. A copy of the current version of such procedures is attached hereto as Exhibit E.

27. Term. The obligations of the Issuer, the Borrower and the Trustee, under this Agreement will survive the defeasance and discharge of the Bonds for as long as such matters are relevant to the exclusion from gross income of interest on the Bonds for federal income tax purposes.

28. Amendments.

(a) To the extent any amendments to the Code or the Regulations, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project more restrictive than those imposed by this Agreement, this Agreement will be deemed to be automatically amended to impose such

additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as will be necessary to document such automatic amendment hereof.

(b) To the extent that the Code or the Regulations, or any amendments thereto, which, as a matter of law, are applicable to the Project and, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Borrower, impose requirements upon the ownership or operation of the Project less restrictive than imposed by this Agreement, this Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Borrower and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All reasonable costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with an amendment to this Agreement will be paid by the Borrower and its successors in interest.

29. Remedies. The Issuer, the Trustee, and the Borrower each hereby agree that the remedies available under Article VIII of the Indenture and Article VIII of the Financing Agreement apply upon the occurrence of an Event of Default (as defined under the Indenture or the Financing Agreement, as applicable) resulting from an action or omission of an action by any party hereunder with respect to any provision of this Agreement.

30. Miscellaneous.

(a) Severability. If any provision of this Agreement is ruled invalid by any court of competent jurisdiction, the invalidity of such provision will not affect any of the remaining provision hereof.

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

(c) Notices. All notices, demands, communications and requests which may or are required to be given hereunder or by any party hereto will be deemed given on the date on which the same will have been mailed by registered or certified mail, postage prepaid, addressed to such parties at the addresses set forth in the Indenture and the Financing Agreement, as applicable.

(d) Successors and Assigns. The terms, provisions, covenants and conditions of this Agreement bind and inure to the benefit of the respective successors and assigns of the Issuer, the Borrower, and the Trustee.

(e) Headings. The headings of this Agreement are inserted for convenience only and will not be deemed to constitute a part of this Agreement.

(f) Governing Law. This Agreement is governed by the laws of the State, without regard to the choice of law rules of the State. Venue for any action under this Agreement will lie within the district courts of the State, and the parties hereto consent to

the jurisdiction and venue of any such court and hereby waive any argument that venue in such forums is not convenient.

[EXECUTION PAGES FOLLOW]

**IN WITNESS WHEREOF**, the Issuer, the Borrower and the Trustee have caused this Agreement to be executed and delivered by duly authorized officers thereof as of Closing Date.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS**, as Issuer

By: \_\_\_\_\_  
Name: Monica Galuski  
Title: Director of Bond Finance/Chief Investment  
Officer

**NORTHGATE PRESERVATION, L.P.**, a New York  
limited partnership

By: Northgate Preservation GP, LLC, a New York  
limited liability company, its General Partner

By: \_\_\_\_\_  
Name: Matthew Finkle  
Title: Vice President

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

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



## EXHIBIT A

### CERTIFICATE OF RBC CAPITAL MARKETS, LLC

I, the undersigned officer of RBC Capital Markets, LLC (“RBC”), make this certificate in connection with the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village) Series 2019 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit A is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I hereby certify as follows as of the Issue Date of the Bonds:
  - (a) I am the duly chosen, qualified and acting officer of RBC for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of RBC. I am the officer of RBC charged, along with other officers of RBC, with responsibility for the Bonds.
  - (b) The first price at which at least 10% of the Bonds was sold to the Public is the price set forth in the Official Statement prepared in connection with the Bonds (the “Actual Sales Prices”).
  - (c) The aggregate of the Actual Sales Prices is \$[\_\_\_\_\_]. The Bonds were sold with pre-issuance accrued interest in the amount of \$[\_\_\_\_\_]. The sum of these two amounts is \$[\_\_\_\_\_].
2. For purposes of this Issue Price Certificate, the following definitions apply:
  - (a) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.
  - (b) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).
  - (c) “Underwriter” means (i) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial

sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

7. The Purchaser represents that it is not a “related party” to the Borrower within the meaning of section 1.150-1(b) of the Regulations. Specifically, the Purchaser represents the following: (a) the Purchaser and the Borrower are not part of the same controlled group of corporations (as defined in section 1563(a) of the Code, except that “more than 50 percent” is substituted for “at least 80 percent” each place it appears) and (b) the relationship between the Purchaser and the Borrower would not result in a disallowance of losses under section 267 of the Code or section 707(b) of the Code.

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents RBC’s interpretation of any laws, including specifically sections 103 and 148 of the Code and the Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Issuer and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of the Form 8038, and other federal income tax advice it may give to the Issuer from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of RBC Capital Markets, LLC has been duly executed as of the Closing Date.

**RBC CAPITAL MARKETS, LLC**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## EXHIBIT B

### CERTIFICATE OF LENDER

I, the undersigned officer of Regions Bank, an Alabama banking corporation, make this certification for the benefit of all persons interested in the exclusion from gross income for federal income tax purposes of the interest on the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows in good faith as of the Issue Date of the Bonds:

1. The Fannie Mae Guarantee Fee does not include any payment for any direct or indirect services other than the transfer of credit risk, unless the compensation for those other services is separately stated, reasonable, and excluded from such amount. The Fannie Mae Guarantee Fee does not exceed a reasonable, arm’s length charge for the transfer of credit risk. No portion of the Fannie Mae Guarantee Fee is refundable upon redemption of any of the prepayment on the Mortgage Loan (and thus, the Bonds) in an amount which would exceed the portion of the Fannie Mae Guarantee Fee that had not been earned. All payments on the Pass-Through Certificate reasonably coincide with payments on the Bonds and the payments on the Pass-Through Certificate are unconditionally payable on a monthly basis which shall be the 25th day of the month (or the next Business Day if the 25th day is not a Business Day). The Fannie Mae Guarantee Fee does not pertain to any mortgaged backed securities other than the Pass-Through Certificate.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the conditions imposed by the Code on the exclusion of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of Lender has been duly executed as of the Closing Date.

**REGIONS BANK,**  
An Alabama banking corporation

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

*Signature Page to Certificate of Regions Bank*

## EXHIBIT C

### CERTIFICATE OF GEORGE K. BAUM & COMPANY

I, the undersigned officer of George K. Baum & Company (the “Financial Advisor”), make this certificate in connection with the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village) Series 2019 (the “Bonds”). Each capitalized term used herein has the meaning or is the amount, as the case may be, specified for such term in the Tax Exemption Certificate and Agreement to which this Exhibit B is attached (the “Tax Exemption Agreement”). I hereby certify as follows as of the Issue Date of the Bonds:

1. I am the duly chosen, qualified and acting officer of the Financial Advisor for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of the Financial Advisor.

2. The Issue Price plus any Pre-Issuance Accrued Interest on the Bonds, based on the representations of the RBC Capital Markets, LLC attached as Exhibit A to the Tax Exemption Agreement, is not more than \$[\_\_\_\_\_].

3. The Financial Advisor has computed the Yield on the Bonds, based on such Issue Price, to be [Bond Yield] percent.

4. The Financial Advisor has calculated the Yield on the Mortgage Loan to be [Loan Yield] percent. Accordingly, the Yield on the Mortgage Loan does not exceed the Yield on the Bonds by more than 1.5 percentage points.

5. For purposes of determining the Yields in paragraphs 3 and 4 above, the Financial Advisor has performed certain calculations relating to the Bonds and the Mortgage Loan. Such calculations are attached hereto as Schedule I. The Financial Advisor hereby represents that such calculations are based on assumptions and methodologies provided by Bond Counsel and are in all material respects consistent with the assumptions and methodologies set forth in the “Yield on the Bonds” and “Yield on the Mortgage Loan” paragraphs of the Tax Exemption Agreement. These calculations include calculations based upon assumptions, information, and estimates obtained from the Borrower and the Issuer, which the Financial Advisor, based on its experience with similar transactions, has no reason to believe are not reasonable in light of the relevant facts and circumstances. To the best of the Financial Advisor’s knowledge, as of the Issue Date of the Bonds, no fact or circumstance has come to the Financial Advisor’s attention that conflicts with the assumptions, information and estimates described in the preceding sentence.

6. As shown in Schedule I attached hereto, the Financial Advisor computed the Weighted Average Maturity of the Bonds, calculated in accordance with the provisions of the Tax Exemption Agreement, to be [WAM] years.

7. The Financial Advisor represents that to the best of its knowledge as of the Issue Date of the Bonds, the statements set forth in paragraphs (a) through (c) of the “Not An Abusive Transaction” paragraph of the Tax Exemption Agreement are true.

The Issuer may rely on the statements made herein in connection with making the representations set forth in the Tax Exemption Agreement and in its efforts to comply with the conditions imposed by the Code on the exclusion of interest on the Bonds from the gross income of their owners. Bracewell LLP also may rely on this certificate for purposes of its opinion regarding the treatment of interest on the Bonds as excludable from gross income for federal income tax purposes and the preparation of the Form 8038.

[EXECUTION PAGE FOLLOWS]

The foregoing Certificate of George K. Baum & Company has been duly executed as of the Closing Date.

**GEORGE K. BAUM & COMPANY**

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

*Signature Page to Certificate of George K. Baum & Company*



**SCHEDULE I**  
**TO CERTIFICATE OF GEORGE K. BAUM & COMPANY**

*Schedule I to Certificate of George K. Baum & Company*

## EXHIBIT D

### SCHEDULE OF MORTGAGE LOAN COSTS

#### **Paid Prior to Closing**

Application Fee	\$3,360
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#### **Paid at Closing**

Issuer Issuance Fee	[\$100,000]
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Issuer Administration Fee (first [ ] years)	[\$40,000]
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Issuer Compliance Fee (first year)	\$4,200
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#### **Annual Fees**

Issuer Administrative Fee (beginning June 1, 2021)	.10% per annum of the aggregate principal amount of the Mortgage Loan outstanding
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Issuer Compliance Fee (beginning June 1, 2022)	\$25 per unit in the Project
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**EXHIBIT E**  
**POST-ISSUANCE COMPLIANCE PROCEDURES**

[See attached]

REGULATORY AND LAND USE RESTRICTION AGREEMENT

Among

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
as Issuer,

THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.,  
a national banking association,  
as Trustee,

and

NORTHGATE PRESERVATION, L.P.,  
a New York limited partnership,  
as Owner

Dated as of [June] 1, 2019

Relating to

\$19,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village)  
Series 2019

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## REGULATORY AND LAND USE RESTRICTION AGREEMENT

THIS REGULATORY AND LAND USE RESTRICTION AGREEMENT (as amended, modified or supplemented from time to time, this “Agreement” or this “Regulatory Agreement”) dated as of [June] 1, 2019 is among the **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS** (together with its successors and assigns, the “Issuer”), a public and official agency of the State of Texas (the “State”), **THE BANK OF NEW YORK MELLON TRUST COMPANY**, a national banking association organized and existing under the laws of the United States of America, as trustee under the hereinafter defined Indenture (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “Trustee”), and **NORTHGATE PRESERVATION, L.P.**, a New York limited partnership (together with its permitted successors and assigns, the “Owner” or “Borrower”).

### RECITALS

WHEREAS, pursuant to the Act (as hereinafter defined), the Issuer is authorized to issue bonds and to use the proceeds thereof to provide monies to aid in financing the acquisition, equipping and rehabilitation of residential rental property for dwelling units in the State; and

WHEREAS, the Owner has requested the assistance of the Issuer in financing a multifamily residential rental housing development located on the real property described in Exhibit A hereto (the “Development Site”) and described in Exhibit B-1 hereto (the “Development Facilities” and, together with the Development Site, the “Development”), and, as a condition to such assistance, the Owner has agreed to enter into this Regulatory Agreement, setting forth certain restrictions with respect to the Development; and

WHEREAS, the Issuer has determined to assist in the financing of the Development by issuing its Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 in the aggregate principal amount of \$19,000,000 (the “Bonds”), and loaning the proceeds of such Bonds to the Owner, upon the terms and conditions set forth in the Financing Agreement (as hereinafter defined); and

WHEREAS, in order for interest on the Bonds to be excludable from gross income for federal income tax purposes under the Code (as defined herein) and the Regulations (as defined herein) and rulings with respect to the Code, and in order to comply with the Act, the use and operation of the Development must be restricted in certain respects; and

WHEREAS, the Issuer, the Trustee and the Owner have determined to enter into this Regulatory Agreement in order to set forth certain terms and conditions relating to the acquisition, equipping, rehabilitation and operation of the Development and in order to ensure that the Development will be acquired, rehabilitated, used and operated in accordance with the Code and the Act.

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

Section 1. Definitions and Interpretation. In addition to terms defined above, capitalized terms have the respective meanings assigned to them in this Section 1 or as elsewhere defined in this Regulatory Agreement, in the Indenture, in the Financing Agreement or in the Tax Exemption Agreement, unless the context in which they are used clearly requires otherwise:

“Act” means Chapter 2306, Texas Government Code, as amended from time to time.

“**Agreement**” or “**Regulatory Agreement**” means this Regulatory and Land Use Restriction Agreement, as it may be amended from time to time.

“**Annual Income**” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by Section 142(d) of the Code.

“**Available Unit**” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Development) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Development is acquired by the Borrower or (ii) the Closing Date 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 (b) 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 counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes and who is appointed by the Issuer, and initially means Bracewell LLP.

“**Closing Date**” means the date upon which the Bonds are issued and delivered in exchange for the proceeds representing the purchase price of the Bonds paid by the original purchasers thereof.

“**Code**” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import hereafter enacted, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“**Compliance Monitoring Rules**” means the rules published by the Issuer in Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code.

“**Development**” means the Development Facilities and the Development Site.

“**Development Amenities**” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program application scoring process, as more fully set forth in Exhibit B-2 hereto.

“**Development Facilities**” means the multifamily housing structure and related buildings and other improvements on the Development Site as more fully set forth in Exhibit B-1 hereto, and all fixtures and other property owned by the Owner and located on, or used in connection with, such buildings, structures and other improvements constituting the Development.

“**Development Site**” means the parcel or parcels of real property described in Exhibit A, which is attached hereto and by this reference incorporated herein, and all rights and appurtenances appertaining thereunto.

“**Eligible Tenants**” means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

“**Fannie Mae**” means Fannie Mae, a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C., § 1716 et seq., and its successors and assigns.

“**Fannie Mae Loan Agreement**” means the Multifamily Loan and Security Agreement between Owner and Issuer, as assigned to Fannie Mae, with respect to the Development and dated the Closing Date, as the same may be supplemented, amended or modified from time to time.

“**Favorable Opinion of Bond Counsel**” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the excludability of interest payable on the Bonds from gross income for federal income tax purposes under existing law (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

“**Financing Agreement**” means the Financing Agreement of even date herewith among the Issuer, the Trustee, the Lender and the Owner, as it may be amended, modified, supplemented or restated from time to time to the extent permitted by the Indenture.

“**Housing Act**” means the United States Housing Act of 1937, as amended, or a successor thereto.

“**HUD**” means the United States Department of Housing and Urban Development or its successors.

“**Indenture**” means the Indenture of Trust of even date herewith between the Issuer and the Trustee, relating to the issuance of the Bonds, and any indenture supplemental thereto.

“**Lender**” has the meaning set forth in the Indenture.

“**Loan Documents**” means the Security Instrument, the Mortgage Note, the Financing Agreement, this Regulatory Agreement, the Tax Exemption Agreement, and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Mortgage Loan.

“**Low-Income Tenant**” means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under Sections 142(d)(2)(B) and (E) of the Code and in accordance with this Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of Section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

“**Low-Income Unit**” means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

“**Mortgage Loan**” has the meaning set forth in the Indenture.

“**Multifamily Tax Subsidy Program Income Limit**” (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

“**Organizational Documents**” means the Amended and Restated Agreement of Limited Partnership of the Owner dated as of \_\_\_\_\_, 20\_\_, as the same may be amended, modified, supplemented or restated from time to time.



**“Persons with Special Needs”** means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

**“Qualified Project Period”** means, with respect to the Development, the period beginning on the first day on which 10 percent of the Units are occupied (which date may be the Closing Date) and ending on the latest of (a) the date that is 15 years after the date on which 50 % of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in section 142(d)(2) of the Code) issued with respect to the Development is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Development under Section 8 of the Housing Act terminates.

**“Regulations”** means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

**“Related Person”** has the meaning set forth in section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under sections 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” is substituted for “at least 80 percent” each place it appears therein).

**“Replacement Reserve”** means the Replacement Reserve Account required to be established by the Fannie Mae Loan Agreement.

**“Security Instrument”** means the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing from the Owner, as the grantor, in favor of Issuer, as the beneficiary, as the same may be supplemented, amended or modified, and as the same is assigned to Lender and Fannie Mae, as their interests may appear.

**“Set Aside”** means the requirement that at least 40% of the Available Units be occupied or held vacant for occupancy at all times by Low-Income Tenants.

**“State Conversion Date”** means the date of the first amortization payment on the note relating to the Mortgage Loan.

**“State Reserve Period”** means, with respect to the Development, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Development; (b) the date on which the Owner suffers a total casualty loss with respect to the Development or the date on which the Development becomes functionally obsolete, if the Development cannot be or is not restored; (c) the date on which the Development is demolished; (d) the date on which the Development ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

**“State Restrictive Period”** means, with respect to the Development, the period beginning on the first day on which the Owner takes legal possession of the Development and ending on the latest of (a) the date that is 30 years after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Development is outstanding for federal income tax

purposes, and (c) the date on which any assistance provided with respect to the Development from the federal government terminates.

“**Tax Exemption Agreement**” means the Tax Exemption Certificate and Agreement of even date herewith among the Issuer, the Trustee and the Owner, as in effect on the Closing Date and as it may thereafter be amended or supplemented or restated in accordance with its terms.

“**Tenant Income Certification**” means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Development.

“**Unit**” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Development; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

“**Unit Status Report**” means the certified residential rental housing program compliance report with respect to the Development to be filed by the Owner with the Issuer electronically through the filing system available on the Issuer’s website in the form available on the Issuer’s website at the time of submission of the report or in such other form as the Issuer may reasonably prescribe in writing to the Owner pursuant to Section 4(e) hereof.

Unless the context clearly requires otherwise, as used in this Regulatory Agreement, words of the masculine, feminine or neuter gender include each other gender, and words of the singular number include the plural number, and vice versa. This Regulatory Agreement and all the terms and provisions hereof are to effectuate the purposes set forth herein and to sustain the validity hereof.

The defined terms used in the preamble and recitals of this Regulatory Agreement have been included for convenience of reference only, and the meaning, construction and interpretation of all defined terms are to be determined by reference to this Section 1, notwithstanding any contrary definition in the preamble or recitals hereof. The titles and headings of the sections of this Regulatory Agreement have been inserted for convenience of reference only and are not to be considered a part hereof and do not in any way modify or restrict any of the terms or provisions hereof and are not to be considered or given any effect in construing this Regulatory Agreement or any provisions hereof or in ascertaining intent, if any question of intent arises.

Section 1A. Acquisition, Equipping and Rehabilitation of the Development. The Owner hereby represents, covenants and agrees as follows:

(a) The statements made in the various certificates delivered by the Owner to the Issuer or the Trustee or both, including specifically the representations and expectations set forth in the Tax Exemption Agreement, are true and correct in all material respects as and when made.

(b) [Reserved].

(c) The Owner will submit to the Issuer and the Trustee evidence of construction completion as required in the Financing Agreement and within 30 days of completion in the format prescribed by the Issuer as required pursuant to Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code. The Owner further agrees to cause the architect of record to submit a certification that the Development was rehabilitated in compliance with all applicable laws and the

engineer of record (if applicable) must submit a certification that the Development was rehabilitated in compliance with design requirements.

(d) The Owner will take or not fail to take, as is applicable, all actions necessary to cause the proceeds of the Bonds to be applied in a manner consistent with the requirements of the Indenture, the Financing Agreement, the Tax Exemption Agreement and this Regulatory Agreement. The Owner acknowledges that such requirements have been designed for the purpose of ensuring compliance with the provisions of the Act or the Code applicable to the Owner and the Development.

(e) The Owner is a qualified “housing sponsor” as defined in the Act.

(f) The Owner will not seek an exemption from ad valorem taxation for the Development without prior written notice to the Issuer.

Section 2. Tax-Exempt Status of the Bonds. The Owner will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes (subject to any exceptions contained in the opinion delivered upon the original issuance of the Bonds). With the intent not to limit the generality of the foregoing, the Owner covenants and agrees that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel:

(a) That the Development will be owned, managed and operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Owner covenants and agrees, continuously during the Qualified Project Period, as follows:

(i) that the Development will be comprised of residential Units and facilities functionally related and subordinate thereto;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., 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 other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code);

(iii) that the land and the facilities that are part of the Development will be functionally related and subordinate to the Units comprising the Development and will be of a character and size that is commensurate with the character and size of the Development;

(iv) that at no time during the Qualified Project Period will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than thirty days or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Development will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of

land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Development will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Development tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Development, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time during the Qualified Project Period will any Unit in any building or structure in the Development that contains fewer than five Units be occupied by the Owner;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in this Regulatory Agreement, the Tax Exemption Agreement and the Financing Agreement) at all times during the longer of (A) the term of the Bonds or (B) the Qualified Project Period, that the Owner will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided herein, and that at no time will any portion of the Development be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that except, if applicable, during the 12-month "transition period" beginning on the Closing Date, as provided under Revenue Procedure 2004-39, 2004-2 C.B. 49, the Development will meet the Set Aside. For the purposes of this Section 2(a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant's Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant's Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of Section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Owner will obtain, complete and maintain on file (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Development and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Issuer's website; provided that, if any Units in the Development are ever made available to tenants who are not Low-Income Tenants, then the Owner will obtain, complete and maintain annual Tenant Income Certifications in accordance with Section 142(d)(3)(A) of the Code. The Owner will obtain such additional information as may be required in the future by Section

142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements now or hereafter promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service with respect to obligations that are tax-exempt private activity bonds described in Section 142(d) of the Code. The Owner will make a diligent and good-faith effort to determine that the income information provided by an applicant in any certification is accurate by taking steps required under Section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Owner will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer's Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Owner will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Development continues to meet the requirements of Section 142(d) of the Code; and

(xii) that the Owner will prepare and submit the Unit Status Report in the form available on the Issuer's website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer's website) in accordance with Section 4(e) hereof. The Owner will retain all documentation required by this Section 2(a)(xii) until the date that is three years after the end of the Qualified Project Period.

(b) That the Owner will maintain complete and accurate records pertaining to the Low-Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Development Site to examine and inspect the Development and to inspect and photocopy the books and records of the Owner pertaining to the Development, including those records pertaining to the occupancy of the Low-Income Units. The Owner will retain all records maintained in accordance with this Section 2 until the date that is three years after the end of the Qualified Project Period.

(c) That, as of the Closing Date, at least 50% of the Units are occupied.

(d) That the Owner will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in this Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties hereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Owner in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Owner, and which is required to be noticed, represented or certified by the Owner hereunder or in connection with any filings, representations or certifications required to be made by the Owner in connection with the issuance and delivery of the Bonds.

Section 3. Modification of Tax and State Restrictive Covenants. The Owner, the Trustee and the Issuer hereby agree as follows:

(a) During the Qualified Project Period and the State Restrictive Period, to the extent any amendments to the Act or the Code, in the written opinion of Bond Counsel filed with the Issuer, the Trustee, and the Owner, impose requirements upon the ownership or operation of the Development more restrictive than those imposed by this Regulatory Agreement, this Regulatory Agreement will be deemed to be automatically amended to impose such additional or more restrictive requirements. The parties hereto hereby agree to execute such amendment hereto as is necessary to document such automatic amendment hereof to be effective for the duration of such more restrictive requirements. In addition, this Regulatory Agreement will be amended to the extent required by, and in accordance with, the Financing Agreement.

(b) During the Qualified Project Period and the State Restrictive Period, to the extent that the Act, the Code, or any amendments thereto, in the written opinion of Bond Counsel filed with the Issuer, the Trustee and the Owner, impose requirements upon the ownership or operation of the Development less restrictive than imposed by this Regulatory Agreement, this Regulatory Agreement may be amended or modified to provide such less restrictive requirements but only by written amendment signed by the Issuer, the Trustee and the Owner and upon receipt of a Favorable Opinion of Bond Counsel.

(c) All costs, including fees and out-of-pocket expenses actually incurred by the Issuer and the Trustee, in connection with compliance with the requirements of this Section will be paid by the Owner and its successors in interest.

Section 4. Housing Development During the State Restrictive Period. The Issuer and the Owner hereby recognize and declare their understanding and intent that the Development is to be owned, managed and operated as a “housing development,” as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Owner hereby represents, covenants and agrees as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Development, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions of Sections 2(a)(viii) and 2(a)(ix) hereof continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Development (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant’s initial occupancy of a Unit in the Development, and, if required as described in Section 2(a)(x) hereof, at least annually thereafter in the manner as described in Section 2(a)(x) hereof, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Development (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Owner from time to time that (i) such lease is subordinate to the Security Instrument and this Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility

requirements of this Regulatory Agreement and the Financing Agreement are substantial and material obligations of tenancy in the Development, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Owner, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Development;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer's website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Issuer with written notice to the Owner, a certified quarterly Unit Status Report in a form available on the Issuer's website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Owner with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Owner pertaining to the Development or the incomes of Development tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer's requirements;

(g) that the Owner is qualified to be a "housing sponsor" as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer's website) the Annual Owner's Compliance Report to the Issuer in the form available on the Issuer's website at the time of submission by April 30 of each year, commencing April 30, 2021;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached hereto as Exhibit C and agreed to in writing by the Issuer. The Owner must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during onsite visits beginning with the second onsite review and must be submitted to the Issuer upon request. The Owner must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, regarding tenant and manager selection, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's Uniform Physical Condition Standards and to provide regular maintenance to keep the Development sanitary, safe and decent and to comply with the requirements of Section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Owner and the Lender, and the Owner will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Development pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Owner is not a party to and will not enter into a contract for the Development with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Owner has benefited from contracts

or financial assistance that has been awarded by a public agency, including the scope of the Owner's participation in contracts with the agency and the amount of financial assistance awarded to the Owner by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Development to so comply;

(n) to ensure that Units intended to satisfy the Set Aside under Section 2(a)(ix) hereof will be distributed evenly throughout the Development and will include a reasonably proportionate amount of each type of Unit available in the Development; and

(o) to ensure that the Development conforms to the federal Fair Housing Act.

Section 4.A. Repairs and Maintenance Required by State Law. The Owner will maintain the Replacement Reserve required by and created pursuant to the Fannie Mae Loan Agreement or a similar account for the longer of: (a) the period of time required pursuant to the Fannie Mae Loan Agreement, or (b) the State Reserve Period as required by Section 2306.186 of the Texas Government Code.

Section 4.B. Development Amenities. The Owner hereby represents, covenants and agrees that the Development will include the Development Amenities as described in Exhibit B-2 attached hereto.

Section 5. [Reserved].

Section 6. Persons With Special Needs. The Owner represents, covenants and warrants that during the State Restrictive Period, it will make at least 5% of the Units within the Development available for occupancy by Persons with Special Needs.

Section 7. Consideration. The Issuer has issued the Bonds to provide funds to make the Mortgage Loan to finance the Development, all for the purpose, among others, of inducing the Owner to acquire, rehabilitate, equip and operate the Development. In consideration of the issuance of the Bonds by the Issuer, the Owner has entered into this Regulatory Agreement and has agreed to restrict the uses to which the Development can be put on the terms and conditions set forth herein.

Section 8. Reliance. The Issuer, the Trustee 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 Bonds, and in the excludability of interest on the Bonds from gross income for federal income tax purposes under existing law. In performing their duties and obligations hereunder, the Owner, the Issuer and the Trustee may rely upon statements and certificates of the Low-Income Tenants or Eligible Tenants and the Issuer and the Trustee may rely upon statements and certifications by the Owner and upon audits of the books and records of the Owner pertaining to the Development. In addition, the Issuer, the Owner and the Trustee may consult with counsel, and the opinion of such counsel will be full and complete authorization and protection in respect of any action taken or suffered by the Issuer, the Owner or the Trustee hereunder in good faith and in conformity with such opinion. In determining whether any default by the Owner exists under this Regulatory Agreement, the Trustee is not required to conduct any investigation into or review of the operations or records of the Owner and may rely on any written report, notice or certificate delivered to the Trustee by any Person retained to review the Owner's compliance with this Regulatory Agreement or by the Owner or the Issuer with respect to the occurrence or absence of a default unless it has actual knowledge that the report, notice or certificate is erroneous or misleading.

Section 9. Development in Dallas County. The Owner hereby represents that the Development is located entirely within Dallas County, Texas.



Section 10. Sale or Transfer of the Development or Change in General Partner.

(a) The Owner covenants and agrees not to sell, transfer or otherwise dispose of the Development, prior to the expiration of the Qualified Project Period (other than pursuant to the lease of Units to Eligible Tenants), without (i) providing 30 days prior written notice to the Issuer, (ii) complying with any applicable provisions of this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and other Loan Documents and (iii) obtaining the prior written consent of the Issuer. Such consent of the Issuer will not be unreasonably withheld and will be given if the following conditions to the sale or other disposition are met or waived in writing by the Issuer: (A) there is delivered to the Trustee and the Issuer a written opinion of independent legal counsel reasonably satisfactory to the Trustee and the Issuer, addressed to the Trustee and the Issuer, concluding that the transferee has duly assumed all of the rights and obligations of the Owner under this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and the other Loan Documents and that each of the documents executed by the transferee in connection therewith has been duly authorized, executed and delivered by the transferee and is a valid and enforceable obligation of the transferee, subject to customary qualifications, (B) the Issuer receives a Favorable Opinion of Bond Counsel, with a copy to the Trustee and the Owner, which opinion will be furnished at the expense of the Owner or the transferee, (C) the Issuer receives an assumption fee equal to 0.25% of the principal balance of the Bonds Outstanding at the time of such transfer, (D) the proposed purchaser or assignee executes any document requested by the Issuer with respect to assuming the obligations of the Owner under this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and the other Loan Documents, and (E) the Issuer has performed a previous participation review on the proposed purchaser or assignee or any affiliated party, the results of which are satisfactory to the Issuer in accordance with Title 10, Part 1, Chapter 1, Subchapter C, Section 1.301, Texas Administrative Code, and the Issuer does not further have any reason to believe the proposed purchaser or assignee is incapable, financially or otherwise, of complying with, or may be unwilling to comply with, the terms of all agreements and instruments binding on such proposed purchaser or assignee relating to the Development, including but not limited to this Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement, the Security Instrument and other Loan Documents. The foregoing provisions do not apply to transfer by foreclosure or deed in lieu of foreclosure or other similar involuntary transfers, but such provisions apply to any transfer subsequent to such involuntary transfers. Notwithstanding anything to the contrary contained herein, and subject to the consent of Fannie Mae as required by the Mortgage Loan Documents, the following shall be permitted and shall not require the prior written approval of Issuer or Trustee, provided that written notice thereof has been provided to the Issuer, (a) the transfer by the Tax Credit Investor of its non-Controlling interest in Borrower in accordance with the terms of the Organizational Documents, (b) the removal of the general partner of the Borrower in accordance with the Organizational Documents and the temporary replacement thereof with the Tax Credit Investor or any of its affiliates, (c) the transfer by the Tax Credit Investor of its interests in Borrower to the general partner or the Borrower or any of its affiliates and (d) any amendment to the Organizational Documents to memorialize a transfer or removal described above. For the purposes of the preceding sentence, “Control” or “Controlling” has the meaning given to such term in Title 10, Part 1, Subchapter A, Section 11.1, Texas Administrative Code. The Owner hereby expressly stipulates and agrees that any sale, transfer or other disposition of the Development in violation of this subsection will be ineffective to relieve the Owner of its obligations under this Regulatory Agreement. Upon any sale, transfer or other disposition of the Development in compliance with this Regulatory Agreement, the Owner so selling, transferring or otherwise disposing of the Development will have no further liability for obligations under the Financing Agreement, this Regulatory Agreement or any other Loan Document arising after the date of such disposition. The foregoing notwithstanding, the duties of

the Owner as set forth in the Financing Agreement, this Regulatory Agreement or any other Loan Document with respect to matters arising prior to the date of such sale, transfer or other disposition will not terminate upon the sale, transfer or other disposition of the Development.

(b) No transfer of the Development will release the Owner from its obligations under this Regulatory Agreement arising prior to the date of such transfer, but any such transfer in accordance with this Regulatory Agreement will relieve the Owner of further liability for obligations under this Regulatory Agreement arising after the date of such transfer.

(c) Except as set forth in Section 10(a) above, the Owner will not change its general partner by transfer, sale or otherwise without the prior written consent of the Issuer, which consent will not be unreasonably withheld. A change in the Owner's general partner includes any transfer of any controlling ownership interest in the general partner other than by death or incapacity.

Section 11. Term. This Regulatory Agreement and all and each of the provisions hereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided herein and, except as otherwise provided in this Section, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions hereof are intended to survive the retirement of the Bonds, discharge of the Mortgage Loan, termination of the Financing Agreement and defeasance or termination of the Indenture; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of this Regulatory Agreement to the contrary notwithstanding, the requirements set forth herein will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of this Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date which prevents the Issuer or the Trustee from enforcing the provisions hereof, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a "qualified residential rental project" that meets the requirements of the Code and State law including, but not limited to, the provisions set forth in Sections 1A through 6, 10, 11 and 12 of this Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Owner or any Related Person obtains an ownership interest in the Development for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of this Regulatory Agreement, this Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Owner upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of this Regulatory Agreement, the parties hereto agree to execute, deliver and record appropriate instruments of release and discharge of the terms hereof; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of this Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of this Regulatory Agreement will be paid by the Owner and its successors in interest.

Section 12. Covenants to Run With the Land. The Owner hereby subjects the Development (including the Development Site) to the covenants, reservations and restrictions set forth in this Agreement. The Issuer, the Trustee and the Owner hereby declare that the covenants, reservations and restrictions set forth herein are covenants running with the land and will pass to and be binding upon the Owner's successors in title to the Development; provided, however, that upon the termination of this Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument hereafter executed covering or conveying the Development or any portion thereof prior to the termination of this Regulatory Agreement will 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 instrument.

No breach of any of the provisions of this Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Development or any portion thereof.

Section 13. Burden and Benefit. The Issuer, the Trustee 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 Development is rendered less valuable thereby. The Issuer, the Trustee 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 Development by Low-Income Tenants and Eligible Tenants and by furthering the public purposes for which the Bonds were issued.

Section 14. Uniformity; Common Plan. The covenants, reservations and restrictions hereof will apply uniformly to the entire Development in order to establish and carry out a common plan for the use, development and improvement of the Development Site.

Section 15. Default; Enforcement by the Trustee and Issuer. If the Owner defaults in the performance or observance of any covenant, agreement or obligation of the Owner set forth in this Regulatory Agreement, and if such default remains uncured by the Owner for a period of 60 days after written notice thereof has been given by the Issuer or the Trustee to the Owner and the Tax Credit Investor at the Notice Addresses set forth in the Indenture, then the Trustee, acting on its own behalf or on behalf of the Issuer and after being indemnified as provided in the Indenture, will declare an "Event of Default" to have occurred hereunder; provided, however, that, if the default stated in the notice is of such a nature that it cannot be corrected within 60 days, such default will not constitute an Event of Default hereunder and will not be declared an Event of Default so long as (i) the Owner institutes corrective action within said 60 days and diligently pursues such action until the default is corrected and (ii) the Owner delivers to the Issuer and the Trustee a Favorable Opinion of Bond Counsel. The Issuer hereby agrees that any cure of any Event of Default hereunder made or tendered by the Tax Credit Investor shall be deemed to be cure by the Owner, and shall be accepted or rejected by the Issuer on the same basis as if made or tendered by the Owner.

During the existence of an Event of Default hereunder, the Trustee or the Issuer, each subject to being indemnified to its satisfaction with respect to the costs and expenses of any proceeding, may, at its option, take any one or more of the following steps:

- (a) by mandamus or other suit, action or proceeding at law or in equity, including injunctive relief, require the Owner to perform its obligations and covenants hereunder or enjoin any acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee hereunder;

(b) have access to and inspect, examine and make copies of all of the books and records of the Owner pertaining to the Development during regular business hours following reasonable notice; and

(c) take such other action at law or in equity as may appear necessary or desirable to enforce the obligations, covenants and agreements of the Owner hereunder.

The Owner hereby agrees that specific enforcement of the Owner's agreements contained herein is the only means by which the Issuer and the Trustee may obtain the benefits of such agreements made by the Owner herein, and the Owner therefore agrees to the imposition of the remedy of specific performance against it in the case of any Event of Default by the Owner hereunder. In addition, if the Issuer succeeds in an action for specific performance of an obligation, covenant or agreement of the Owner contained herein, it is entitled to the relief provided in Section 16(b) hereof to the extent provided in that provision.

All rights and remedies herein given or granted are cumulative, nonexclusive and in addition to any and all rights and remedies that the parties may have or may be given by reason of any law, statute, ordinance, document or otherwise. Notwithstanding the availability of the remedy of specific performance provided for in this Section, promptly upon determining that a violation of this Regulatory Agreement has occurred, the Issuer will to the extent that it has actual knowledge thereof, by notice in writing, use its best efforts to inform the Trustee and the Owner (provided that the failure to notify will not adversely affect the Issuer's or the Trustee's rights under this Regulatory Agreement) that a violation of this Regulatory Agreement has occurred.

It is specifically declared that this Regulatory Agreement or obligations hereunder may not be enforced by tenants or prospective tenants of the Development (except as described in Section 16 below) or, except as specifically provided in the Indenture, by the owners of the Bonds.

Section 16. Enforcement of Certain Provisions by Tenants and other Private Parties.

(a) During the existence of an Event of Default hereunder with respect to Sections 4(i) and 4(j) hereof only, a tenant of the Development or any private party may, at its option by mandamus or other suit, including injunctive relief, require the Owner to perform its obligations and covenants under Sections 4(i) and 4(j) hereof.

(b) If the Issuer, a tenant of the Development, or any private party brings an action to enforce the obligations and covenants of the Owner under Sections 4(i) and 4(j) hereof, such party has the right to recover attorney's fees directly from the Owner, without recourse to the Development, if such party is successful in an action seeking enforcement of the obligations and covenants of the Owner hereunder. This is the only monetary relief a tenant of the Development or other private parties may receive under this Regulatory Agreement and any such recovery is subject to the provisions set forth in Section 15 above.

Section 17. The Trustee. The Trustee will act only as specifically provided herein, in the Indenture and in the Tax Exemption Agreement. Subject to the right of the Trustee to be indemnified as provided in the Indenture, the Trustee agrees to act as the agent of and on behalf of the Issuer when requested in writing by the Issuer to do so, and any act required to be performed by the Issuer as herein provided will be deemed taken if such act is performed by the Trustee. The Trustee is entering into this Regulatory Agreement solely in its capacity as Trustee under the Indenture, and the duties, powers, rights and obligations of the Trustee in acting hereunder will be subject to the provisions of the Indenture and the Tax Exemption Agreement, all of which are incorporated by reference herein. The incorporated provisions of the Indenture and the Tax Exemption Agreement are intended to survive the retirement of the Bonds,

discharge of the Mortgage Loan, termination of the Financing Agreement and defeasance or termination of the Indenture and the Tax Exemption Agreement.

Subject to the Trustee's rights under the Indenture, the Trustee will, at the direction of the Issuer, take reasonable actions to enforce compliance by the Owner with the terms of this Regulatory Agreement. The Trustee may rely on certificates and reports delivered to the Trustee by the Owner without independent investigation and the Trustee's responsibility to review and monitor compliance hereunder will not extend beyond the Trustee's receipt of the certificates, reports, and other documents required to be submitted to the Trustee by the Owner pursuant to this Regulatory Agreement.

The Trustee may resign only upon giving 60 days prior written notice to the Issuer, the Owner, and to each registered owner of Bonds then Outstanding as shown on the Bond Register. The Trustee may be removed at any time upon 30 days prior written notice to the Trustee, (a) by the Issuer, (b) by the owners of not less than 51% in aggregate principal amount of Bonds then Outstanding, which written instrument must designate a successor Trustee or (c) by the Owner, with the prior written consent of the Issuer or the owners of 100% in aggregate principal amount of Bonds then Outstanding. Such resignation or removal will not be effective until a successor Trustee satisfying the requirements of the Indenture is appointed and has accepted its appointment. The Trustee's right to indemnification provided in the Financing Agreement will survive the resignation or removal of the Trustee and the termination of this Regulatory Agreement.

Upon discharge of the Indenture, the Owner will pay to the Trustee a fee for the performance of the Trustee's duties under this Agreement for the remaining term of this Regulatory Agreement. The amount of such fee to be paid by the Owner to the Trustee will be in an amount mutually agreed upon by the Owner and the Trustee at the time of the discharge of the Indenture.

After the date upon which all of the Bonds have been paid in full, the Trustee shall no longer have any duties or responsibilities under this Regulatory Agreement and all references to the Trustee in this Regulatory Agreement shall be deemed references to the Issuer.

Section 18. Recording and Filing. The Owner will cause this Regulatory Agreement, and all amendments and supplements hereto and thereto, to be recorded and filed in the real property records of Dallas County, Texas and in such other places as the Issuer or the Trustee may reasonably request. A file-stamped copy of this Regulatory Agreement and all amendments and supplements thereto will be delivered to the Trustee. The Owner will pay all fees and charges incurred in connection with any such recording. This Regulatory Agreement is subject to and subordinate to all matters of record as of the date hereof.

Section 19. Reimbursement of Expenses. Notwithstanding any prepayment of the Mortgage Loan and notwithstanding a discharge of the Indenture and the Tax Exemption Agreement, throughout the term of this Regulatory Agreement, the Owner will continue to pay to the Issuer and the Trustee all fees and reimbursement for all expenses actually incurred thereby required to be paid to the Issuer and the Trustee by the Owner pursuant to the Financing Agreement and the Tax Exemption Agreement.

Section 20. Governing Law. This Regulatory Agreement is governed by the laws of the State of Texas. The Trustee's rights, duties, powers and obligations hereunder are governed in their entirety by the terms and provisions of this Regulatory Agreement, the Financing Agreement, the Indenture and the Tax Exemption Agreement.

Section 21. Amendments. Subject to the provisions of Section 3 hereof, this Regulatory Agreement may be amended only by a written instrument executed by the parties hereto (except that after discharge of the Indenture, consent of the Trustee will not be required), or their successors in title, and duly recorded in the real property records of Dallas County, Texas, and only upon receipt by the Issuer (with a

copy to the Trustee and the Owner) of a Favorable Opinion of Bond Counsel and an opinion of Bond Counsel that such action is not contrary to the provisions of the Act. In addition, for so long as the Mortgage Loan is outstanding, this Regulatory Agreement may not be amended without Fannie Mae's prior written consent, with the exception of clerical errors or administrative correction of non-substantive matters, as set forth in Exhibit D hereto.

Section 22. Notices. Any notice required to be given hereunder to the Issuer, the Trustee, the Owner and the Tax Credit Investor will be given in the manner and to the address (or facsimile numbers) set forth in the Indenture.

Section 23. Severability. If any provision of this Regulatory Agreement is held to be invalid, illegal or unenforceable, the validity, legality and enforceability of the remaining portions hereof will not in any way be affected or impaired thereby.

Section 24. Multiple Counterparts. This Regulatory Agreement may be simultaneously executed in multiple counterparts, all of which constitute one and the same instrument, and each of which is deemed to be an original.

Section 25. Authorization to Act for Issuer. To the extent allowed by law, the Issuer hereby authorizes the Owner to take on behalf of the Issuer all actions required or permitted to be taken by it hereunder, or under the Indenture and the Financing Agreement and to make on behalf of the Issuer all elections and determinations required or permitted to be made by the Issuer hereunder or under the Indenture and the Financing Agreement. In addition, the Issuer hereby authorizes the Owner to exercise, on behalf of the Issuer, any election with respect to the Bonds pursuant to the Code or the Regulations, and the Issuer agrees to cooperate with the Owner and execute any form of statement required by the Code or the Regulations to perfect any such election.

Section 26. Subordination and Incorporation of Fannie Mae Rider. Notwithstanding anything to the contrary herein, the Fannie Mae Rider to Restrictive Covenants attached hereto as Exhibit D is hereby incorporated herein for all purposes.

IN WITNESS WHEREOF, the Issuer, the Trustee and the Owner have executed this Regulatory Agreement by duly authorized representatives, all as of the date first above written.

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS, as Issuer**

By: \_\_\_\_\_  
Name: J. B. Goodwin  
Title: Chair

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: James B. Eccles  
Title: Secretary

ACKNOWLEDGMENT

STATE OF TEXAS            §  
  §  
COUNTY OF TRAVIS       §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019 personally appeared J.B. Goodwin, Chair of the Governing Board of the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

**THE BANK OF NEW YORK MELLON TRUST  
COMPANY, as Trustee**

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

**ACKNOWLEDGMENT**

STATE OF TEXAS           §  
  §  
COUNTY OF \_\_\_\_\_ §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019 personally appeared \_\_\_\_\_, a \_\_\_\_\_ of The Bank of New York Mellon Trust Company, a national banking association, who acknowledged that [s]he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)



**NORTHGATE PRESERVATION, L.P.**, a New York limited partnership

By: Northgate Preservation GP, LLC, a New York limited liability company, its general partner

By: \_\_\_\_\_  
Name: Matthew Finkle  
Title: Vice President

ACKNOWLEDGMENT

STATE OF NEW YORK §  
  §  
COUNTY OF NEW YORK §

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019 personally appeared Matthew Finkle, a Vice President of Northgate Preservation GP, LLC, a New York limited liability company, the general partner of Northgate Preservation, L.P., a New York limited partnership, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public Signature

My Commission expires: \_\_\_\_\_

(Personalized Seal)

EXHIBIT A

PROPERTY DESCRIPTION

[legal description to come from Borrower]

EXHIBIT B-1

DESCRIPTION OF DEVELOPMENT

Borrower: Northgate Preservation, L.P., a New York limited partnership

Development: The Development is a 168-unit (including 1 superintendent unit) affordable, multifamily housing development known as Northgate Village Apartments, located at 12303 North Plano Road, Dallas, Dallas County, Texas 75243. It consists of fifteen (15) residential apartment buildings with approximately 190,960 net rentable square feet. The unit mix will consist of:

16	two-bedroom/one-bath units
80	three-bedroom/one-and-one-half-bath units
72	four-bedroom/two-bath units
<hr/>	
168	Total Units

Unit sizes will range from approximately 940 square feet to approximately 1,200 square feet.

## EXHIBIT B-2

### DEVELOPMENT AMENITIES

“Development Amenities” means the amenities for which the Development was awarded points by the Issuer, pursuant to Section 2306.359 of the Texas Government Code, during the Private Activity Bond Program pre-application scoring process.

Development Common Amenities must include at least eighteen (18) points selected from the following list which are grouped primarily for organizational purposes. The Owner is not required to select a specific number of amenities from each section. The Owner may change, from time to time, the amenities offered; however, the overall points must remain the same. The tenant must be provided written notice of the elections made by the Owner.

#### (i) Community Space for Resident Supportive Services

(I) Except in Applications where more than 10% of the units in the proposed Development are Supportive Housing Single Room Occupancy units, an Application may qualify to receive half of the points required under 10 TAC §11.101(b)(5)(A)(i)-(vi) of the Qualified Allocation Plan by electing to provide a High Quality Pre-Kindergarten (“HQ Pre-K”) program and associated educational space at the Development Site. To receive the points the Applicant must commit to all of subparagraphs (-a-) through (-c-) of this paragraph.

(-a-) Space and Design. The educational space for the HQ Pre-K program must be provided on the Development Site and must be a suitable and appropriately designed space for educating children that an independent school district or open-enrollment charter school can utilize to establish and operate a HQ Pre-K program. This space includes at a minimum a bathroom and large closet in the classroom space; appropriate design considerations made for the safety and security of the students; including limited and secure ingress and egress to the classroom space; and satisfaction of the requirements of all applicable building code for school facilities. The Applicant must provide in the Application a copy of the current school facility code requirements applicable to the Development Site and Owner and Architect certifications that they understand the associated space and design requirements reflected in those code requirements. The Application must also include acknowledgement by all lenders, equity providers and partners that the Application includes election of these points.

(-b-) Educational Provider. The Applicant must enter into an agreement, as described in sub items (-1-) - (-5-) below, and provide evidence of such agreement to the Department on or before submission of the Cost Certification. Lack of evidence of such agreement by the deadline will be cause for rescission of the Commitment Notice.

(-1-) The agreement must be between the Owner and any one of the following: a school district; open-enrollment charter school; or Education Service Center. Private schools and private childcare providers, whether nonprofit or for profit, are not eligible parties, unless the private school or private childcare provider has

entered into a partnership with a school district or open-enrollment charter school to provide a HQ Pre-K program in accordance with Texas Education Code Chapter 29, Subchapter E-1.

(-2-) The agreement must reflect that at the Development Site the educational provider will provide a HQ Pre-K program, in accordance with Texas Education Code Chapter 29, Subchapter E-1, at no cost to residents of the proposed Development and that is available for general public use, meaning students other than those residing at the Development may attend.

(-3-) Such agreement must reflect a provision that the option to operate the HQ Pre-K program in the space at the Development Site will continue to be made available to the school or provider until such time as the school or provider wishes to withdraw from the location. This provision will not limit the Owner's right to terminate the agreement for good cause.

(-4-) Such agreement must set forth the responsibility of each party regarding payment of costs to use the space, utility charges, insurance costs, damage to the space or any other part of the Development, and any other costs that may arise as the result of the operation of the HQ Pre-K program.

(-5-) The agreement must include provision for annual renewal, unless terminated under the provisions of item (-c-).

(-c-) If an education provider who has entered into an agreement becomes defunct or elects to withdraw from the agreement and provision of services at the location, as provided for in item (-b-)(-3-) of this subclause, the Owner must notify the Texas Commissioner of Education at least 30 days prior to ending the agreement to seek out any other eligible parties listed in (-b-)(-1-) above. If another interested open-enrollment charter school or school district is identified by the Texas Commissioner of Education or the Owner, the Owner must enter into a subsequent agreement with the interested open-enrollment charter school or school district and continue to offer HQ Pre-K services. If another interested provider cannot be identified, and the withdrawing provider certifies to the Department that their reason for ending the agreement is not due to actions of the Owner, the Owner will not be considered to be in violation of its commitment to the Department. If the Owner is not able to find a provider, they must notify the Commissioner annually of the availability of the space.

(II) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for children and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 15 square feet times the total number of Units, but need not exceed 2,000 square feet in total. It must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (4 points);

(III) Multifunctional learning and care center(s) or conference room(s) with the appropriate furnishings to deliver the Resident Supportive Services pertaining to classes or care for

adults and selected by the Development Owner. The room(s) devoted to meeting this requirement must equal 10 square feet times the total number of Units, but need not exceed 1,000 square feet in total. It must be separate from any other community space but may include a full kitchen. The room(s) must include storage space, such as closets and/or cabinetry (2 points);

(IV) Service provider office in addition to leasing offices (1 point);

(ii) Safety

(I) Controlled gate access for entrance and exit areas, intended to provide access that is limited to the Development's tenancy (1 point);

(II) Secured Entry (applicable only if all Unit entries are within the building's interior) (1 point);

(III) Twenty-four hour, seven days a week monitored camera/security system in each building. Monitoring may be on-site or off-site (2 points);

(IV) Twenty-four hour, seven days a week recorded camera / security system in each building (1 point);

(V) The provision of a courtesy patrol service that, at a minimum, answers after-hour resident phone calls regarding noise and crime concerns or apartment rules violations and that can dispatch to the apartment community a courtesy patrol officer in a timely manner (3 points);

(iii) Health/Fitness / Play

(I) Accessible walking/jogging path, equivalent to the perimeter of the Development or a length that reasonably achieves the same result, separate from a sidewalk and in addition to required accessible routes to Units or other amenities (1 point);

(II) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 40 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (1 point);

(III) Furnished fitness center. Equipped with a variety of fitness equipment (at least one item for every 20 Units). Choose from the following: stationary bicycle, elliptical trainer, treadmill, rowing machine, universal gym, multi-functional weight bench, stair-climber, dumbbell set, or other similar equipment. Equipment shall be commercial use grade or quality. Fitness center must be located indoors or be a designated room with climate control and allow for after-hours access. (2 points);

IV) One Children's Playscape Equipped for 5 to 12 year olds, or one Tot Lot (2 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (V) of this subparagraph is not selected; or

(V) Two Children's Playscapes Equipped for 5 to 12 year olds, two Tot Lots, or one of each (4 points). Must be covered with a shade canopy or awning, intended to keep equipment cool, provide shade and ultraviolet protection. Can only select this item if clause (IV) of this subparagraph is not selected;

(VI) Horseshoe pit; putting green; shuffleboard court; pool table; or ping pong table in a dedicated location accessible to all residents to play such games (1 point);

(VII) Swimming pool (3 points);

(VIII) Splash pad/water feature play area (1 point);

(IX) Sport Court or field (including, but not limited to, Tennis, Basketball, Volleyball, Soccer or Baseball Field) (2 points);

(iv) Design / Landscaping

(I) Full perimeter fencing that includes parking areas and all amenities (excludes guest or general public parking areas) (2 points);

(II) Enclosed community sun porch or covered community porch/patio (1 point);

(III) Dog Park area that is fully enclosed (the perimeter fencing may be used for part of the enclosure) and intended for tenant owned dogs to run off leash (requires that the Development allow dogs) (1 point);

(IV) Shaded rooftop or structural viewing deck of at least 500 square feet (2 points);

(V) Porte-cochere (1 point);

(VI) Lighted pathways along all accessible routes (1 point);

(VII) a resident-run community garden with annual soil preparation and mulch provided by the Owner and access to water (which may be subject to local water usage restrictions) (1 point);

(v) Community Resources

(I) Gazebo or covered pavilion w/sitting area (seating must be provided) (1 point);

(II) Community laundry room with at least one washer and dryer for every 40 Units (2 points);

(III) Barbecue grill and picnic table with at least one of each for every 50 Units (1 point). Grill must be permanently installed (no portable grills);

(IV) Business center with workstations and seating internet access, 1 printer and at least one scanner which may be integrated with the printer, and either 2 desktop computers or laptops available to check-out upon request (2 points);

(V) Furnished Community room (2 points);

(VI) Library with an accessible sitting area (separate from the community room) (1 point);

(VII) Activity Room stocked with supplies (Arts and Crafts, board games, etc.) (2 points);

(VIII) Community Dining Room with full or warming kitchen furnished with adequate tables and seating (3 points);

(IX) Community Theater Room equipped with a 52 inch or larger screen or projection with surround sound equipment; DVD player or a streaming service at no cost to residents; and seating (3 points);

(X) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the clubhouse and/or community building (1 point);

(XI) High-speed Wi-Fi of 10 Mbps download speed or more with coverage throughout the Development (2 points);

(XII) Bicycle parking that allows for, at a minimum, 1 bicycle for every 5 Units, within reasonable proximity to each residential building that allows for bicycles to be secured with lock (lock not required to be provided to tenant) (1 point);

(XIII) Package Lockers. Automated Package Lockers provided at a location within the complex that can be accessed by residents 24/7 and at no charge to the resident. To qualify, there would need to be at least 1 locker for every 8 residential units (2 points).

Development Unit Amenities and Construction Features must include at least nine (9) points selected from the following list. Rehabilitation Developments will start with a base score of five (5) points. Owner may change, from time to time, the amenities offered; however, the overall points must remain the same.

#### **Unit Features**

(I) Covered entries (0.5 point);

(II) Nine foot ceilings in living room and all Bedrooms (at minimum) (1 point);

(III) Microwave ovens (0.5 point);

(IV) Self-cleaning or continuous cleaning ovens (0.5 point);

(V) Energy-Star rated refrigerator with icemaker (0.5 point);

(VI) Storage room or closet, of approximately 9 square feet or greater, separate from and in addition to Bedroom, entryway or linen closets and which does not need to be in the Unit but must be on the Property site (0.5 point);

(VII) Energy-Star qualified laundry equipment (washers and dryers) for each individual Unit; must be front loading washer and dryer in required accessible Units (2 points);

(VIII) Covered patios or covered balconies (0.5 point);

(IX) High Speed Internet service to all Units (can be wired or wireless; required equipment for either must be provided) (1 point);

(X) Built-in (recessed into the wall) shelving unit (0.5 point);

(XI) Recessed LED lighting or LED lighting fixtures in kitchen and living areas (1 point);

(XII) Breakfast Bar (a space, generally between the kitchen and dining area, that includes an area for seating although actual seating such as bar stools does not have to be provided) (0.5 point);



- (XIII) Walk-in closet in at least one Bedroom (0.5 point);
- (XIV) Energy-Star rated ceiling fans in all Bedrooms (0.5 point);
- (XV) 48” upper kitchen cabinets (1 point);
- (XVI) Kitchen island (0.5 points);
- (XVII) Kitchen pantry with shelving (may include the washer/dryer unit for Rehabilitation Developments only) (0.5 point);
- (XVIII) EPA WaterSense or equivalent qualified toilets in all bathrooms (0.5 point);
- (XIX) EPA WaterSense or equivalent qualified showerheads and faucets in all bathrooms (0.5 point);
- (XX) Natural stone or quartz countertops in kitchen and bath (1 point);
- (XXI) Double vanity in at least one bathroom (0.5 point);
- (XXII) Hard floor surfaces in over 50% of unit NRA (0.5 point).

### **Development Construction Features**

- (I) Covered parking (may be garages or carports, attached or freestanding) and include at least one covered space per Unit (1.5 points);
- (II) 15 SEER HVAC or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, or in applicable regions of the state, an efficient evaporative cooling system (1.5 points);
- (III) 16 SEER HVAC or for Rehabilitation (excluding Reconstruction) where such systems are not being replaced as part of the scope of work, a radiant barrier in the attic is provided, or in applicable regions of the state, an efficient evaporative cooling system (1.5 points);
- (IV) Thirty (30) year roof (0.5 point);
- (V) Greater than 30 percent stucco or masonry (includes stone, cultured stone, and brick but excludes cementitious and metal siding) on all building exteriors; the percentage calculation may exclude exterior glass entirely (2 points);
- (VI) Electric Vehicle Charging Station (0.5 points); and
- (VII) An Impact Isolation Class (“IIC”) rating of at least 55 and a Sound Transmission Class (“STC”) rating of 60 or higher in all Units, as certified by the architect or engineer of record (3 points)
- (VIII) Green Building Features. Points under this item are intended to promote energy and water conservation, operational savings and sustainable building practices. Points may be selected from only one of three categories: Enterprise Green Communities, Leadership in Energy and Environmental Design (LEED), and ICC 700 National Green Building Standard. A Development may qualify for no more than four (4) points total under this subclause. If the Development involves scattered sites, there must be green building features incorporated into each site in order to qualify

for these points.

(-a-) Enterprise Green Communities. The Development must incorporate all mandatory and optional items applicable to the construction type (i.e. New Construction, Rehabilitation, etc.) as provided in the most recent version of the Enterprise Green Communities Criteria found at <http://www.greencommunitiesonline.org>.

(-b-) LEED. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a LEED Certification, regardless of the rating level achieved (i.e., Certified, Silver, Gold or Platinum).

(-c-) ICC/ASHRAE - 700 National Green Building Standard. The Development must incorporate, at a minimum, all of the applicable criteria necessary to obtain a NGBS Green Certification, regardless of the rating level achieved (i.e. Bronze, Silver, Gold, or Emerald).

## EXHIBIT C

### TENANT SUPPORTIVE SERVICES

The tenant supportive services to be provided must include at least eight (8) points selected from the following list which are grouped primarily for organizational purposes. The Owner is not required to select a specific number of services from each section. The Owner may change, from time to time, the services offered; however, the overall points as selected at Application must remain the same. The services provided should be those that will directly benefit the Target Population of the Development. Tenants must be provided written notice of the elections made by the Owner.

#### (A) Transportation Supportive Services

- (i) shuttle, at least three days a week, to a grocery store and pharmacy and/or a major, big-box retailer that includes a grocery store and pharmacy, OR a daily shuttle, during the school year, to and from nearby schools not served by a school bus system for children who live at the Development (3.5 points);
- (ii) monthly transportation to community/social events such as mall trips, community theatre, bowling, organized tours, etc. (1 point);

#### (B) Children Supportive Services

- (i) Provide a High Quality Pre-Kindergarten (HQ Pre-K) program and associated educational space at the Development Site meeting the requirements of 10 TAC §11.101(b)(5)(C)(i)(I) of the Qualified Allocation Plan. (Half of the points required under 10 TAC §11.101(b)(7) of the Qualified Allocation Plan);
- (ii) 12 hours of weekly, organized, on-site services provided to K-12 children by a dedicated service coordinator or third-party entity. Services include after-school and summer care and tutoring, recreational activities, mentee opportunities, test preparation, and similar activities that promote the betterment and growth of children and young adults (3.5 points);

#### (C) Adult Supportive Services

- (i) 4 hours of weekly, organized, on-site classes provided to an adult audience by persons skilled or trained in the subject matter being presented, such as character building programs, English as a second language classes, computer training, financial literacy courses, health education courses, certification courses, GED preparation classes, resume and interview preparatory classes, general presentations about community services and resources, and any other course, class, or presentation that may equip residents with new skills that they may wish to develop (3.5 points);
- (ii) annual income tax preparation (offered by an income tax prep service) or IRS-certified VITA (Volunteer Income Tax Assistance) program (offered by a qualified individual) that also emphasizes how to claim the Earned Income Tax Credit (1 point);
- (iii) contracted career training and placement partnerships with local worksource offices, culinary programs, or vocational counseling services; also resident training programs that train and hire residents for job opportunities inside the development in areas like leasing, tenant

services, maintenance, landscaping, or food and beverage operation (2 points);

(iv) external partnerships for provision of weekly substance abuse meetings at the Development Site (1 point);

(D) Health Supportive Services

(i) Food pantry consisting of an assortment of non-perishable food items and common household items (i.e. laundry detergent, toiletries, etc.) accessible to residents at least on a monthly basis or upon request by a resident. While it is possible that transportation may be provided to a local food bank to meet the requirement of this resident service, the resident must not be required to pay for the items they receive at the food bank (2 points);

(ii) annual health fair provided by a health care professional(1 point);

(iii) weekly exercise classes (offered at times when most residents would be likely to attend) (2 points);

(iv) contracted onsite occupational or physical therapy services for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(E) Community Supportive Services

(i) partnership with local law enforcement and/or local first responders to provide quarterly on-site social and interactive activities intended to foster relationships with residents (such activities could include playing sports, having a cook-out, swimming, card games, etc.) (2 points);

(ii) Notary Services during regular business hours (§2306.6710(b)(3)) (1 point);

(iii) twice monthly arts, crafts, and other recreational activities (e.g. Book Clubs and creative writing classes) (1 point);

(iv) twice monthly on-site social events (i.e. potluck dinners, game night, sing-a-longs, movie nights, birthday parties, holiday celebrations, etc.) (1 point);

(v) specific case management services offered by a qualified Owner or Developer, qualified provider or through external, contracted parties for seniors, Persons with Disabilities or Supportive Housing (3 points);

(vi) weekly home chore services (such as valet trash removal, assistance with recycling, furniture movement, etc., and quarterly preventative maintenance including light bulb replacement) for Elderly Developments or Developments where the service is provided for Persons with Disabilities and documentation to that effect can be provided for monitoring purposes (2 points);

(vii) any of the programs described under Title IV-A of the Social Security Act (42 U.S.C. §§601, et seq.) which enables children to be cared for in their homes or the homes of relatives; ends the dependence of needy families on government benefits by promoting job preparation, work and marriage; prevents and reduces the incidence of unplanned pregnancies; and encourages the formation and maintenance of two-parent families (1 point);

(viii) a part-time resident services coordinator with a dedicated office space at the Development or a contract with a third-party to provide the equivalent of 15 hours or more of weekly resident supportive services at the Development (2 points);

(ix) provision, by either the Development Owner or a community partner, of an education tuition- or savings-match program or scholarships to residents who may attend college (2 points).

## EXHIBIT D

### FANNIE MAE RIDER TO REGULATORY AGREEMENT

THIS FANNIE MAE RIDER TO REGULATORY AGREEMENT (“Rider”) is attached to and forms a part of the Regulatory and Land Use Restriction Agreement (“Regulatory Agreement”), dated as of [June] 1, 2019, by and among Northgate Preservation, L.P. (“Borrower”), its permitted successors and assigns, the Texas Department of Housing and Community Affairs (“Issuer”) and The Bank of New York Mellon Trust Company, N.A. (“Trustee”), as Trustee.

1. Definitions. All capitalized terms used in this Rider have the meanings given to those terms in the Regulatory Agreement, the Financing Agreement or the Indenture, as applicable.

2. Applicability. This Rider shall amend and supplement the Regulatory Agreement. In the event any provision of this Rider conflicts with the Regulatory Agreement, this Rider shall supersede the conflicting provision of the Regulatory Agreement. This Rider shall apply in spite of the fact that the covenants, reservations and restrictions of the Regulatory Agreement run with the land and may be deemed applicable to any successor in interest to the Borrower.

3. Obligations not Secured by the Development. The Regulatory Agreement shall not constitute a mortgage, equitable mortgage, deed of trust, deed to secure debt or other lien or security interest in the Development. None of the obligations of the Borrower or any subsequent owner of the Development under the Regulatory Agreement shall be secured by a lien on, or security interest in, the Development. All such obligations are expressly intended to be and shall remain unsecured obligations. The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

4. Subordination. The terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 1A, 2, 3, 4, 10, 11, 12, and this Rider, are and shall at all times remain subject and subordinate, in all respects, to the liens, rights and interests created under the Loan Documents. Upon a conveyance or other transfer of title to the Development by foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan, the Person who acquires title to the Development pursuant to such foreclosure, deed in lieu of foreclosure or comparable conversion of the Loan (unless such Person is the Borrower or a Person related to the Borrower within the meaning of Section 144(a)(3) of the Code, in which event the Regulatory Agreement shall remain in full force and effect in its entirety) shall acquire such title free and clear of the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 1A, 2, 3, 4, 10, 11, 12, and this Rider and, from and after the date on which such Person acquires title to the Development, the terms, covenants and restrictions of the Regulatory Agreement, other than those set forth in Sections 1A, 2, 3, 4, 10, 11, 12, and this Rider, shall automatically terminate and be of no force and effect; provided that Sections 1A, 2, 3, 4, 10, 11, 12, and this Rider shall also terminate and be of no force or effect under the circumstances set forth in Section 11 of the Regulatory Agreement.

5. Obligations Personal. The Issuer agrees that no owner of the Mortgaged Property (including Fannie Mae) subsequent to the Borrower will be liable for, assume or take title to the Development subject to:

(a) any failure of any prior owner of the Development to perform or observe any representation or warranty, affirmative or negative covenant or other agreement or undertaking under the Regulatory Agreement; and

(b) the payment of any compensation or any accrued unpaid fees, costs, expenses or penalties otherwise owed by any prior owner of the Development under the Regulatory Agreement.

The Borrower and each subsequent owner of the Development shall be responsible under the Regulatory Agreement for its own acts and omissions occurring during the period of its ownership of the Development. All such liability and obligations shall be and remain personal to such person even after such person ceases to be the owner of the Development.

6. Sale or Transfer.

(a) Restrictions Not Applicable to Certain Transfers. Subject to Section 4 of this Rider, all provisions of the Regulatory Agreement regarding the sale or transfer of the Development or of any interest in the Borrower, including any requirement, limitation or condition precedent for any of (i) the consent of the Issuer or the Trustee to such transfer, (ii) an agreement by any transferee to abide by the requirements and restrictions of the Regulatory Agreement, (iii) transferee criteria or other similar requirements, (iv) an opinion of legal counsel and (v) the payment of any assumption fee, transfer fee, penalty or other charges, shall not apply to any of the following:

(1) any transfer of title to the Development to Fannie Mae or to a third party by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Development. No transfer of the Development shall operate to release the Borrower from its obligations under the Regulatory Agreement. Fannie Mae shall have the right to sell the Development to a purchaser ("Proposed Purchaser"), upon delivery to the Issuer of items (A), (B) and (D) as set forth in Section 10(a) of the Regulatory Agreement, with the prior written consent of the Issuer.

Provided the Issuer has received such items, the Issuer's prior written consent shall be given unless the Issuer determines that the Proposed Purchaser has events of noncompliance uncorrected during the corrective action period in accordance with Title 10, Part 1, Chapter 1, Subchapter C, Section 1.301 of the Texas Administrative Code and therefore considered an "Unacceptable Purchaser." The Issuer agrees that on or prior to the 10th day following receipt of the items described above, the Issuer shall provide Fannie Mae written notice confirming whether the Proposed Purchaser is, or is not, in compliance with the Issuer's tax exempt bond or low income housing tax credit program. The Issuer agrees to use its best efforts to respond to Fannie Mae as soon as possible following receipt of the required information. On or prior to the forty-fifth (45th) day following the receipt by the Issuer of such items described above, the Issuer shall provide to Fannie Mae either (i) written notice that the Proposed Purchaser is an Unacceptable Purchaser or (ii) the Issuer's written consent to the Proposed Purchaser. The Issuer hereby agrees that in the event Fannie Mae does not receive the Issuer's notice with respect to the Proposed Purchaser within the above 45-day period, the Issuer shall conclusively be deemed to have consented to a sale or transfer of the Development to the Proposed Purchaser under the Regulatory Agreement and the Financing Agreement, in which event Fannie Mae may sell or transfer the Development to the Proposed Purchaser solely upon delivery to the Issuer of the items described above. In the event the Issuer does not deliver to Fannie Mae on or prior to the end of the 45-day period described above its written notice that the Proposed Purchaser is an Unacceptable Purchaser, any and all title insurance companies requested to insure the transfer of title to the Development to the Proposed Purchaser shall be entitled to rely on an affidavit from Fannie Mae that no such notice was received prior to expiration of the 45-day period. If Fannie Mae does receive the Issuer's consent to the transfer, all title insurance companies shall be entitled to rely on a copy of such written notice;

(2) any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any additional indebtedness of the Borrower which is

originated by a lender for sale to Fannie Mae or guaranteed or otherwise credit enhanced by Fannie Mae; and

(3) provided that no Bonds are then Outstanding or all Bonds are to be simultaneously fully paid, redeemed or defeased, any execution and delivery of a mortgage, deed of trust, deed to secure debt or other lien by the Borrower to secure any indebtedness incurred by the Borrower which effectively refinances the Loan.

(b) Incurrence of Additional Indebtedness. All the provisions of the Regulatory Agreement relating to the incurrence of additional indebtedness, including but not limited to any requirement, limitation or condition precedent for the consent of the Issuer to such incurrence of additional indebtedness, will not apply to any "Supplemental Loan" or similar loan, originated by a Fannie Mae DUS lender and sold and/or assigned to Fannie Mae, which is secured by the Development and subordinate in priority of lien to the Loan, provided that written notice thereof shall have been provided to the Issuer in advance.

(c) Fannie Mae Rights to Consent Not Impaired. Nothing contained in the Regulatory Agreement shall affect any provision of the Security Instrument or any of the other Credit Enhancement Documents or Loan Documents which requires the Borrower to obtain the consent of Fannie Mae as a precondition to sale, transfer or other disposition of, or any direct or indirect interest in, the Development or of any direct or indirect interest in the Borrower, excluding transfers permitted by the Security Instrument.

(d) Conclusive Evidence. Any written consent to a sale or transfer obtained from the Issuer shall constitute conclusive evidence that the sale or transfer is not a violation of the transfer provisions of the Regulatory Agreement.

7. Damage, Destruction or Condemnation of the Development. In the event that the Development is damaged or destroyed or title to the Development, or any part thereof, is taken through the exercise or the threat of the exercise of the power of eminent domain, the Borrower shall comply with all applicable requirements of the Security Instrument and the other Loan Documents.

8. Regulatory Agreement Default. Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

(b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.

9. Amendments. Except as otherwise provided in Section 3 of the Regulatory Agreement, the Issuer shall not consent to any amendment, supplement to, or restatement of the Regulatory Agreement without the prior written consent of Fannie Mae. The Trustee shall send to Fannie Mae prior notice of any amendment made pursuant to Section 3 of the Regulatory Agreement where possible but in any event immediately following the execution of any such amendment.

10. Termination. The Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee, Fannie Mae and the Borrower upon receipt of a Favorable Opinion of Bond Counsel acceptable to the Issuer and the Trustee. So long as the Bonds have been redeemed or are redeemed within a reasonable period thereafter, the Regulatory Agreement shall terminate and be of no further force or effect from and



after the date of any transfer of title to the Development by foreclosure, deed in lieu of foreclosure or comparable conversion of any lien on the Development; provided, however, that the preceding provisions of this sentence shall cease to apply and the restrictions contained in the Regulatory Agreement shall be reinstated if, at any time subsequent to the termination of such provisions as the result of the foreclosure or the delivery of a deed in lieu of foreclosure or a similar event, the Borrower or any related person (within the meaning of Section 1.103-10(e) of the Regulations) obtains an ownership interest in the Development for federal income tax purposes.

11. 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 Fannie Mae and are entered into for the benefit of various parties, including Fannie Mae. Fannie Mae shall accordingly have contractual rights in the Regulatory Agreement and shall be entitled (but not obligated) to enforce, separately or jointly with the Issuer and/or the Trustee, or to cause the Issuer or the Trustee to enforce, the terms of the Regulatory Agreement. In addition, the Borrower and the Issuer intend that Fannie Mae be a third-party beneficiary of the Regulatory Agreement.

12. Copies of Notices under the Regulatory Agreement. Copies of all notices under the Regulatory Agreement shall be sent to the Loan Servicer at the address set forth below or to such other address as the Loan Servicer may from time to time designate:

Regions Bank  
1180 West Peachtree Street, 14th Floor  
Atlanta, Georgia 30309  
RE: \$19,000,000 Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019

13. Notices. Any notice to be given to Fannie Mae shall be sent to Fannie Mae at the address set forth below or to such other address as Fannie Mae may from time to time designate:

Fannie Mae  
1100 15th Street, N.W  
Drawer AM  
Washington, DC 20005  
Attention: Director, Multifamily Asset Management  
Telephone: (301) 204-8008  
Telecopy: (301) 280-2065  
RE: TDHCA Pass-Through Bonds; Northgate Village; Regions Bank

with a copy to:

Fannie Mae  
1100 15th Street, N.W  
Drawer AM  
Washington, DC 20005  
Attention: Vice President, Multifamily Operations  
Telephone: (301) 204-8422  
Telecopy: (202) 752-8369  
RE: TDHCA Pass-Through Bonds; Northgate Village; Regions Bank

## BOND PURCHASE AGREEMENT

\$19,000,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019

\_\_\_\_\_, 2019

Texas Department of Housing and  
Community Affairs  
P.O. Box 13941  
Austin, Texas 78711

Northgate Preservation, L.P.  
c/o Related Companies  
60 Columbus Circle, 18<sup>th</sup> Floor  
New York, New York 10023

Ladies and Gentlemen:

RBC Capital Markets, LLC (the “Underwriter”) offers to enter into the following agreement (the “Bond Purchase Agreement”) with the Texas Department of Housing and Community Affairs (the “Issuer”) and Northgate Preservation, L.P., a New York limited partnership (the “Borrower”), which, upon acceptance of this offer, will be binding upon the Issuer, the Borrower and the Underwriter. This offer is made subject to the Issuer’s and the Borrower’s acceptance on or before 5:00 p.m., Central time, today. If this offer is not timely accepted, it will thereafter be subject to withdrawal by the Underwriter upon written notice delivered to the Issuer and the Borrower at any time prior to the acceptance hereof by the Issuer and the Borrower.

Capitalized terms not otherwise defined herein shall have the meanings set forth in the Indenture (as hereinafter defined). For purposes of this Bond Purchase Agreement, (a) the term “Issuer Documents” means the Indenture, the Financing Agreement, the Regulatory Agreement, and this Bond Purchase Agreement, (b) the term “Borrower Documents” means the Financing Agreement, the Mortgage Note, the Subordinate Mortgage, the Regulatory Agreement, the Continuing Disclosure Agreement, this Bond Purchase Agreement, and any other document executed by the Borrower relating to the Bonds (defined below), (c) the term “Trustee Documents” means the Indenture, and (d) the term “Financing Documents” means, collectively (but without duplication), the Issuer Documents, the Borrower Documents, and the Trustee Documents.

### **Section 1. Purchase and Sale of the Bonds.**

Upon the terms and conditions and upon the basis of the representations and warranties herein set forth, the Underwriter hereby agrees to purchase from the Issuer, and the Issuer hereby agrees to sell to the Underwriter, all but not less than all of the Issuer’s \$19,000,000 Multifamily Housing Revenue Bonds (Pass Through – Northgate Village), Series 2019 (the “Bonds”) at a purchase price equal to 100% of the principal amount thereof plus accrued interest in the amount of \$ \_\_\_\_\_. The Issuer will deliver the Bonds to the order of the Underwriter (with CUSIP numbers printed thereon) against payment of the purchase price therefor in immediately available funds at 10:00 a.m., Central time, on the “Closing Date” as defined herein. The Bonds will mature on the date and will bear interest at the rate set forth on Schedule I attached hereto.

The Borrower agrees to pay to the Underwriter on the Closing Date, as compensation for services of the Underwriter hereunder, a fee equal to \$ \_\_\_\_\_ (the "Underwriter's Fee"). Such fee shall include the following costs: clearance charges, regulatory agencies' fees, computer services expenses, interest carrying charges, telephone and fax charges, and travel, but shall not include the cost of counsel to the Underwriter. The Underwriter's Fee shall be due and payable in immediately available funds on the Closing Date, solely and exclusively from funds provided by the Borrower.

Inasmuch as this purchase and sale represents a negotiated transaction, the Issuer and the Borrower acknowledge and agree that: (i) the transaction contemplated by this Bond Purchase Agreement is an arm's length, commercial transaction among the Issuer, the Borrower, and the Underwriter in which the Underwriter is acting solely as a principal and is not acting as a municipal advisor, financial advisor or fiduciary to the Issuer or the Borrower; (ii) the Underwriter has not assumed any advisory or fiduciary responsibility to the Issuer or the Borrower with respect to the transaction contemplated hereby and the discussions, undertakings and procedures leading thereto (irrespective of whether the Underwriter has provided other services or is currently providing other services to the Issuer or the Borrower on other matters); (iii) the Underwriter is acting solely in its capacity as an underwriter for its own account, (iv) the only obligations the Underwriter has to the Issuer or the Borrower with respect to the transaction contemplated hereby are expressly set forth in this Bond Purchase Agreement; and (v) the Issuer and the Borrower have each consulted their own legal, accounting, tax, financial and other advisors, as applicable, to the extent they have deemed appropriate. The parties acknowledge that the structure, terms and timing of the transaction have been determined by the Underwriter and the Borrower and presented to the Issuer for approval.

The Bonds shall be issued under the provisions of Chapter 2306, Texas Government Code, as amended (the "Act"). The Bonds shall be issued pursuant to the terms of the Indenture of Trust (the "Indenture") dated as of June 1, 2019, between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the "Trustee"). The Bonds are being issued for the purpose of funding a loan (the "Mortgage Loan") for the benefit of the Borrower, pursuant to the terms of a certain Financing Agreement dated as of June 1, 2019, among the Issuer, the Borrower, Regions Bank, an Alabama banking corporation (the "Lender") and the Trustee. The proceeds of the Mortgage Loan will be used to finance a portion of the cost of the acquisition, rehabilitation, renovation and equipping of the Project.

The Bonds will initially be collateralized by (i) the deposit into the Collateral Security Principal Account of the Collateral Security Fund under the Indenture of the proceeds received from the assignment to the Lender of the Mortgage Loan to be made by the Issuer to the Borrower and fully funded in an amount equal to the original principal amount of the Bonds on the date of issuance of the Bonds (such assigned Mortgage Loan being referred to herein as the "Assigned Loan"), and (ii) the deposit to the Collateral Security Interest Account of the Collateral Security Fund of Bond proceeds in an amount sufficient to pay the interest on the Bonds to but not including August 27, 2019 (the "Mandatory Redemption Date"). Upon the satisfaction of certain conditions set forth in the Indenture, the Trustee will use moneys on deposit in the Collateral Security Fund to acquire a Guaranteed Mortgage Pass-Through Certificate (the "Pass-Through Certificate"), backed by the Mortgage Loan on the Project, and to be issued, upon satisfaction of the conditions set forth in the Indenture, by the Federal National Mortgage Association ("Fannie Mae"). It is expected that the Pass-Through Certificate will be acquired by the Trustee prior to July 26, 2019 (the "First Payment Date"), and in any event prior to the Mandatory Redemption Date, unless such Mandatory Redemption Date is extended as provided in the Indenture. Principal and interest will initially be paid from funds (including accrued interest, if any) on deposit in the Collateral Security Fund until the month following the Purchase Date, at which time payments in an amount equal to the principal and interest paid on the Pass-Through Certificate will be passed through to Bondholders on each Payment Date. "Payment Date" means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to

the Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date on which a payment of principal, interest, and/or premium, if any, is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month, or the next Business Day if the 25th is not a Business Day, after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of an exchange of the Bonds for the Pass-Through Certificate pursuant to the Indenture, the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable current principal amount of the Pass-Through Certificate to or upon the order of the Issuer. The payment of interest on a Payment Date shall relate to the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the Final Payment Date. After the Purchase Date, any balance remaining in the Collateral Security Interest Account of the Collateral Security Fund, after application of moneys therein to pay any accrued interest on the Pass-Through Certificate or interest on the Bonds on the next Payment Date, as applicable, will be transferred to the Proceeds Fund. If the Pass-Through Certificate is not acquired by the Trustee prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the Bonds will be redeemed at a redemption price of par (the "Original Issue Price"), plus interest accrued on the Bonds to but not including the Mandatory Redemption Date (as such date may be extended under the Indenture) from moneys on deposit in the Collateral Security Fund under the Indenture.

It shall be a condition (a) to the obligations of the Issuer to sell and deliver the Bonds to the Underwriter, and (b) to the obligations of the Underwriter with respect to the Bonds, to purchase and accept delivery of and to pay for the Bonds, that the entire aggregate principal amount of the Bonds to be sold and delivered by the Issuer in accordance with this Section 1 shall be sold and delivered simultaneously by the Issuer and be purchased, accepted and paid for simultaneously by the Underwriter.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THE INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

IF THE PASS-THROUGH CERTIFICATE IS ISSUED BY FANNIE MAE AND ACQUIRED BY THE TRUSTEE AS COLLATERAL FOR THE BONDS, FANNIE MAE'S OBLIGATIONS WILL BE SOLELY AS PROVIDED IN THE PASS-THROUGH CERTIFICATE AND IN THE FANNIE MAE MBS PROSPECTUS SUMMARIZED AT APPENDIX G – "FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM" OF THE PRELIMINARY OFFICIAL STATEMENT AND IN THE FORM OF PROPOSED ADDITIONAL DISCLOSURE ADDENDUM ATTACHED TO THE PRELIMINARY OFFICIAL STATEMENT AT APPENDIX I. THE OBLIGATIONS OF FANNIE MAE UNDER THE PASS-THROUGH CERTIFICATE WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT AND WILL NOT BE A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT AND WILL NOT BE GUARANTEED BY THE FULL FAITH AND CREDIT OF FANNIE MAE OR THE UNITED STATES OF AMERICA.

On or before the Closing Date, the Issuer and the Borrower shall have delivered to the Underwriter the Official Statement completed with the information permitted to be omitted from the Preliminary Official Statement, dated \_\_\_\_\_, 2019 (the "Preliminary Official Statement") by Rule 15c2-12 under the Securities Exchange Act of 1934 (the "Rule") and such other amendments and supplements as shall have been approved by the Issuer, the Underwriter and the Borrower.

The Issuer and the Borrower hereby represent and warrant that the Preliminary Official Statement was deemed final by the Issuer and the Borrower as of its date, except for the omission of such information which is dependent upon the final pricing of the Bonds for completion, all as permitted to be excluded by the Rule. The Borrower has executed and delivered to the Underwriter a certificate in the form attached hereto as Exhibit C to evidence the foregoing.

The Underwriter acknowledges that the Issuer and the Borrower have not authorized or consented to (i) the sale of Bonds to any purchaser in connection with the initial public offering of the Bonds unless a copy of the Official Statement relating to the Bonds (the "Official Statement") is delivered to such purchaser not later than the settlement of such transaction, (ii) making any representations or providing any information to prospective purchasers of the Bonds in connection with the initial public offering and sale of the Bonds other than the information set forth in the Official Statement and any amendment thereto approved in writing by the Issuer and the Borrower, or (iii) any actions in connection with the public offering and sale of the Bonds in violation of applicable requirements of federal and state securities laws and any applicable requirements of the Municipal Securities Rulemaking Board and the Financial Industry Regulatory Authority.

## **Section 2. Representations and Warranties of the Issuer.**

The Issuer represents and warrants as of the date hereof to the Underwriter and the Borrower as follows:

(a) The Issuer is a public and official agency of the State, and has full legal right, power and authority (i) to enter into the Issuer Documents, (ii) to adopt the Bond Resolution dated May 23, 2019 authorizing the issuance of the Bonds (the "Bond Resolution"), (iii) to issue, sell and deliver the Bonds as provided herein and in the Indenture, (iv) to authorize the Trustee under the Indenture to use the proceeds of the Bonds to make the Mortgage Loan to provide for the acquisition, renovation, improvement and equipping of the Project, and (v) to carry out the transactions on its part contemplated by the Issuer Documents, as they may be amended or supplemented from time to time by the Issuer.

(b) The information in the Official Statement under the headings “THE ISSUER” and “NO LITIGATION” (insofar as the information under such captions applies to the Issuer) was, on the date thereof, and is, on the date hereof, true and correct and did not, on the date thereof, and does not, on the date hereof, contain any untrue statement of a material fact or omit to state a material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading.

(c) By adopting the Bond Resolution, the Issuer has duly authorized and approved the execution, delivery and use of the Official Statement (but by such authorization and approval, the Issuer makes no representations as to the accuracy or sufficiency of its contents, except as provided herein), has duly authorized and approved the execution and delivery of and the performance by the Issuer of the obligations on its part contained in the Issuer Documents, has duly authorized and approved the issuance, execution and delivery of, and the performance by the Issuer of its obligations under, the Bonds and has duly authorized and approved the consummation by it of all other transactions on its part contemplated by the Issuer Documents. The Bond Resolution has been duly adopted by the Issuer, has not been amended, modified or repealed and is in full force and effect on the date hereof.

(d) The Issuer is not in breach of or default under any applicable law or administrative regulation of the State or of the United States, or any applicable judgment or decree or any loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject which would impair in any material respect the performance of its obligations under the Issuer Documents.

(e) The execution and delivery by the Issuer of the Bonds and the Issuer Documents, compliance with the provisions of each thereof and the consummation of the transactions contemplated thereby will not conflict with or constitute a breach of or default under any law, administrative regulation, judgment, decree, loan agreement, note, resolution, agreement or other instrument to which the Issuer is a party or is otherwise subject; provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Mortgage Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

(f) All approvals, consents and orders of any governmental authority, board, agency or commission having jurisdiction which would constitute a condition precedent to the performance by the Issuer of its obligations under the Issuer Documents have been obtained or will be obtained on or before the Closing Date; provided, however, that the Issuer makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Mortgage Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

(g) There is no action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, pending, or to the best knowledge of the Issuer threatened in writing, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (i) the use of the Official Statement or the use of the proceeds of the Bonds to make the Mortgage Loan, (ii) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Issuer Documents, (iii) the tax-exempt status of the interest on

the Bonds or the accuracy or completeness of the Official Statement, (iv) the execution and delivery of the Issuer Documents or the Bonds, or (v) the power of the Issuer to carry out the transactions contemplated by the Bonds, the Official Statement or any of the Issuer Documents.

(h) The Bonds, when issued, authenticated and delivered in accordance with the Indenture and sold to the Underwriter as provided herein, will be validly issued and outstanding limited and special obligations of the Issuer, enforceable in accordance with their terms, subject to bankruptcy, insolvency, reorganization, moratorium and other similar laws affecting creditor's rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity, and entitled to the benefits of the Indenture.

(i) The Issuer Documents, when duly executed and delivered by the Issuer and the other parties thereto, and all other documents to be delivered by the Issuer in connection with the consummation of the transactions contemplated hereby and by the Official Statement and such Issuer Documents, when duly executed and delivered by the Issuer and the other parties thereto, will constitute valid, legal and binding limited obligations of the Issuer, enforceable in accordance with their terms, except as enforceability may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws affecting creditor's rights generally and further subject to the exercise of judicial discretion in accordance with general principles of equity.

(j) Any certificate signed by any official of the Issuer and delivered to the Underwriter shall be deemed to be a representation and warranty by the Issuer to the Underwriter as to the statements made therein.

(k) To the best of its knowledge, neither the Issuer nor anyone acting with its authorization on its behalf (other than the Underwriter) has, directly or indirectly, offered for sale or solicited any offer to acquire the Bonds or any security the offering of which would be deemed for purposes of the Securities Act of 1933, as amended, to be part of the offering of the Bonds contemplated hereby.

(l) The Bonds, the principal of and the interest thereon, are special limited obligations of the Issuer payable solely from the revenues and assets of the Issuer pledged under the Indenture and from no other revenues or assets of the Issuer. The Bonds do not constitute an indebtedness or obligation of the State, and neither the faith and credit nor the taxing power of the State is pledged to the payment of the principal of or interest on the Bonds. The Issuer has no taxing power which is available to pay the Bonds.

### **Section 3. Covenants of the Issuer and Certain Conditions and Acknowledgements.**

The Issuer covenants with the Underwriter as follows:

(a) The Issuer is and will be at the Closing Date duly organized and validly existing as a public and official agency duly organized and existing under the constitution and laws of the State with the power and authority under the constitution and laws of the State, to issue the Bonds and to execute, deliver and perform its obligations hereunder and under the Financing Agreement and the Indenture, to pledge the property described in the Indenture to be pledged thereby in the manner and to the extent therein set forth; all actions required for the issuance of the Bonds and the execution and delivery of, and the performance of its obligations under, this Bond Purchase Agreement and under the Financing Agreement, the Indenture and the Bonds have been, or as of the Closing Date will have been, duly and effectively taken; this Bond Purchase Agreement has been and the Financing Agreement and the Indenture will, as of the Closing Date, have been duly

executed, issued and delivered; and the Bonds will, as of the Closing Date, have been duly authorized, executed, issued and delivered.

(b) There is no action, suit, proceeding, inquiry or investigation at law or in equity or before or by any court, public board or body pending, or, to the best knowledge of the Issuer, threatened against or affecting the Issuer wherein an unfavorable decision, ruling or finding would adversely affect (i) the transactions contemplated by, or the validity or enforceability of, the Bonds, the Indenture, the Financing Agreement, or this Bond Purchase Agreement or (ii) the tax-exempt status of interest on the Bonds.

(c) The execution and delivery by the Issuer of the Bonds, the Indenture, the Financing Agreement and this Bond Purchase Agreement and the performance by the Issuer of its obligations thereunder (i) do not violate applicable provisions of the constitution, statutory laws or regulations of the State, (ii) do not violate its activating resolution or bylaws, (iii) do not breach or result in a default under any other agreement to which it is a party, and (iv) do not violate the terms of any judicial or administrative judgment, order, decree or arbitral decision that names the Issuer and is specifically directed to it or its properties, and no approval or other action by, or filing or registration with, any governmental authority or agency is required in connection therewith that has not been obtained or accomplished or will not be obtained or accomplished by the Closing Date (provided no representation or warranty is expressed as to any action required under federal or state securities or Blue Sky laws in connection with the sale of the Bonds by the Underwriter).

(d) The information relating to the Issuer contained in the Preliminary Official Statement and the Official Statement under the headings "THE ISSUER" and "NO LITIGATION" (to the extent that litigation affecting the Issuer is described under that heading) or incorporated by reference in the Preliminary Official Statement and the Official Statement or otherwise supplied in writing by the Issuer for inclusion therein does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(e) Each of the representations of the Issuer contained in the Financing Agreement and in the Indenture are and will, as of the Closing Date, be true and correct in all material respects and are hereby made to the Underwriter as if set forth herein.

(f) The Issuer will not take or omit to take any action, which action or omission might in any way result in the inclusion of the interest on the Bonds in gross income of the owners thereof for federal income tax purposes.

(g) The obligation of the Issuer under this Bond Purchase Agreement shall be subject to the Issuer having received such legal opinions, certificates, proceedings, instruments and other documents as, in the sole discretion of counsel to the Issuer, are necessary in order to satisfy, or evidence satisfaction of, the conditions precedent in the Indenture.

(h) The Underwriter acknowledges that the Issuer, its officers, counsel, advisors and agents, and employees and agents of any of the foregoing (each individually an "Issuer Party" and all collectively the "Issuer Parties") have not undertaken to furnish information to the Underwriter, or to ascertain the accuracy or completeness of any information that may have been furnished to the Underwriter by or on behalf of the Borrower relating to the operations, financial condition or future prospects of the Borrower or the Project and that none of the Issuer Parties



have made any representations concerning the accuracy or completeness of any information supplied to the Underwriter and relating to the Project. On the basis of the foregoing, the Issuer hereby consents to the Underwriter's lawful use of the Preliminary Official Statement and the Official Statement in connection with the offer, sale, and distribution of the Bonds.

#### **Section 4. Representations, Warranties and Agreements of the Borrower.**

The Borrower, as to itself and the Project, represents, warrants and agrees with the Underwriter and the Issuer as follows:

(a) The Borrower is duly organized and existing as a limited partnership under the laws of the State of New York, has full legal right, power and authority to own its properties and to conduct its business as described in the Official Statement and to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents and the Official Statement, and is duly qualified to do such business and is in good standing wherever such qualification and/or standing are required, including the State.

(b) By all necessary action, the Borrower has duly authorized and approved the execution and delivery of the Borrower Documents, and the performance by the Borrower of the obligations in connection with the issuance of the Bonds on its part contained in the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture, the Official Statement and the Borrower Documents in connection with the issuance of the Bonds.

(c) On the Closing Date, the Borrower Documents will constitute the valid, legal and binding obligations of the Borrower (assuming due authorization, execution and delivery by the respective other parties thereto, where necessary), enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

(d) Between the date of this Bond Purchase Agreement and the date which is 25 days after the Closing Date, the Borrower shall promptly notify the Underwriter of the institution of any action, suit, proceeding, inquiry or investigation, of which it becomes aware, seeking to prohibit, restrain or otherwise restrict the issuance of the Bonds, the execution, delivery and performance by the Borrower of the Borrower Documents or the use of the Official Statement in connection with the offering, sale or distribution of the Bonds.

(e) As of the date hereof and on the Closing Date, the information contained in the Preliminary Official Statement and the Official Statement under the headings "THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS," "CERTAIN BONDHOLDERS' RISKS" (but only with respect to those risks that expressly relate to the Borrower or the Project), or "NO LITIGATION – The Borrower" (as such information under such caption pertains to the Borrower) or incorporated by reference in the Preliminary Official Statement and the Official Statement or otherwise supplied in writing by the Borrower for inclusion therein does not contain any untrue statement of a material fact and does not omit to state a material fact necessary in order to make the statements made therein, in light of the circumstances under which they were made, not misleading.

(f) If between the date of this Bond Purchase Agreement and the date which is 25 days after the Closing Date an event occurs, that is known to the Borrower that would cause the section of the Preliminary Official Statement, the Official Statement and any amendments or supplements under the headings “THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” (but only with respect to those risks that expressly relate to the Borrower or the Project), or “NO LITIGATION – The Borrower” (as such information under such caption pertains to the Borrower) to contain an untrue statement of a material fact or omit to state a material fact necessary in order to make the statements therein, in light of the circumstances under which they were made, not misleading, the Borrower shall promptly notify the Underwriter, and, if in the opinion of the Underwriter such event requires an amendment of or supplement to the Official Statement, the Borrower, at the expense of the Borrower, will amend or supplement the Official Statement in a form and manner approved by the Issuer, the Borrower and the Underwriter; provided, however, if such event shall occur on or prior to the Closing Date, the Underwriter, in its sole discretion, shall have the right to terminate its obligations hereunder by written notice to the Issuer and the Borrower, and the Underwriter shall have no obligation to purchase and pay for the Bonds.

(g) To the best knowledge of the Borrower, after due and diligent inquiry, as of the date hereof, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, which violation or breach of or default would have a material adverse effect upon the transactions contemplated by this Bond Purchase Agreement, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Borrower Documents, and compliance with the provisions on the Borrower’s part contained therein, do not and will not conflict with or constitute on the part of the Borrower a violation or breach of or default under any constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound which breach or default would have a material adverse effect upon the transactions contemplated by this Bond Purchase Agreement, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents provided, however, that the Borrower makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Mortgage Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

(h) All consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or commission of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been or will be obtained prior to the Closing Date and are or will be in full force and effect prior to the Closing Date; provided,

however, that the Borrower makes no representation or warranty with respect to compliance with applicable state securities or Blue Sky laws or the registration of the Bonds or the Mortgage Note under the Securities Act of 1933, as amended, or the qualification of the Indenture under the Trust Indenture Act of 1939, as amended.

(i) As of the date hereof, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the knowledge of the Borrower, threatened against the Borrower, affecting the existence of the Borrower, involving the Project or seeking to restrain or enjoin the issuance, sale, execution or delivery of the Bonds or the financing of the Project, or in any way contesting or affecting as to the Borrower, the validity or enforceability of the Act, the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or any proceedings of the Borrower taken with respect to the sale, execution or delivery thereof, or the application of any moneys or security provided for the payment of the Bonds, or in any way contesting or challenging the completeness or accuracy of the Official Statement or any supplement or amendment thereto, or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby, or challenging the exclusion of interest on the Bonds from gross income for Federal income tax purposes; nor, to the best knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower's financial condition or operations or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

(j) The Borrower will furnish such information, execute such instruments and take such other action in cooperation with the Underwriter as the Underwriter may reasonably request in order (i) to qualify the Bonds for offer and sale under the Blue Sky or other securities laws and regulations of such states and other jurisdictions of the United States as the Underwriter may designate and (ii) to determine the eligibility of the Bonds for investment under the laws of such states and other jurisdictions, and will use its best efforts to continue such qualifications in effect so long as required for the distribution of the Bonds; provided, however, that the Borrower shall not be required to register as a dealer or broker of securities or execute a general or special consent to service of process or qualify to do business in any jurisdiction where it is not now so subject.

(k) Any certificate signed by the Borrower and delivered to the Underwriter, or to the Issuer pursuant to the Indenture or the Borrower Documents shall be deemed a representation and warranty by the Borrower to the Underwriter, and to the Issuer as to the statements made therein as of the date thereof.

(l) The Borrower will not take or omit to take any action, which action or omission will adversely affect the exclusion from gross income of interest on the Bonds for purposes of federal income taxation.

(m) The Borrower shall honor all other covenants contained in the Borrower Documents, which agreements are incorporated herein and made a part of this Bond Purchase Agreement; provided, however, that nothing herein shall be deemed to alter the non-recourse nature of any covenants which are, under the terms of the Borrower Documents, without recourse to the Borrower.

(n) The Borrower is not in default under any undertakings with respect to continuing disclosure requirements designed to comply with the Rule in connection with any issue of municipal securities issued on its behalf.

The execution and delivery of this Bond Purchase Agreement by the Borrower shall constitute a representation to the Underwriter and the Issuer that the representations and warranties contained in this Section 4 are true as of the date hereof.

## **Section 5. Indemnification.**

(a) The Borrower agrees to pay, defend, protect, indemnify, save and hold harmless the Issuer and the Underwriter and each past, present and future member, officer, director, official, employee and agent of the Issuer and the Underwriter and each person, if any, who controls any of the foregoing within the meaning of Section 15 of the Securities Act of 1933, as amended, or Section 20 of the Securities Exchange Act of 1934, as amended (collectively referred to herein as the “Indemnified Parties”), against any and all liabilities, losses, damages, costs, expenses (including reasonable attorneys’ fees), causes of action (whether in contract, tort or otherwise), suits, claims, demands and judgments of any kind, character and nature (collectively referred to herein as the “Liabilities”) caused by (i) the breach (or alleged breach) by the Borrower of any of its representations or warranties in this Bond Purchase Agreement or (ii) any untrue or misleading statement or alleged untrue or alleged misleading statement of a material fact contained in the Preliminary Official Statement or the Official Statement under the headings “THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” (but only with respect to those risks that expressly relate to the Borrower or the Project), and “NO LITIGATION – The Borrower,” or caused by any omission or alleged omission from the above-referenced sections of the Preliminary Official Statement or the Official Statement of any material fact necessary to be stated therein in order to make the statements made therein, in light of the circumstances under which they were made, not misleading, unless caused by the gross negligence or willful misconduct of the Indemnified Party seeking indemnification.

(b) Any Indemnified Party shall notify the Borrower of the existence of any Liability to which this indemnification obligation would apply and shall give to the Borrower an opportunity to defend the same at the Borrower’s expense and with counsel satisfactory to the Indemnified Party, provided that the Indemnified Party shall at all times also have the right to fully participate in the defense. If there may be legal defenses available to the Indemnified Party that are in conflict with those available to the Borrower or if the Borrower shall, after this notice and within a period of time necessary to preserve any and all defenses to any claim asserted, fail to assume the defense or to employ counsel for that purpose satisfactory to the Indemnified Party, the Indemnified Party shall have the right, but not the obligation, to undertake the defense of, and to compromise or settle the claim or other matter on behalf of, for the account of, and at the risk of, the Borrower, provided that any compromise or settlement shall be entered into only with the consent of the Borrower.

(c) Except with respect to the Issuer (including its past, present and future officers, directors, members, employees, counsel or agents), in order to provide for just and equitable contribution in circumstances in which the indemnity provided for in paragraph (b) of this Section 5 is for any reason held to be unavailable (other than a holding to the effect that the specific circumstances are not the subject of the indemnity), the Borrower and the Indemnified Party shall contribute proportionately to the aggregate Liabilities to which the Borrower and the Indemnified Party may be subject, so that the Indemnified Party is responsible for that portion represented by the percentage that the fees paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds bear to the aggregate offering price of the Bonds, with the Borrower responsible for the balance; provided, however, that in no case shall the Indemnified Party be responsible for any amount in excess of the fees

paid by the Borrower to the Indemnified Party in connection with the issuance and administration of the Bonds.

(d) The Indemnified Parties, other than the Issuer and the Underwriter, shall be considered to be third party beneficiaries of this Bond Purchase Agreement for purposes of this Section 5. The provisions of this Section 5 will be in addition to all liability that the Borrower may otherwise have and shall survive any termination of this Bond Purchase Agreement, the offering and sale of the Bonds and the payment or provisions for payment of the Bonds.

(e) The indemnification hereunder shall be in addition to, and shall not limit, any indemnity granted by the Borrower pursuant to the Financing Agreement, the Regulatory Agreement or any other document.

## **Section 6. Disclosure Matters.**

The Issuer and the Borrower acknowledge that the Underwriter is required to comply with the requirements of the Rule in connection with the offer and sale of the Bonds and each agrees to cooperate (at the cost and expense of the Borrower) with the Underwriter so as to enable the Underwriter to comply with the Rule. To this end:

(a) The Borrower has delivered to the Underwriter the Official Statement that the Borrower deemed final as of its date, except for the omission of no more than the following information: the offering price(s), interest rate(s), selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings, and other terms of the Bonds depending on such matters (collectively, the "Permitted Omissions").

(b) If, during the period from the date hereof to and including the date as of which the Official Statement is available to any person from a nationally recognized municipal securities information repository, but in no case less than 25 days following the Closing Date, any event occurs as a result of which the Official Statement for the Bonds as then amended or supplemented might include an untrue statement of material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, the Issuer, if such event relates to the information included in the Official Statement under the captions "THE ISSUER" and "NO LITIGATION" (insofar as such information under such caption pertains to the Issuer), or the Borrower, if such event relates to the captions "THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS," "CERTAIN BONDHOLDERS' RISKS" (but only with respect to those risks that expressly relate to the Borrower or the Project), or "NO LITIGATION – The Borrower" (insofar as such information under such caption pertains to the Borrower), shall promptly notify the Underwriter thereof and shall (in either case, at the expense of the Borrower), upon the request of the Underwriter, prepare and deliver to the Underwriter as many copies of an amendment or supplement which will correct such statement or omission as the Underwriter may reasonably request.

(c) On or before the date which is five business days after the date hereof (or such earlier date as is necessary to accompany any confirmation that requests payment for a Bond), the Issuer agrees to deliver or cause to be delivered to the Underwriter, at the expense of the Borrower, as many copies of the Official Statement as the Underwriter may reasonably request.

## **Section 7. Closing.**

At 10:00 a.m., Central time, on \_\_\_\_\_, 2019, or at such time on such earlier or later date as shall be agreed upon in writing by the Issuer, the Borrower, and the Underwriter (the "Closing Date"),

the Issuer will deliver or cause to be delivered, the Bonds in definitive form, duly executed and authenticated by the Trustee. Delivery of the Bonds shall be made at the offices of the Trustee (or such other place upon which the Underwriters and the Issuer mutually agree) which shall hold the Bonds as custodian for The Depository Trust Company, 55 Water Street, New York, New York 10041 (“DTC”) under its “FAST” system. Subject to the terms and conditions hereof, the Issuer and the Borrower shall deliver at the offices of Bracewell LLP, Austin, Texas (“Bond Counsel”), the other documents and instruments to be delivered pursuant to this Bond Purchase Agreement (the “Closing Documents”), and the Underwriter shall accept delivery of the Bonds and Closing Documents and pay the purchase price for the Bonds as set forth in Section 1 above by wire transfer, to the Trustee, in immediately available federal funds. Immediately following such payment and acceptance, the Underwriter shall receive its fee with respect to the Bonds in the amount set forth in Section 1 above by wire transfer from the Trustee in immediately available federal funds to the order of the Underwriter, in such manner as shall be agreed upon by the Borrower and the Underwriter. This delivery and payment is herein called the “Closing” and the date on which the Closing occurs is herein called the “Closing Date.” The Bonds shall be prepared and delivered as fully registered Bonds without coupons in the denominations set forth in the Official Statement or multiples thereof. One fully registered Bond in the total aggregate principal amount of the Bonds, bearing a proper, duly assigned CUSIP number, will be issued initially in the name of Cede & Co., as nominee of DTC.

#### **Section 8. Closing Conditions.**

The Underwriter has entered into this Bond Purchase Agreement in reliance upon representations, warranties and agreements of the Issuer and the Borrower contained herein, in reliance upon the representations, warranties and agreements to be contained in the documents and instruments to be delivered at the Closing and upon the performance by the Issuer and the Borrower of their obligations hereunder, both as of the date hereof and as of the Closing Date. Accordingly, the Underwriter’s obligations under this Bond Purchase Agreement to purchase, to accept delivery of and to pay for the Bonds shall be subject to the performance by the Issuer and the Borrower of their obligations to be performed by them hereunder at or prior to the Closing, and to the accuracy in all material respects of the representations and warranties of the Issuer and of the Borrower contained herein as of the date hereof and as of the Closing as if made on the Closing Date, and shall also be subject to the following additional conditions:

(a) At the time of the Closing, the Bond Resolution shall have been duly approved and adopted by the Issuer and shall be in full force and effect and each of the Financing Documents shall have been duly authorized, executed and delivered, and shall not have been amended, modified or supplemented, except as may have been agreed to in writing by the Underwriter and there shall have been taken in connection therewith and in connection with the issuance of the Bonds all such actions as, in the opinion of Bond Counsel and counsel for the Underwriter, shall be necessary and appropriate in connection with the transactions contemplated hereby.

(b) The Underwriter may terminate this Bond Purchase Agreement by notification to the Issuer and the Borrower if at any time subsequent to the date hereof and at or prior to the Closing:

(i) (A) legislation shall be enacted by the Congress of the United States or adopted by the Senate or House of Representatives of the United States, or recommended to the Congress for passage by the President of the United States, or favorably reported for passage to the Senate or House of Representatives by any committee of either such body to which such legislation has been referred for consideration or by a conference committee of such bodies, (B) a decision shall be rendered by a court of the United States or by the Tax Court of the United States, (C) a ruling, regulation or official action shall be rendered by or on behalf of the United States, or (D) a ruling,

regulation or official action shall be issued, in any manner, including by pronouncement, press release or any other form of notice, by or on behalf of the Treasury Department of the United States, the Internal Revenue Service or another governmental agency of the United States or by or on behalf of any member of the Senate or House of Representatives of the United States in any such instance with respect to federal taxation of interest received on obligations of the general character of the Bonds and which (1) in the reasonable opinion of counsel for the Underwriter, would have or proposes action which would have the effect of making such interest includable in gross income for federal income tax purposes or (2) which, in the reasonable opinion of the Underwriter, would materially adversely affect the marketability of or the market price for the Bonds;

(ii) between the date hereof and the Closing, payment for and delivery of the Bonds is rendered impossible because (A) trading in securities generally shall have been suspended on the New York Stock Exchange or a general banking moratorium shall have been established by Federal or New York authorities or (B) a war involving the United States shall have been declared, or a national emergency, or any other outbreak or escalation of hostilities, or another national or international calamity shall have occurred, the effect of any of which, in the reasonable judgment of the Underwriter, materially adversely affects the marketability of the Bonds (it being agreed by the parties none of the foregoing events exist as of the date hereof);

(iii) any event shall occur or exist which, in the reasonable judgment of the Underwriter, either makes untrue or incorrect in any material respect any statement or information contained in the Official Statement, or has the effect of constituting the omission from the Official Statement, of any material fact which should have been reflected therein for the purpose for which the Official Statement is to be used in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading, and the Borrower and the Issuer do not agree to supplement the Official Statement;

(iv) any fact or event shall exist or have existed that, in the Underwriter's reasonable judgment, requires or has required an amendment of or a supplement to the Official Statement, which in the reasonable opinion of the Underwriter, would materially and adversely affect the marketability of or the market price for the Bonds, and the Borrower and the Issuer do not agree to supplement the Official Statement;

(v) legislation shall be enacted, or any action shall be taken by the Securities and Exchange Commission, which, in the reasonable opinion of counsel for the Underwriter, has or may have the effect of requiring the contemplated distribution of the Bonds to be registered under the Securities Act of 1933, as amended, or the Indenture to be qualified as an indenture under the Trust Indenture Act of 1939, as amended;

(vi) there shall have occurred, in the reasonable judgment of Underwriter, a material adverse change in the capital markets which makes the sale or financing contemplated hereby impossible on the terms, manner and basis contemplated by the Bond Resolution and mutually agreed to by the Issuer, Underwriter and the Borrower;

(vii) there shall have occurred any materially adverse change in the affairs or financial condition of the Issuer or the Borrower which makes sale of the Bonds impossible on the terms contemplated by the Bond Resolution and mutually agreed to by the Issuer, Underwriter and the Borrower;

(viii) there shall have occurred or any notice shall have been given of any intended review, downgrading, suspension, withdrawal, or negative change in credit watch status by any national rating service to any rating of the Bonds or the government of the United States which, in the reasonable judgment of the Underwriter, materially adversely effects the value or marketability of the Bonds; or

(c) At or prior to the Closing, the Underwriter shall receive the following documents:

(i) an approving opinion of Bracewell LLP, Bond Counsel, addressed to the Issuer and the Underwriter, dated the Closing Date substantially in the form attached as Appendix E to the Official Statement;

(ii) an opinion of the Texas Attorney General as to the legality and validity of the Bonds dated the date of its approval of the Bonds;

(iii) opinions and/or letters, dated the Closing Date and addressed to the Underwriter and to such other parties as may be appropriate, of

(A) Bracewell LLP, substantially in the form attached hereto as Exhibit A;

(B) Borrower's Counsel, substantially in the form attached hereto as Exhibit B; and

(C) Counsel to the Underwriter, as to such matters as the Underwriter may reasonably request.

(iv) a certificate, dated the Closing Date and signed on behalf of the Issuer, to the effect that:

(A) the Issuer has not received notice of any pending, nor to the Issuer's actual knowledge is there any threatened, action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (1) the use of the Official Statement, (2) the use of the proceeds of the Bonds to make the Mortgage Loan, (3) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Issuer Documents, (4) the tax exempt status of the interest on the Bonds, (5) the accuracy or completeness of the Official Statement under the headings "THE ISSUER" and "NO LITIGATION" (but only as to information under such caption relating to the Issuer), (6) the execution and delivery by the Issuer of the Issuer Documents or the Bonds, or (7) the power of the Issuer to carry out the transactions on its part contemplated in the Issuer Documents;

(B) to the best knowledge and belief of the persons signing the certificate, the sections of the Official Statement under the headings "THE ISSUER" and "NO LITIGATION" (as to the Issuer) do not contain any untrue statement of a material fact or omit to state any material fact necessary in order to make the statements contained therein, in light of the circumstances under which they were made, not misleading; and



(C) the Issuer has complied with all the covenants and satisfied all the conditions on its part to be performed or satisfied at or prior to the Closing Date, and the representations and warranties of the Issuer contained herein and in each of the Bond Documents to which it is a party are true and correct as of the Closing Date;

(v) a certificate of Fannie Mae dated the Closing Date substantially in the form set forth in Exhibit D hereto, which certificate shall be provided to the Underwriter and the Issuer, stating that Fannie Mae has provided the link which includes a template of the Fannie Mae MBS Prospectus (Multifamily Fixed-Rate Yield Maintenance) set forth in the first paragraph under the caption “APPENDIX G – FANNIE MAE MORTGAGE BACKED SECURITIES PROGRAM” in the Preliminary Official Statement and the Official Statement; if the Pass-Through Certificate had been issued by Fannie Mae on the Closing Date, the disclosure in the Additional Disclosure Addendum, provided in connection with the Pass-Through Certificate, will be substantially the same in all material respects as the Additional Disclosure provided in Appendix I in the Official Statement; and Fannie Mae has authorized the inclusion of such information in the Preliminary Official Statement and the Official Statement for use in connection with the marketing of the Bonds.

(vi) a certificate of the Lender dated the Closing Date, which certificate shall be provided to the Underwriter and the Issuer, stating that the Lender has provided the information under the caption “APPENDIX H – TERM SHEET” in the Preliminary Official Statement and Official Statement, that the information under such caption in the Preliminary Official Statement and the Official Statement is accurate as of the date of the Preliminary Official Statement and as of the date of the Official Statement, respectively, and as of the Closing Date, and that the Lender has authorized the inclusion of such information in the Preliminary Official Statement and the Official Statement for use in connection with the marketing of the Bonds.

(vii) an executed copy of the Tax Exemption Agreement, which will include facts, estimates and circumstances and reasonable expectations pertaining to Section 148 of the Code to support the conclusion that none of the Bonds will be an “arbitrage bond”;

(viii) a certificate of the Borrower, dated the Closing Date, to the effect that (A) each of the representations and warranties set forth in each of the Borrower Documents (including this Bond Purchase Agreement) is true and correct in all material respects on the Closing Date with the same effect as if made on the Closing Date, (B) no event has occurred since the date of the Official Statement to cause the information in the Official Statement under the captions “THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” (but only with respect to those risks that expressly relate to the Borrower or the Project), or “NO LITIGATION – The Borrower” (as such information under such caption pertains to the Borrower) to contain an untrue statement of a material fact, or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading, and (C) the Borrower has complied with all agreements and satisfied all the conditions on its part to be performed or satisfied under the Borrower Documents at or prior to the Closing Date;

(ix) counterpart originals or certified copies of each of the Financing Documents;

(x) written evidence satisfactory to the Underwriter that Moody’s Investors Service, Inc. has issued a rating of “Aaa” for the Bonds, and such rating shall be in effect on the Closing Date;

(xi) such agreements, certificates and opinions as reasonably requested by the Underwriter to evidence the closing of the Mortgage Loan;

(xii) the Borrower's 15c2-12 Certificate, duly executed by the Borrower substantially in the form set forth in Exhibit C hereto;

(xiii) an opinion of McCall, Parkhurst & Horton LLP and Mahomes Bolden PC, Co-Disclosure Counsel to the Issuer, in form and substance satisfactory to the Issuer; and

(xiv) such additional legal opinions, certificates (including any certificates necessary or desirable in order to establish the exclusion of the interest on the Bonds from gross income for federal income tax purposes), instruments and other documents as the Underwriter may reasonably request to evidence the truth and accuracy, as of the Closing Date, of the Issuer's representations herein and in the Official Statement and the due performance or satisfaction by the Issuer at or prior to such date of all agreements then to be performed, and all conditions then to be satisfied by the Issuer.

If the obligations of the Underwriter shall be terminated for any reason permitted by this Bond Purchase Agreement, neither the Underwriter, the Borrower nor the Issuer shall be under any further obligation hereunder.

#### **Section 9. Expenses.**

(a) The Underwriter shall be under no obligation to pay, and the Borrower hereby agrees to pay, any expenses incident to the performance of the Issuer's obligations hereunder, including, but not limited to, the costs of printing and mailing the Official Statement; the fees and expenses of Issuer's counsel, including bond counsel, and Borrower's counsel; the fees and expenses of the Trustee and its counsel; and the fees and disbursements of any other experts or consultants retained by the Issuer or the Borrower; the fees of rating agencies in connection with the rating of the Bonds; the Underwriter's Fee and the fees and expenses of counsel to the Underwriter; and all other expenses in connection with the public offering and sale of the Bonds. Notwithstanding the foregoing, the Issuer shall have no obligation to pay any fees, expenses or costs associated with or resulting from the issuance and delivery of the Bonds, other than from the proceeds of the Bonds. The Borrower shall also pay any expenses (included in the expense component of the Underwriter's discount) incurred by the Underwriter which are incidental to implementing this Bond Purchase Agreement and the issuance of the Bonds, including, but not limited to, meals, transportation and lodging, if any, and any other miscellaneous closing costs.

(b) The Borrower acknowledges that the Underwriter will pay from the Underwriter's expense allocation of the underwriting discount the applicable per bond assessment charged by the Municipal Advisory Council of Texas, a non-profit corporation whose purpose is to collect, maintain and distribute information relating to issuing entities of municipal securities. An employee of the Underwriter serves on the Board of the Municipal Advisory Council of Texas.

(c) The Borrower acknowledges that it has had an opportunity, in consultation with such advisors as it may deem appropriate, if any, to evaluate and consider the fees and expenses being incurred in connection with the issuance of the Bonds. The Issuer and the Borrower acknowledge that the Underwriting Fee will pay or reimburse the Underwriter for various expenses incurred by the Underwriter which are incidental to implementing this Bond Purchase Agreement and the issuance and purchase of the Bonds.

**Section 10. Notices.**

Any notice or other communication to be given to the Issuer or the Borrower may be given by mailing the same to each of them at the respective addresses set forth on the cover hereof, and any notice or other communication to be given to the Underwriter may be given by mailing the same to RBC Capital Markets, LLC, 100 2<sup>nd</sup> Avenue South, Suite 800, St. Petersburg, FL 33701-4337; Attention: Helen H. Feinberg.

**Section 11. Parties in Interest.**

This Bond Purchase Agreement is made solely for the benefit of the Issuer, the Borrower and the Underwriter (including any successor or assignees of the Issuer or Underwriter), and, except as provided in Section 5 hereof, no other party or person shall acquire or have any right hereunder or by virtue hereof.

**Section 12. Amendments.**

This Bond Purchase Agreement may not be amended without the written consent of the Issuer, the Borrower and the Underwriter.

**Section 13. Survival of Representations and Warranties.**

The representations and warranties of the Issuer and the Borrower shall not be deemed to have been discharged, satisfied or otherwise rendered void by reason of the Closing and regardless of any investigations made by or on behalf of the Underwriter (or statements as to the results of such investigations) concerning such representations and statements of the Issuer and the Borrower and regardless of delivery of and payment for the Bonds.

**Section 14. Execution in Counterparts.**

This Bond Purchase Agreement may be executed by the parties hereto in separate counterparts, each of which when so executed and delivered shall be an original, but all such counterparts shall together constitute but one and the same instrument.

**Section 15. No Prior Agreements.**

This Bond Purchase Agreement supersedes and replaces all prior negotiations, agreements and understandings between the parties hereto in relation to the sale of Bonds for the Issuer and the Borrower.

**Section 16. Effective Date.**

This Bond Purchase Agreement shall become effective and binding upon the respective parties hereto upon the execution of the acceptance hereof by the Issuer and the Borrower and shall be valid and enforceable as of the time of such acceptance.

**Section 17. Governing Law.**

This Bond Purchase Agreement shall be governed by the laws of the State without giving effect to the conflict of law principles of the State.

## **Section 18. No Personal Liability of Issuer.**

The Issuer and none of the members of the Issuer, nor any officer, agent or employee of the Issuer, shall be charged personally by the Underwriter with any liability, or be held liable to the Underwriter under any term or provision of this Bond Purchase Agreement, or because of execution or attempted execution, or because of any breach or attempted or alleged breach of this Bond Purchase Agreement.

## **Section 19. Establishment of Issue Price.**

Notwithstanding any provision of this Bond Purchase Agreement to the contrary, the following provisions related to the establishment of the issue price of the Bonds apply:

(a) *Definitions.* For purposes of this Section, the following definitions apply:

(i) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than a Tax Law Underwriter or a Related Party to a Tax Law Underwriter.

(ii) “Related Party” means any two or more persons who are subject, directly or indirectly, to (A) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another), (B) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (C) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(iii) “Sale Date” means the date of execution of this Bond Purchase Agreement by all parties.

(iv) “Tax Law Underwriter” means, with respect to each Issue of the Bonds, (A) any person that agrees pursuant to a written contract with the Issuer to participate in the initial sale of such Issue of the Bonds to the Public and (B) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (A) to participate in the initial sale of such Issue of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

(b) *Issue Price Certificate.* The Underwriter agrees to assist the Issuer in establishing the issue price of the Bonds and to execute and deliver to the Issuer at Closing an “issue price” or similar certificate relating to each Issue of the Bonds, together with the supporting pricing wires or equivalent communications, substantially in the form attached hereto as Exhibit E, with such modifications as may be appropriate or necessary, in the reasonable judgment of the Underwriter, the Issuer and Bond Counsel, to accurately reflect, as applicable, the sales price or prices or the initial offering price or prices to the Public of the Bonds (the “Issue Price Certificate”).

(c) *Public Offering.* The Underwriter confirms that, on the Sale Date, the Underwriter offered each Issue of the Bonds to the Public at the offering price or prices (each, an “Initial Offering Price”), or at the corresponding yield or yields, set forth in Schedule I attached hereto.

(d) *10% Test.* Except as set forth in the Issue Price Certificate, the Issuer will determine the issue price of the Bonds based on the first price at which 10% of the Bonds is sold to the Public (the “10% Test”) (if different interest rates apply within a maturity, each separate CUSIP number within that maturity will be subject to the 10% Test). The Issue Price Certificate will confirm if the issue price will be the applicable Initial Offering Price because the 10% Test was satisfied as of the Sale Date.

(e) *Hold-The-Offering-Price Rule.* The Issue Price Certificate will confirm if the 10% Test was not satisfied as of the Sale Date and, if such is the case, the Issuer and the Underwriter agree that the restrictions in the next sentence will apply, which will allow the Issuer to treat the Initial Offering Price to the Public of each the Bonds as the issue price of the Bonds (the “Hold-the-Offering-Price Rule”). If the 10% Test was not satisfied as of the Sale Date, the Underwriter will neither offer nor sell unsold Bonds to any person at a price that is higher than the applicable Initial Offering Price of the Bonds during the period starting on the Sale Date and ending on the earlier of the following:

(i) the close of the fifth business day after the Sale Date; or

(ii) the date on which the Tax Law Underwriters have sold at least 10% of the Bonds to the Public at a price that is no higher than the Initial Offering Price of the Bonds.

The Underwriter will promptly advise the Issuer when the Tax Law Underwriters have sold 10% of the Bonds to the Public at a price that is no higher than the applicable Initial Offering Price of the Bonds, if that occurs prior to the close of the fifth business day after the Sale Date. On or after the sixth business day after the Sale Date, if requested by the Issuer or Bond Counsel, the Underwriter also will promptly confirm that the Tax Law Underwriters have complied with the Hold-the-Offering-Price Rule. If at any time the Underwriter becomes aware of any noncompliance by a Tax Law Underwriter with respect to the Hold-the-Offering-Price Rule, the Underwriter will promptly report such noncompliance to the Issuer.

(f) *Matters Relating to Certain Agreements.* The Underwriter confirms that any selling group agreement and each retail distribution agreement to which the Underwriter is a party relating to the initial sale of an Issue of the Bonds to the Public, together with related pricing wires, contains or will contain language obligating the Underwriter, each dealer who is a member of any selling group, and each broker-dealer that is a party to any such retail distribution agreement, as applicable, to (i) report the prices at which it sells to the Public the unsold Bonds of each maturity allotted to it until it is notified by the Underwriter that either the 10% Test has been satisfied as to the Bonds of that maturity or all Bonds of that maturity have been sold to the Public and (ii) comply with the Hold-the-Offering-Price Rule, if applicable, in each case if and for so long as directed by the Underwriter and as set forth in the relating pricing wires.

The Issuer acknowledges that, in making the representation that the Underwriter will comply with the Hold-the-Offering-Price Rule with respect to any Bonds, the Underwriter is relying on (A) in the event a selling group has been created in connection with the sale of the Issue of the Bonds to the Public, the agreement of each dealer who is a member of the selling group to comply with the Hold-the-Offering-Price Rule, as set forth in a selling group agreement and the related pricing wires, and (B) in the event that

an Underwriter is a party to a retail distribution agreement that was employed in connection with the sale of an issue of the Bonds, the agreement of each broker-dealer that is a party to such agreement to comply with the Hold-the-Offering-Price Rule, as set forth in the retail distribution agreement and the related pricing wires. The Issuer further acknowledges that each Tax Law Underwriter will be solely liable for its failure to comply with its agreement regarding the Hold-the-Offering-Price Rule and that no Tax Law Underwriter will be liable for the failure of any other Tax Law Underwriter to comply with its corresponding agreement regarding the Hold-the-Offering-Price Rule as applicable to an Issue of the Bonds.

(g) *Sale to Related Party not a Sale to the Public.* The Underwriter acknowledges that sales of any Bonds to any person that is a Related Party to a Tax Law Underwriter do not constitute sales to the Public for purposes of this Section.

## **Section 20. Underwriter Not Engaged with Foreign Terrorist Organizations.**

The Underwriter hereby verifies that it and its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, do not boycott Israel and, to the extent this Bond Purchase Agreement is a contract for goods or services, will not boycott Israel during the term of this Bond Purchase Agreement. The foregoing verification is made solely to comply with Section 2270.002, Texas Government Code, and to the extent such Section does not contravene applicable Federal law. As used in the foregoing verification, ‘boycott Israel’ means refusing to deal with, terminating business activities with, or otherwise taking any action that is intended to penalize, inflict economic harm on, or limit commercial relations specifically with Israel, or with a person or entity doing business in Israel or in an Israeli-controlled territory, but does not include an action made for ordinary business purposes. The Underwriter understands ‘affiliate’ to mean an entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

The Underwriter represents that neither it nor any of its parent company, wholly- or majority-owned subsidiaries, and other affiliates is a company identified on a list prepared and maintained by the Texas Comptroller of Public Accounts under Section 2252.153 or Section 2270.0201, Texas Government Code, and posted on any of the following pages of such officer’s internet website:

<https://comptroller.texas.gov/purchasing/docs/sudan-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/iran-list.pdf>,

<https://comptroller.texas.gov/purchasing/docs/fto-list.pdf>.

The foregoing representation is made solely to comply with Section 2252.152, Texas Government Code, and to the extent such Section does not contravene applicable Federal law and excludes the Underwriter and each of its parent company, wholly- or majority-owned subsidiaries, and other affiliates, if any, that the United States government has affirmatively declared to be excluded from its federal sanctions regime relating to Sudan or Iran or any federal sanctions regime relating to a foreign terrorist organization. The Underwriter understands “affiliate” to mean any entity that controls, is controlled by, or is under common control with the Underwriter and exists to make a profit.

(Remainder of Page Intentionally Left Blank)

If the foregoing is in accordance with your understanding of this Bond Purchase Agreement please sign and return to us by email your acceptance hereof, whereupon it will become a binding agreement among the Issuer, the Borrower and the Underwriter in accordance with its terms.

Very truly yours,

**RBC CAPITAL MARKETS, LLC,**  
as Underwriter

By: \_\_\_\_\_  
Helen H. Feinberg  
Managing Director

(Issuer's Signature Page to Bond Purchase Agreement)

ACCEPTED at \_\_\_\_\_, Texas at \_\_\_\_\_ .m. Central Time this \_\_\_ day of \_\_\_\_\_, 2019.

**TEXAS DEPARTMENT OF HOUSING  
AND COMMUNITY AFFAIRS,**  
as Issuer

By: \_\_\_\_\_  
Name: J.B. Goodwin  
Title: Chair

(SEAL)

ATTEST:

By: \_\_\_\_\_  
Name: James B. Eccles  
Title: Secretary



(Borrower's Signature Page to Bond Purchase Agreement)

ACCEPTED at \_\_\_\_\_, \_\_\_\_\_ at \_\_\_\_\_ .m. \_\_\_\_\_ Time this \_\_\_\_ day of \_\_\_\_\_, 2019.

**NORTHGATE PRESERVATION, L.P.,**  
a New York limited partnership

By: Northgate Preservation GP, LLC,  
a New York limited liability company  
its General Partner

By: \_\_\_\_\_  
Matthew Finkle, Vice President

**SCHEDULE I**

**AMOUNT, MATURITY DATE, INTEREST RATE AND PRICE**

<b>Principal Amount</b>	<b>Maturity Date</b>	<b>Interest Rate</b>	<b>Price</b>
\$19,000,000	July 1, 2036	[ ]%	[ ]%

**EXHIBIT A**

**FORM OF SUPPLEMENTAL OPINION OF BOND COUNSEL**

\_\_\_\_\_, 2019

Texas Department of Housing and  
Community Affairs  
Austin, Texas

The Bank of New York Mellon Trust Company, N.A., as Trustee  
Dallas, Texas

RBC Capital Markets, LLC  
St. Petersburg, Florida

Fannie Mae  
Washington, DC

\$19,000,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019

Ladies and Gentlemen:

We have represented the Texas Department of Housing and Community Affairs (the “Issuer”) in connection with the issuance by the Issuer of its \$19,000,000 Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 (the “Bonds”) pursuant to a resolution adopted by the Governing Board of the Issuer on May 23, 2019 (the “Bond Resolution”) and an Indenture of Trust dated as of June 1, 2019 (the “Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). The Bonds bear interest, mature on the date, and are subject to redemption prior to maturity as provided in the Indenture. Capitalized terms used herein and not otherwise defined are used with the meanings assigned to such terms in the Indenture, in the Financing Agreement dated as of June 1, 2019 (the “Financing Agreement”) among the Issuer, the Trustee, Northgate Preservation, L.P., a New York limited partnership (the “Borrower”) and Regions Bank, as lender (the “Lender”) or in the Regulatory and Land Use Restriction Agreement dated as of June 1, 2019 (the “Regulatory Agreement”), among the Issuer, the Trustee, and the Borrower.

This opinion is rendered pursuant to Section 8(c)(ii)(A) of the Bond Purchase Agreement dated \_\_\_\_\_, 2019 (the “Bond Purchase Agreement”) among the Issuer, the Borrower and RBC Capital Markets, LLC as underwriter. In connection therewith, we have examined and are familiar with (i) certified or original executed counterparts of the documents referred to in our opinion of even date herewith relating to the Bonds, and the Official Statement relating to the Bonds (the “Official Statement”) and (ii) such other documents, instruments, certificates and opinion as we have deemed necessary to enable us to render this opinion.

You have authorized us to assume without independent verification (i) the genuineness of certificates, records and other documents (collectively, “documents”) submitted to us and the accuracy and completeness of the statements contained therein; (ii) the due authorization, execution and delivery of the documents described above by the parties thereto; (iii) that all documents submitted to us as originals

are accurate and complete; (iv) that all documents submitted to us as copies are true and correct copies of the originals thereof; and (v) that all information submitted to us and on which we have relied was accurate and complete.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing laws, the Bonds may be offered and sold without registration under the Securities Act of 1933, as amended, and the Indenture is not required to be qualified under the Trust Indenture Act of 1939, as amended.

We have reviewed the statements appearing in the Official Statement (except as to any statistical and financial data included in the Official Statement, as to which we do not express an opinion) under the captions "DESCRIPTION OF THE BONDS," "SECURITY FOR THE BONDS" (except with respect to the final two paragraphs under the subcaption "The Pass-Through Certificate," as to which no opinion is expressed)," TAX MATTERS," "APPENDIX A – Definitions of Certain Terms," "APPENDIX B – Summary of Certain Provisions of the Indenture," "APPENDIX C – Summary of Certain Provisions of the Financing Agreement," "APPENDIX D – Summary of Certain Provisions of the Regulatory Agreement" and "APPENDIX E – Proposed Form of Opinion of Bond Counsel." Such statements, insofar as they purport to summarize certain provisions of the Bonds, the Indenture, the Financing Agreement, the Regulatory Agreement and certain aspects of our firm's opinion relating to the federal tax implications with respect to the Bonds, present a fair and accurate summary of such matters. Other than as set forth above, we were not requested to participate in and did not take part in the preparation of any information in the Official Statement and do not assume responsibility with respect thereto.

In rendering this opinion, we have relied upon the opinions and certificates delivered pursuant to the Bond Purchase Agreement.

The opinions expressed above are expressed only insofar as the laws of the State of Texas and the United States of America may be applicable. This opinion speaks only as of its date and only in connection with the Bonds and may not be applied to any other transaction. The opinions set forth above are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement these opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in law that may hereafter occur or become effective. Further, this opinion is furnished by us solely to the addressees, and is solely for your benefit, and no one else is entitled to rely upon this opinion.

Very truly yours,

**EXHIBIT B**

**OPINION OF BORROWER'S COUNSEL**

\_\_\_\_\_, 2019

RBC Capital Markets, LLC

The Bank of New York Mellon Trust Company, N.A.

Texas Department of Housing and  
Community Affairs

\$19,000,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019

(After appropriate introductory language, the opinion shall state substantially as follows:)

1. The Borrower is a limited partnership, duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite limited partnership power and all material government licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. The Borrower is qualified to do business in the State of Texas.

2. The Borrower has full legal right, power and authority (a) to own its properties and conduct its business as described in the Preliminary Official Statement and the Official Statement and (b) to enter into and to carry out and consummate the transactions contemplated by the Borrower Documents.

3. The General Partner is a limited liability company, duly organized, validly existing and in good standing under the laws of the State of New York and has all requisite limited liability company power and all material government licenses, authorizations, consents and approvals necessary to own and operate its property and conduct its business. The General Partner is qualified to do business in the State of Texas.

4. By all necessary action, the Borrower has duly authorized and adopted the Borrower Documents, and approved the execution and delivery of, and the performance by the Borrower of the obligations in connection with the issuance of the Bonds on its part contained in the Bonds and the Borrower Documents and the consummation by it of all other transactions contemplated by the Indenture and the Borrower Documents in connection with the issuance of the Bonds. The individual(s) who have executed the Borrower Documents on behalf of the General Partner of the Borrower have the authority to bind the General Partner and thereby the Borrower to the terms and conditions of the Borrower Documents.

5. The Borrower Documents have been duly executed and delivered by the Borrower and, assuming the due authorization, execution and delivery of such agreements by the respective other parties thereto where necessary, if any, constitute legal, valid and binding obligations of the Borrower enforceable in accordance with their respective terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium and other similar laws of general applicability affecting the enforcement of creditors' rights and to general principles of equity, regardless of whether such enforceability is considered in equity or in law.

6. The execution and delivery of the Borrower Documents, the performance by Borrower of its obligations thereunder and the consummation of the transactions contemplated therein are within the organizational powers of Borrower and will not (i) conflict with or constitute a breach of the Borrower's organizational documents; (ii) to our knowledge, constitute a default under any indenture, mortgage, deed of trust or other material lien, lease, contract, note, order, judgment, decree or other material agreement, instrument or restriction of any kind to which Borrower is a party or by which any of its properties are bound or affected; or (iii) result in a violation of any constitutional or statutory provision or any material order, rule, regulation, decree or ordinance of any court, government or governmental authority known to us to be applicable to the Borrower or its property.

7. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, the Borrower is not in any material respect in violation of, breach of or default under any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement (including, without limitation, the Borrower Documents) or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, and no event has occurred and is continuing which with the passage of time or the giving of notice, or both, would constitute such a default or event of default under any such instruments; and the execution and delivery of the Bonds and the Borrower Documents, and compliance with the provisions on the Borrower's part contained therein, do not and will not conflict with, or constitute on the part of the Borrower a violation of, breach of or default under, any applicable constitutional provision or law of any state or of the United States, or any order, rule or regulation of any court or governmental agency or body having jurisdiction over the Borrower or any of its activities, properties or assets, or any indenture, mortgage, deed of trust, resolution, note, agreement or other agreement or instrument to which the Borrower is a party or by which the Borrower or any of its property or assets is bound, nor will any such execution, delivery or compliance result in the creation or imposition of any lien, charge or other security interest or encumbrance of any nature whatsoever upon any of the property or assets of the Borrower or under the terms of any such law, regulation or instrument, except as provided by the Bonds or the Borrower Documents.

8. As of the Closing Date, all consents, approvals, authorizations, and orders of or filings or registrations with any governmental authority, board, agency or issuer of any state or of the United States having jurisdiction required in connection with, or the absence of which would materially adversely affect, the execution and delivery by the Borrower of the Borrower Documents or the performance by the Borrower of its obligations thereunder have been obtained or made and are in full force and effect.

9. To the best of our knowledge after due and diligent inquiry, as of the Closing Date, there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best of our knowledge, threatened against the Borrower, affecting the existence of the Borrower or the titles of its officers to their respective offices, or contesting or affecting as to the Borrower the validity or enforceability of the Act, the Bonds, any Borrower Document or the execution and delivery or adoption by the Borrower of any Borrower Document, or in any way contesting or challenging the completeness or accuracy of the Preliminary Official Statement or the Official Statement or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated thereby; nor, to the best of our knowledge, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the financial condition or operations of the Borrower or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.

10. Nothing has come to our attention that would lead us to believe that the statements and information contained in the Preliminary Official Statement and the Official Statement as of their respective dates and the date hereof under the captions “THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS,” “CERTAIN BONDHOLDERS’ RISKS” (but only with respect to those risks that expressly relate to the Borrower or the Project), and “NO LITIGATION—The Borrower” (except as to the statistical and financial data included in the Preliminary Official Statement and the Official Statement with respect to which we do not express any opinion), contain any untrue statement of a material fact or omit to state any material fact necessary to make the statements therein, in light of the circumstances under which they were made, not misleading.

11. The Borrower may not plead the defense of usury or maintain an action for usury with respect to the loan(s) being made under the Transaction Documents.

Very truly yours,

## EXHIBIT C

### RULE 15c2-12 CERTIFICATE

\$19,000,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019

The undersigned hereby certifies and represents to RBC Capital Markets, LLC (the “Underwriter”) that he/she is authorized to execute and deliver this certificate on behalf of Northgate Preservation, L.P., a New York limited partnership (the “Borrower”), and hereby further certifies to the Underwriter as follows:

(a) This Certificate is delivered to enable the Underwriter to comply with Securities and Exchange Commission Rule 15c2-12 under the Securities Exchange Act of 1934 (the “Rule”) in connection with the issuance and sale of the above captioned bonds (the “Bonds”).

(b) In connection with the issuance and sale of the Bonds, there has been prepared a Preliminary Official Statement, dated the date of this certificate, setting forth information concerning the Bonds and the Borrower (the “Preliminary Official Statement”).

(c) As used herein, “Permitted Omissions” shall mean the offering price(s), interest rate(s), accreted values, yield to maturity, selling compensation, aggregate principal amount, principal amount per maturity, delivery dates, ratings and other terms of the Bonds depending on such matters, all with respect to the issuance and sale of the Bonds.

(d) The Preliminary Official Statement is, as of the date thereof, deemed final within the meaning of the Rule, except for Permitted Omissions.

(e) The sections of the Preliminary Official Statement entitled “CONTINUING DISCLOSURE” and “APPENDIX F — FORM OF CONTINUING DISCLOSURE AGREEMENT” describes the agreement the Borrower expects to make for the benefit of the Bondholders in the Continuing Disclosure Agreement dated as of June 1, 2019 by and between the Borrower and The Bank of New York Mellon Trust Company, N.A., as dissemination agent, by which the Borrower will undertake to provide continuing disclosure in accordance with the Rule.

Dated: \_\_\_\_\_, 2019



(Signature Page to Borrower's Rule 15c2-12 Certificate)

IN WITNESS WHEREOF, I have hereunto set my hand as of the date set forth above.

**NORTHGATE PRESERVATION, L.P.**,  
a New York limited partnership

By: Northgate Preservation GP, LLC,  
a New York limited liability company  
its General Partner

By: \_\_\_\_\_  
Matthew Finkle, Vice President

## **EXHIBIT D**

### **CERTIFICATE OF FANNIE MAE**

\$19,000,000

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019

This Certificate, dated \_\_\_\_\_, 2019, is being furnished to the Texas Department of Housing and Community Affairs (the “Issuer”) and RBC Capital Markets, LLC, as underwriter (the “Underwriter”), pursuant to the terms of the Bond Purchase Agreement dated as of \_\_\_\_\_, 2019 (the “Bond Purchase Agreement”) among the Underwriter, the Issuer and Northgate Preservation, L.P., a New York limited partnership, regarding the purchase by the Underwriter of the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 (the “Bonds”), issued by the Issuer. All terms not otherwise defined herein shall have the meanings ascribed to such terms in the Bond Purchase Agreement.

The undersigned hereby certifies to the Issuer and the Underwriter that (A) Fannie Mae has provided the link which includes a template of the Fannie Mae MBS Prospectus (Multifamily Fixed-Rate Yield Maintenance) set forth in the first paragraph under the caption “APPENDIX G – FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM” in the Preliminary Official Statement and the Official Statement, (B) if the Pass-Through Certificate had been issued by Fannie Mae on the date of this certificate, the disclosure in the Additional Disclosure Addendum, provided in connection with the Pass-Through Certificate, will be substantially the same in all material respects as the Additional Disclosure provided in Appendix I of the Official Statement, and (C) Fannie Mae has authorized the inclusion of such information in the Preliminary Official Statement and the Official Statement for use in connection with the marketing of the Bonds.

**FANNIE MAE**

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

FANNIE MAE CERTIFICATE (Northgate Village)

## EXHIBIT E

### ISSUE PRICE CERTIFICATE

I, the undersigned officer of RBC Capital Markets, LLC (“RBC”), make this certification in connection with the \$19,000,000 Multifamily Housing Revenue Bonds (Pass-Through - Northgate Village), Series 2019 (the “Bonds”) issued by the Texas Department of Housing and Community Affairs (the “Department”).

1. I hereby certify as follows in good faith as of the Issue Date of the Bonds:

(a) I am the duly chosen, qualified and acting officer of RBC for the office shown below my signature; as such, I am familiar with the facts herein certified and I am duly authorized to execute and deliver this certificate on behalf of RBC. I am the officer of RBC charged, along with other officers of RBC, with responsibility for the Bonds.

(b) **[IF 10% OF MATURITY SOLD]** The first price at which at least 10% of the Bonds was sold to the Public is the price set forth on the cover of the Official Statement prepared in connection with the Bonds (the “Actual Sales Price”).

(c) **[IF FEWER THAN 10% OF MATURITY SOLD ON SALE DATE]** At least 10% of the Bonds was not sold to the Public on the Sale Date. On or before the Sale Date, RBC offered for purchase the Bonds to the Public at the applicable initial offering price set forth on the cover of the Official Statement prepared in connection with the Bonds (the “Initial Offering Price”). A copy of the pricing wire evidencing the Initial Offering Price is attached hereto as Attachment I. In connection with the offering of the Bonds, RBC agreed in writing that (i) during the Hold Period, it would neither offer nor sell any Bond to any person at a price higher than the applicable Initial Offering Price (the “Hold-the-Offering-Price Rule”) and (ii) any selling group agreement would contain the agreement of each dealer who is a member of the selling group, and any retail distribution agreement would contain the agreement of each broker-dealer who is a party to the retail distribution agreement, that, during the Hold Period, such party would comply with the Hold-the-Offering-Price Rule. In accordance with such agreements, no Underwriter offered or sold any of the Bonds at a price higher than the Initial Offering Price the Bonds during the Hold Period.

(d) The [Actual Sales Price/Initial Offering Price] of the Bonds is \$[\_\_\_\_\_].

2. For purposes of this Issue Price Certificate, the following definitions apply:

(a) [“Hold Period” means, with respect to the Bonds, the period starting on the Sale Date and ending on the earlier of (i) the close of the fifth business day after the Sale Date or (ii) the date on which the Underwriters have sold at least 10% of such Bonds to the Public at a price no higher than the applicable Initial Offering Price.]

(b) “Public” means any person (including an individual, trust, estate, partnership, association, company, or corporation) other than an Underwriter or a Related Party to an Underwriter.

(c) “Related Party” means any two or more persons who are subject, directly or indirectly, to (i) more than 50% common ownership of the voting power or the total value of their stock, if both entities are corporations (including direct ownership by one corporation of another),

(ii) more than 50% common ownership of their capital interests or profits interests, if both entities are partnerships (including direct ownership by one partnership of another), or (iii) more than 50% common ownership of the value of the outstanding stock of the corporation or the capital interest or profits interest of the partnership, as applicable, if one entity is a corporation and the other entity is a partnership (including direct ownership of the applicable stock or interests by one entity of the other).

(d) ["Sale Date" means the first day on which there is a binding contract in writing for the sale or exchange of the Bonds. The Sale Date of the Bonds is \_\_\_\_\_, 20[\_\_\_\_].]

(e) "Underwriter" means (i) any person that agrees pursuant to a written contract with the Department to participate in the initial sale of the Bonds to the Public, and (ii) any person that agrees pursuant to a written contract directly or indirectly with a person described in clause (i) of this definition to participate in the initial sale of the Bonds to the Public (including a member of a selling group or a party to a retail distribution agreement participating in the initial sale of the Bonds to the Public).

The representations set forth in this certificate are limited to factual matters only. Nothing in this certificate represents RBC's interpretation of any laws, including specifically sections 103 and 148 of the Internal Revenue Code of 1986, as amended, and the Treasury Regulations thereunder. The undersigned understands that the foregoing information will be relied upon by the Department and the Borrower with respect to certain of the representations set forth in the Tax Exemption Agreement and with respect to compliance with the federal income tax rules affecting the Bonds, and by Bracewell LLP in connection with rendering its opinion that the interest on the Bonds is excluded from gross income for federal income tax purposes, the preparation of Internal Revenue Service Form 8038-G, and other federal income tax advice it may give to the Department from time to time relating to the Bonds.

[EXECUTION PAGE FOLLOWS]

EXECUTED as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_.

RBC CAPITAL MARKETS, LLC

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

Name: \_\_\_\_\_

Title: \_\_\_\_\_

## MULTIFAMILY NOTE

US \$ \_\_\_\_\_, 2019

**FOR VALUE RECEIVED**, the undersigned (“**Borrower**”) promises to pay to the order of **REGIONS BANK**, an Alabama banking corporation (“**Lender**”), the principal amount of \_\_\_\_\_ Dollars (US \$ \_\_\_\_\_) (the “**Mortgage Loan**”), together with interest thereon accruing at the Interest Rate on the unpaid principal balance from the date the Mortgage Loan proceeds are disbursed until fully paid in accordance with the terms hereof and of that certain Multifamily Loan and Security Agreement dated as of the date hereof, by and between Borrower and Lender (as the same may be amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Loan Agreement**”).

### 1. **Defined Terms.**

Capitalized terms used and not specifically defined in this Multifamily Note (this “**Note**”) have the meanings given to such terms in the Loan Agreement.

### 2. **Repayment.**

Borrower agrees to pay the principal amount of the Mortgage Loan and interest on the principal amount of the Mortgage Loan from time to time outstanding at the Interest Rate or such other rate or rates and at the times specified in the Loan Agreement, together with all other amounts due to Lender under the Loan Documents. The outstanding balance of the Mortgage Loan and all accrued and unpaid interest thereon shall be due and payable on the Maturity Date, together with all other amounts due to Lender under the Loan Documents.

### 3. **Security.**

The Mortgage Loan evidenced by this Note, together with all other Indebtedness is secured by, among other things, the Security Instrument, the Loan Agreement and the other Loan Documents. All of the terms, covenants and conditions contained in the Loan Agreement, the Security Instrument and the other Loan Documents are hereby made part of this Note to the same extent and with the same force as if they were fully set forth herein. In the event of a conflict or inconsistency between the terms of this Note and the Loan Agreement, the terms and provisions of the Loan Agreement shall govern.

### 4. **Acceleration.**

In accordance with the Loan Agreement, if an Event of Default has occurred and is continuing, the entire unpaid principal balance of the Mortgage Loan, any accrued and unpaid interest, including interest accruing at the Default Rate, the Prepayment Premium (if applicable), and all other amounts payable under this Note, the Loan Agreement and any other Loan Document shall at once become due and payable, at the option of Lender, without any prior

notice to Borrower, unless applicable law requires otherwise (and in such case, after satisfactory notice has been given).

**5. Personal Liability.**

The provisions of Article 3 (Personal Liability) of the Loan Agreement are hereby incorporated by reference into this Note to the same extent and with the same force as if fully set forth herein.

**6. Governing Law.**

This Note shall be governed in accordance with the terms and provisions of Section 15.01 (Governing Law; Consent to Jurisdiction and Venue) of the Loan Agreement.

**7. Waivers.**

Presentment, demand for payment, notice of nonpayment and dishonor, protest and notice of protest, notice of acceleration, notice of intent to demand or accelerate payment or maturity, presentment for payment, notice of nonpayment, and grace and diligence in collecting the Indebtedness are waived by Borrower, for and on behalf of itself, Guarantor and Key Principal, and all endorsers and guarantors of this Note and all other third party obligors or others who may become liable for the payment of all or any part of the Indebtedness.

**8. Commercial Purpose.**

Borrower represents that the Indebtedness is being incurred by Borrower solely for the purpose of carrying on a business or commercial enterprise or activity, and not for agricultural, personal, family or household purposes.

**9. Construction; Joint and Several (or Solidary, as applicable) Liability.**

(a) Section 15.08 (Construction) of the Loan Agreement is hereby incorporated herein as if fully set forth in the body of this Note.

(b) If more than one Person executes this Note as Borrower, the obligations of such Person shall be joint and several (solidary instead for purposes of Louisiana law).

**10. Notices.**

All Notices required or permitted to be given by Lender to Borrower pursuant to this Note shall be given in accordance with Section 15.02 (Notice) of the Loan Agreement.

**11. Time is of the Essence.**

Borrower agrees that, with respect to each and every obligation and covenant contained in this Note, time is of the essence.



## **12. Loan Charges Savings Clause.**

Borrower agrees to pay an effective rate of interest equal to the sum of the Interest Rate and any additional rate of interest resulting from any other charges of interest or in the nature of interest paid or to be paid in connection with the Mortgage Loan and any other fees or amounts to be paid by Borrower pursuant to any of the other Loan Documents. Neither this Note, the Loan Agreement nor any of the other Loan Documents shall be construed to create a contract for the use, forbearance or detention of money requiring payment of interest at a rate greater than the maximum interest rate permitted to be charged under applicable law. It is expressly stipulated and agreed to be the intent of Borrower and Lender at all times to comply with all applicable laws governing the maximum rate or amount of interest payable on the Indebtedness evidenced by this Note and the other Loan Documents. If any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower is interpreted so that any interest or other charge or amount provided for in any Loan Document, whether considered separately or together with other charges or amounts provided for in any other Loan Document, or otherwise charged, taken, reserved or received in connection with the Mortgage Loan, or on acceleration of the maturity of the Mortgage Loan or as a result of any prepayment by Borrower or otherwise, violates that law, and Borrower is entitled to the benefit of that law, that interest or charge is hereby reduced to the extent necessary to eliminate any such violation. Amounts, if any, previously paid to Lender in excess of the permitted amounts shall be applied by Lender to reduce the unpaid principal balance of the Mortgage Loan without the payment of any prepayment premium (or, if the Mortgage Loan has been or would thereby be paid in full, shall be refunded to Borrower), and the provisions of the Loan Agreement and any other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the Loan Agreement and any other Loan Documents reduced, without the necessity of the execution of any new documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. For the purpose of determining whether any applicable law limiting the amount of interest or other charges permitted to be collected from Borrower has been violated, all Indebtedness that constitutes interest, as well as all other charges made in connection with the Indebtedness that constitute interest, and any amount paid or agreed to be paid to Lender for the use, forbearance or detention of the Indebtedness, shall be deemed to be allocated and spread ratably over the stated term of the Mortgage Loan. Unless otherwise required by applicable law, such allocation and spreading shall be effected in such a manner that the rate of interest so computed is uniform throughout the stated term of the Mortgage Loan.

## **13. WAIVER OF TRIAL BY JURY.**

**TO THE MAXIMUM EXTENT PERMITTED BY LAW, EACH OF BORROWER AND LENDER (A) AGREES NOT TO ELECT A TRIAL BY JURY WITH RESPECT TO ANY ISSUE ARISING OUT OF THIS NOTE OR THE RELATIONSHIP BETWEEN THE PARTIES AS LENDER AND BORROWER THAT IS TRIABLE OF RIGHT BY A JURY AND (B) WAIVES ANY RIGHT TO TRIAL BY JURY WITH RESPECT TO SUCH ISSUE TO THE EXTENT THAT ANY SUCH RIGHT EXISTS NOW OR IN THE FUTURE. THIS WAIVER OF RIGHT TO TRIAL BY JURY IS SEPARATELY GIVEN**

**BY EACH PARTY, KNOWINGLY AND VOLUNTARILY WITH THE BENEFIT OF COMPETENT LEGAL COUNSEL.**

**14. Receipt of Loan Documents.**

Borrower acknowledges receipt of a copy of each of the Loan Documents.

**15. Incorporation of Schedules.**

The schedules, if any, attached to this Note are incorporated fully into this Note by this reference and each constitutes a substantive part of this Note.

**16. Defined Terms.**

(a) As used hereunder, the term “**Maximum Lawful Rate**” shall mean the maximum lawful rate of interest which may be contracted for, charged, taken, received or reserved by Lender in accordance with the applicable laws of the State of Texas (or applicable United States federal law to the extent that such law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law), taking into account all Charges (as defined below) made in connection with the transaction evidenced by this Note and the other Loan Documents.

(b) As used hereunder, the term “**Charges**” shall mean all fees, charges and/or any other things of value, if any, contracted for, charged, taken, received or reserved by Lender in connection with the transactions relating to this Note and the other Loan Documents, which are treated as interest under applicable law.

**17. Procedural Obligations of Borrower.**

(a) In addition to the provisions of Section 12 above, Borrower hereby agrees that as a condition precedent to any claim seeking usury penalties against Lender, Borrower will provide written notice to Lender, advising Lender in reasonable detail of the nature and amount of the violation, and Lender shall have sixty (60) days after receipt of such notice in which to correct such usury violation, if any, by either refunding such excess interest to Borrower or crediting such excess interest against this Note and/or the Indebtedness then owing by Borrower to Lender. All calculations of the rate of interest contracted for, charged, taken, reserved or received by Lender for the use, forbearance or detention of any debt evidenced by this Note and/or any other Loan Documents, that are made for the purpose of determining whether such rate exceeds the Maximum Lawful Rate, shall be made, to the extent permitted by applicable law, by amortizing, prorating, allocating and spreading, using the actuarial method, all interest contracted for, charged, taken, reserved or received by Lender throughout the full term of this Note and/or any other Loan Documents (including any and all renewal and extension periods).

(b) In no event shall the provisions of Chapter 346 of the Texas Finance Code (which regulates certain revolving credit loan accounts and revolving triparty accounts) apply to this Note and/or any Indebtedness.

(c) Not later than the sixty-first (61st) day before the date Borrower files suit seeking penalties for Lender's violation of the usury law (or not later than the time of Borrower filing a counterclaim in an original action by Lender), Borrower is required to give Lender written notice stating in reasonable detail the nature and amount of the violation. Lender is then entitled to correct such violation within the sixty (60) day period beginning with the date such notice is received. If the usury violation is raised on a counterclaim, Lender can petition the court to abate the proceedings for sixty (60) days to allow Lender to cure the violation. If Lender timely corrects such violation, Lender will not be liable to Borrower for such violation, except to reimburse Borrower for reasonable attorneys' fees in the event the issue is raised by Borrower in a counterclaim. Lender is also not liable to Borrower for a violation of the usury penalty statute if Lender gives written notice to Borrower of Lender's usury violation before Borrower itself gives written notice of the violation or files an action alleging the violation, and provided Lender corrects such violation not later than the sixtieth (60th) day after the date Lender actually discovered the violation that applies to the Note and/or any of the Indebtedness. Notwithstanding anything to the contrary contained herein or in any of the other Loan Documents, it is not the intention of Lender to accelerate the maturity of any interest that has not accrued at the time of such acceleration or to collect unearned interest at the time of such acceleration.

#### **18. Ceiling Election.**

To the extent that Lender is relying on Chapter 303 of the Texas Finance Code to determine the Maximum Lawful Rate payable on the Note and/or any other portion of the Indebtedness, Lender will utilize the weekly ceiling from time to time in effect as provided in such Chapter 303, as amended. To the extent United States federal law permits Lender to contract for, charge, take, receive or reserve a greater amount of interest than under Texas law, Lender will rely on United States federal law instead of such Chapter 303 for the purpose of determining the Maximum Lawful Rate. Additionally, to the extent permitted by applicable law now or hereafter in effect, Lender may, at its option and from time to time, utilize any other method of establishing the Maximum Lawful Rate under such Chapter 303 or under other applicable law by giving notice, if required, to Borrower as provided by applicable law now or hereafter in effect.

**ATTACHED SCHEDULE.** The following Schedule is attached to this Note:

Schedule 1

Modifications to Note

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower has signed and delivered this Note under seal (where applicable) or has caused this Note to be signed and delivered under seal (where applicable) by its duly authorized representative. Where applicable law so provides, Borrower intends that this Note shall be deemed to be signed and delivered as a sealed instrument.

**BORROWER:**

**NORTHGATE PRESERVATION, L.P.**  
a New York limited partnership

By: Northgate Preservation GP, LLC  
a New York limited liability company  
its General Partner

By: Related Affordable, LLC  
a Delaware limited liability company  
its Sole Member

By: \_\_\_\_\_  
Matthew Finkle  
President

Drafted by and when Recorded,  
Return to:

Levitt & Boccio, LLP  
423 West 55<sup>th</sup> Street, 8<sup>th</sup> Floor  
New York, NY 10019  
Attention: David S. Boccio

DEED OF TRUST,  
SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS  
AND FIXTURE FILING

THIS DEED OF TRUST, SECURITY AGREEMENT, ASSIGNMENT OF LEASES AND RENTS AND FIXTURE FILING (the "Mortgage") is made as of June \_\_, 2019, by **NORTHGATE PRESERVATION, L.P.**, a New York limited partnership, with an office at 60 Columbus Circle, New York, New York 10023 ("Mortgagor"), in favor of \_\_\_\_\_ ("Trustee"), having a mailing address at \_\_\_\_\_, for the benefit of **NORTHGATE VILLAGE ASSOCIATE, LLC**, a Delaware limited liability company, with an office at 60 Columbus Circle, New York, New York 10023, ("Mortgagee").

R E C I T A L S

WHEREAS, Mortgagee, as seller, and Mortgagor, as buyer, entered into that certain Purchase and Sale Agreement dated as of November 14, 2018 (as amended), wherein Mortgagee agreed to permit Mortgagor to pay a portion of the purchase price for the Mortgaged Property (as hereinafter defined) through a seller take-back loan;

WHEREAS, Mortgagor has requested and Mortgagee has agreed that Mortgagee shall make such loan to Mortgagor in an amount of TWO MILLION AND NO/00 DOLLARS (\$2,000,000.00) (the "Loan"), for the purpose of financing portion of the acquisition of a 168-unit

apartment complex located in the City of Dallas, County of Dallas, State of Texas (the “Improvements”).

WHEREAS, Mortgagee requires as a condition precedent to the making of the Loan that Mortgagor execute this Mortgage granting to Mortgagee a security interest, mortgage, lien, encumbrance and charge upon the collateral hereinafter described.

W I T N E S S E T H:

NOW, THEREFORE, for good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, and in order to secure the full and timely payment of the Indebtedness (as defined below), Mortgagor does hereby GRANT, BARGAIN, SELL, CONVEY, ASSIGN, WARRANT, TRANSFER, MORTGAGE, PLEDGE, GRANT A SECURITY INTEREST IN, and SET OVER unto Trustee, in trust, with power of sale, for the benefit of Mortgagee, the property described on Exhibit A hereto, whether now or hereafter acquired by Mortgagor, and all of Mortgagor’s right, title and interest in and to any and all buildings and other improvements now or hereafter constructed thereon (collectively, the “Premises”), along with the other items listed below constituting Mortgaged Property.

The following, with the Premises, are herein collectively called the “Mortgaged Property”:

- (a) All appurtenances and all estate, rights and privileges of Mortgagor in and to the Premises;
- (b) Any and all water and water rights, ditch, and ditch rights, reservoir and reservoir rights, stock or interests in water, irrigation or ditch companies, royalties, minerals, oil and gas rights, lease or leasehold interests owned by Mortgagor, now or hereafter used or useful in connection with, appurtenant to or related to the Premises;
- (c) All right, title and interest of Mortgagor in and to all streets, roads and public places, opened or proposed, and all easements and rights of way, public or private, now or hereafter used in connection with the Premises;
- (d) Subject to the rights of Mortgagor under Paragraph A.4 hereof, all of Mortgagor’s right, title and interest in and to the Leases and Rents (as defined in Paragraph A.4 hereof);
- (e) All of Mortgagor’s rights in and to the Personal Property Collateral (as defined in Paragraph A.5); and
- (f) Mortgagor’s right, title and interest in and to any and all awards, payments or other amounts including interest thereon, which may be made with respect to the Mortgaged Property as a result of injury to or decrease in the value of the Mortgaged Property or as a result of the exercise of the right of eminent domain.

TO HAVE AND TO HOLD the Mortgaged Property, together with all and singular of the rights, privileges, tenements, hereditaments and appurtenances thereto in any way incident or belonging unto Mortgagee and to its successors and assigns forever.

FOR THE PURPOSE OF SECURING, in such order of priority as Mortgagee may elect the following (the “Indebtedness”):

(1) Payment to Mortgagee of an indebtedness in the maximum principal sum of the amount of the Loan with interest thereon, according to the terms of the Promissory Note dated the date hereof from Mortgagor to Mortgagee (the “Note”), and any and all extensions, modifications, substitutions or renewals of such indebtedness;

(2) Payment to Mortgagee of all other obligations becoming due or payable under the provisions of the Note, which Note is incorporated herein by reference to the same extent and effect as if fully set forth herein and made a part of this Mortgage and the provisions of any and all other instruments, agreements and documents executed by Mortgagor and delivered to or for the benefit of Mortgagee in connection with the Loan (such other instruments, agreements and documents, together with the Note and this Mortgage are sometimes hereinafter collectively referred to as the “Loan Documents”); and

(3) Due, prompt and complete observance and performance of each and every obligation, covenant and agreement of Mortgagor contained herein or in any of the other Loan Documents.

The parties hereto intend that, in addition to obligations advanced on the date hereof, this Mortgage shall secure unpaid balances of all obligations created or arising after the date hereof.

A. PROVISIONS RELATING TO THE MORTGAGED PROPERTY

A.1. Condition of Mortgaged Property.

(a) Mortgagor agrees to comply with all laws, ordinances, regulations and governmental orders affecting the Mortgaged Property, the non-compliance with which would have a material adverse effect on the use or value of the Mortgaged Property; not to commit, suffer or permit any act with respect to the Mortgaged Property in violation of law, or of any covenants, conditions or restrictions affecting the Mortgaged Property, the non-compliance with which would have a material adverse effect on the use or value of the Mortgaged Property; to make or cause to be made from time to time all necessary or proper replacements, repairs, and renewals; and to do any other act or acts, all in a timely and proper manner, which from the character or use of the Mortgaged Property may be reasonably necessary to protect and preserve the value of the Mortgaged Property.

(b) Mortgagor agrees to observe and comply with all conditions and requirements necessary to preserve and extend any and all rights, licenses, permits (including but not limited to zoning variances, special exceptions and non-conforming uses), privileges, franchises and concessions which are applicable to the Mortgaged Property or which have been granted to or contracted for by Mortgagor in connection with the contemplated use of the Mortgaged Property, the loss of which would have a material adverse effect on the use or value of



the Mortgaged Property; and to not initiate, join in or consent to any change in any restrictive covenant, zoning ordinance or other private or public restriction affecting the Mortgaged Property or any part thereof which is not an encumbrance consented to by Mortgagee on the date hereof, except with Mortgagee's prior written consent, not to be unreasonably withheld or delayed.

(c) Mortgagee may during normal business hours and with reasonable prior notice to Mortgagor, enter and inspect or protect the Mortgaged Property, in person or by agent, in such manner and to such extent as it may deem necessary, but only if such person or agent is accompanied by a representative of Mortgagor that Mortgagor shall make available if Mortgagee satisfies the requirements of this sentence as to time and notice of such inspection.

A.2. Alterations and Additions. Without the prior written consent of Mortgagee, Mortgagor agrees not to cause or permit any building or improvement which constitutes a part of the Premises to be removed, demolished or materially altered, in whole or in part, or any fixture or article of personal property which constitutes a portion of the Mortgaged Property to be removed, damaged or destroyed unless such personal property is replaced with property of equal or greater value. Mortgagor agrees that, as to any material alteration to be made upon the Premises which is not contemplated by the Plans (as defined in the Mortgagor's Amended and Restated Agreement of Limited Partnership (the "Partnership Agreement"), plans and specifications therefor shall be prepared and shall be subject to Mortgagee's reasonable approval in advance of the commencement of work; once commenced, all work thereunder shall be prosecuted with due diligence; and all construction thereof will be in substantial accordance with the plans and specifications so approved and will comply in all material respects with all laws, ordinances or regulations made or promulgated by any governmental agency or other lawful authority and with the rules of the applicable Board of Fire Underwriters.

A.3. Status of Title. Mortgagor agrees to protect, preserve and defend its interest in the Mortgaged Property and title thereto; to appear and defend this Mortgage in any action or proceeding affecting or purporting to affect the Mortgaged Property, the lien or security interest of this Mortgage thereon, or any of the rights of Mortgagee hereunder, and to pay all costs and expenses incurred by Mortgagee in or in connection with any such action or proceeding, including attorneys' fees, whether any such action or proceeding progresses to judgment and whether brought by or against Mortgagee. Upon the occurrence and during the continuation of an Event of Default or if Mortgagee reasonably determines that Mortgagor has failed to diligently prosecute or defend any such action, Mortgagee may, but shall not be under any obligation to, appear or intervene in such action or proceeding and retain counsel therein and defend the same or otherwise take such action therein as may be advised and may settle or compromise the same and, in that behalf and for any of such purposes, may expend and advance such sums of money as Mortgagee may deem necessary, and Mortgagee shall be reimbursed therefor.

A.4. Assignment of Rents and Performance of Leases.

(a) Mortgagor hereby absolutely assigns and transfers to Mortgagee (for the benefit of Mortgagee) all of Mortgagor's right, title and interest in and to the following:

(1) All leases, written or oral, now in existence or hereafter arising and all agreements for the use and occupancy of all or any portion of the Premises, together

with all the right, power and authority of Mortgagor to alter, modify or change the terms of such leases and agreements or to surrender, cancel or terminate such leases and agreements, and together with any and all extensions and renewals thereof (all of such leases, agreements and tenancies being hereinafter collectively called the "Leases");

(2) Any and all guaranties of the obligations of the lessees (the "Lessees") under any of such Leases;

(3) The immediate and continuing right to collect and receive all of the rents, income, receipts, revenues, issues and profits now due or which may become due or to which Mortgagor may now or shall hereafter (whether during any applicable period of redemption, or otherwise) become entitled or may demand or claim, arising or issuing from or out of the Leases, or from or out of the Premises or any part thereof, including but not limited to: minimum rents, additional rents, percentage rents, parking maintenance charges or fees, tax and insurance contributions, proceeds of sale of electricity, gas, chilled and heated water and other utilities and services, deficiency rents and liquidated damages following default or late payment of rent, premiums payable by any Lessee upon the exercise of a cancellation privilege provided for in any Lease, amounts payable by any Lessee pursuant to a negotiated lease termination, and all proceeds payable under any policy of insurance covering loss of rents resulting from untenability caused by destruction or damage to the Premises, together with any and all rights and claims of any kind that Mortgagor may have against any Lessee under any Lease or any subtenants or occupants of the Premises (all such money, rights and claims being hereinafter collectively called the "Rents"), LESS AND EXCEPTING THEREFROM, HOWEVER, any sums which by the express provisions of any Lease are payable directly to any governmental authority or to any other person, firm or corporation other than the lessor under such Lease.

(b) Provided that there exists no Event of Default hereunder, Mortgagor shall have the right under a license granted hereby and Mortgagee hereby grants to Mortgagor a license (but limited by the remedies of Mortgagee set forth herein) to collect, but not more than one (1) month in advance, all of the Rents arising from or out of the Leases or any renewals or extensions thereof, or from or out of the Premises or any part thereof, and, subject to the restrictions set forth in the Loan Documents, to exercise the rights of the landlord under the Leases. So long as no default exists hereunder, Mortgagor may use the Rents in any manner not inconsistent with the Loan Documents. The license granted hereby shall be revoked at Mortgagee's option upon written notice from Mortgagee to Mortgagor after the occurrence and during the continuance of an Event of Default hereunder (such written notice to be given at any time after the occurrence of an Event of Default and such revocation to be effective so long as the default is continuing) and thereafter during the continuance of such Event of Default all Rents collected shall be paid over to Mortgagee immediately upon receipt by Mortgagor.

(c) Subject to the license described and limited in subparagraph (b) above, Mortgagor hereby constitutes and appoints Mortgagee the true and lawful attorney-in-fact, coupled with an interest, of Mortgagor, empowered and authorized in the name, place and stead of Mortgagor during the continuance of an Event of Default to demand, sue for, attach, levy, recover and receive all Rents and any premium or penalty payable upon the exercise by any Lessee under any Lease of a privilege of cancellation originally provided in such Lease and to give proper

receipts, releases and acquittances therefor and after deducting expenses of collection, to apply the net proceeds as a credit upon any portion of the indebtedness secured hereby selected by Mortgagee notwithstanding the fact that such portion of said indebtedness may not then be due and payable or that such portion of said indebtedness is otherwise adequately secured, and Mortgagor does hereby authorize and direct any such Lessee to deliver such payment to Mortgagee in accordance with this Mortgage, and Mortgagor hereby ratifies and confirms all that its said attorney, Mortgagee, shall do or cause to be done by virtue of the powers granted hereby. The foregoing appointment is irrevocable and continuing and such rights, powers and privileges shall be exclusive in Mortgagee, its successors and assigns, so long as any part of the Indebtedness remains unpaid or undischarged. A Lessee need not inquire into the authority of Mortgagee to collect any Rents, and its obligations to Mortgagor shall be absolutely discharged to the extent of any payment to Mortgagee.

(d) At the option of Mortgagee, this Mortgage shall become subject and subordinate, in whole or in part (but not with respect to priority of entitlement to insurance proceeds or any condemnation or eminent domain award) to all or any portion of the Leases upon the execution by Mortgagee of unilateral declaration to that effect and recording thereof in the Real Property Records, Dallas County.

(e) The acceptance by Mortgagee of the assignment provided in this Paragraph A.4, together with all of the rights, powers, privileges and authority created in this paragraph or elsewhere in this Mortgage, shall not, prior to foreclosure or entry upon and taking possession of the Premises by Mortgagee, be deemed or construed to constitute Mortgagee a "mortgagee in possession" nor thereafter or at any time or in any event obligate Mortgagee to appear in or defend any action or proceeding relating to the Leases, the Rents or the Premises or to take any action hereunder or to expend any money or incur any expenses or perform or discharge any obligation, duty or liability under any Lease or to assume any obligation or responsibility for any security deposits or other deposits delivered to Mortgagor by any Lessee and not assigned and delivered to Mortgagee, nor shall Mortgagee be liable in any way for any injury or damage to person or property sustained by any person or persons, firm or corporation in or about the Premises.

(f) Notwithstanding any other provision in this Mortgage or in any of the other Loan Documents to the contrary, all provisions related to the assignment of the Rents in this Mortgage are subject to the terms, provisions, and conditions of the Texas Assignment of Rents Act ("**TARA**"), as codified in Chapter 64 of the Texas Property Code (as the same may be amended, modified, or supplemented from time to time, the "Texas Property Code"). To the extent that specific terms and requirements of this Mortgage or any other Loan Document conflict with the specific terms and requirements of TARA, (i) to the extent such terms and requirements of TARA may be superseded by an agreement between the parties, the specific terms and requirements of this Mortgage or the other Loan Documents hereby supersedes such specific terms and requirements of TARA; and (ii) to the extent that such terms and requirements of TARA cannot be superseded by an agreement between the parties, the specific terms and requirements of TARA shall control, and the parties further agree that all other terms and requirements of this Mortgage and the other Loan Documents shall not otherwise be impaired or superseded thereby and shall remain in full force and effect. This Mortgage is intended to be a "Security Instrument" for purposes of TARA and the Indebtedness shall be a secured obligation for purposes of TARA..

A.5. Security Agreement and Fixture Filing.

(a) Mortgagor hereby grants to Mortgagee a security interest in all of Mortgagor's right, title and interest in the following property, whether now owned or hereafter acquired: (i) all building materials, furniture, fixtures, equipment and other personal property to be incorporated into any improvements constructed on the Premises (whether such items are stored on the Premises or elsewhere); (ii) all other goods, materials, supplies, inventory, fixtures, equipment, machinery, furniture and furnishings and other personal property which are located on, or used in connection with, the Premises; (iii) all Leases and Rents; (iv) all permits and licenses issued in connection with or otherwise relating to the Project, including, without limitation, any and all building permits, authorizations, licenses and approvals heretofore or hereafter issued by any governmental authority (federal, state or local) ("Permits") and all other contracts related to the Premises, including any "Housing Assistance Payments Contract" or other rental subsidy agreement (if any); (v) to the extent assignable, all general intangibles, accounts, chattel paper, instruments, documents, investment property, notes, drafts, letters of credit, letter of credit rights, insurance and condemnation awards and proceeds, trade names, trademarks and service marks, and deposits arising from or related to the Premises and any business conducted on the Premises by Mortgagor; and (vi) all replacements and substitutions for, or additions to, all products and proceeds of, and all books, records and files relating to, any of the foregoing (the "Personal Property Collateral"). The security interest granted in this Paragraph A.5 shall secure the payment and performance of the Indebtedness. Terms used in Paragraph A.5 which are defined in the Texas Uniform Commercial Code, as in effect from time to time (the "Texas UCC"), and not otherwise defined in this Mortgage, shall have the meanings ascribed to them in the Texas UCC. Mortgagor also grants a security interest in (and right of setoff against) all accounts (including agency, custody, safekeeping, securities, investment, brokerage, and revocable trust accounts) with and other property held or possessed by or in transit to Mortgagee or any of its affiliates.

(b) This Mortgage shall constitute a fixture filing within the meaning of the Texas UCC with respect to the portion of the Personal Property Collateral that constitutes fixtures. The addresses of Mortgagor and Mortgagee are as set forth in the preamble hereto and the Texas Organizational ID No. of Mortgagor is 803209146.

(c) Mortgagor represents and warrants that: (i) Mortgagor has good title to its Personal Property Collateral in existence as of the date hereof, and will have good title to Personal Property Collateral acquired after the date hereof; (ii) Mortgagor has not previously assigned or encumbered the Personal Property Collateral, and no financing statement covering any of the Personal Property Collateral has been delivered to any other person or entity (other than as set forth in any prior Mortgages or Regulatory Agreements (as hereinafter defined)); and (iii) Mortgagor's principal place of business is located at 60 Columbus Circle, New York, New York.

(d) In addition to Mortgagee's rights as a "Secured Party" under the Texas UCC, Mortgagee may, but shall not be obligated to, at any time without notice and at the expense of Mortgagor: (i) give notice to any person of Mortgagee's rights hereunder and enforce such rights at law or in equity; (ii) insure, protect, defend and preserve the Personal Property Collateral or any rights or interests of Mortgagee therein; (iii) inspect the Personal Property Collateral; and

(iv) endorse, collect and receive any right to payment of money owing to Mortgagor from or under or from the Personal Property Collateral.

(e) Upon the occurrence of an Event of Default hereunder, then in addition to all of Mortgagee's rights as a "Secured Party" under the Texas UCC or otherwise at law: (i) Mortgagee may (a) upon written notice, require Mortgagor to assemble any or all of the Personal Property Collateral and make it available to Mortgagee at a place designated by Mortgagee; (b) without prior notice, enter upon the Mortgaged Property or other place where any of the Personal Property Collateral may be located and take possession of, collect, sell, and dispose of any or all of the Personal Property Collateral, and store the same at locations acceptable to Mortgagee at Mortgagor's expense; (c) sell, assign and deliver at any place or in any lawful manner all or any part of the Personal Property Collateral and bid and become purchaser at any such sale; and (ii) Mortgagee may, for the account of Mortgagor and at Mortgagor's expense: (a) operate, use, consume, sell or dispose of the Personal Property Collateral as Mortgagee deems appropriate for the purpose of performing any or all of the Indebtedness; (b) enter into any agreement, compromise, or settlement, including, without limitation, settlement of insurance claims, which Mortgagee may deem desirable or proper with respect to any of the Personal Property Collateral; and (c) endorse and deliver evidence of title for, and receive, enforce and collect by legal action or otherwise, all indebtedness and obligations now or hereafter owing to Mortgagor in connection with or on account of any or all of the Personal Property Collateral.

Notwithstanding any other provision hereof, Mortgagee shall not be deemed to have accepted any property other than cash in satisfaction of any obligation of Mortgagors to Mortgagee unless Mortgagee shall make an express written election of said remedy under the Texas UCC or other applicable law.

(f) Mortgagor hereby irrevocably appoints Mortgagee as Mortgagor's attorney-in-fact (such agency being coupled with an interest), for the sole purpose of doing the following, without the obligation to do so, in Mortgagee's name, or in the name of Mortgagor, prepare, execute and file or record financing statements, continuation statements, applications for registration and like papers necessary to create, perfect or preserve any of Mortgagee's security interests and rights in or to any of the Personal Property Collateral, and, upon a default hereunder, take any other action required of Mortgagor hereunder; provided, however, that Mortgagee as such attorney-in-fact shall be accountable only for such funds as are actually received by Mortgagee and that if no default exists Mortgagee shall provide Mortgagor with written notice of, and a reasonable opportunity to cure, the circumstance or occurrence giving rise to Mortgagee's desire to act as attorney-in-fact prior to exercising any of the powers granted hereunder.

(g) Except as otherwise provided in this Section or the other Loan Documents, so long as no default exists under this Mortgage or any of the Loan Documents, Mortgagor may possess, use, move, transfer or dispose of any of the Personal Property Collateral in the ordinary course of Mortgagor's business.

(h) Mortgagor hereby authorizes Mortgagee to file, and if requested will execute and deliver to Mortgagee, all financing statements and other documents and take such other actions as may from time to time be requested by Mortgagee in order to maintain a perfected

security interest of Mortgagee in the Personal Property Collateral, and the priority thereof against any lien or encumbrance not expressly permitted by Mortgagee.

A.6. Subrogation. As further security for the payment and performance of the Indebtedness, Mortgagee shall be subrogated to the lien, although released of record, of any and all encumbrances paid from the proceeds of any advance or expenditure included in the Indebtedness to the extent permitted by law.

A.7. Indemnity. To the fullest extent permitted by law, Mortgagor shall indemnify, save and keep Mortgagee harmless from any damage, claims or causes of action brought by third parties against Mortgagee in its capacity as lender of the Indebtedness secured hereby, arising out of or related to a known or alleged design or construction defect of the Improvements, or otherwise arising out of or related to Mortgagor's operations and management or other activities of or in connection with the Improvements. Mortgagor hereby acknowledges that Mortgagee (in its capacity as such) shall not be deemed to have assumed any responsibility or liability in respect to the design of the Improvements, or the adequacy of the Plans, on account of Mortgagee's receipt or review of the Plans delivered pursuant to the Loan Agreement. Mortgagor shall indemnify, save and keep Mortgagee harmless from any liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind and nature whatsoever against Mortgagee in its capacity as lender of the Indebtedness secured hereby, specifically excepting, however, any such liabilities, obligations, losses, damages, penalties, actions, judgments, suits, costs, expenses or disbursements due to indemnified person's gross negligence or willful misconduct, which may be imposed on, incurred by or asserted against Mortgagee in any way relating to or arising out of (i) the Loan Documents or any other document delivered in connection therewith or the transactions contemplated thereby, (ii) the protection of the collateral, (iii) the management, operation or sale of collateral after the acquisition of title thereto, (iv) the enforcement of any of the terms of the Loan Documents or of any such other documents or (v) the breach of any environmental representation, warranty or covenant contained herein or in any other Loan Document.

A.8. Environmental Hazards.

(a) Except for matters covered by a written program of operations and maintenance approved in writing by Mortgagee (an "O&M Program") or matters described in Section (b) below, Mortgagor shall not cause or permit any of the following:

(1) the presence, use, generation, release, treatment, processing, storage (including storage in above ground and underground storage tanks), handling, or disposal of any Hazardous Materials (as defined below) on or under the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property;

(2) the transportation of any Hazardous Materials to, from, or across the Mortgaged Property;

(3) any occurrence or condition on the Mortgaged Property, which occurrence or condition is or may be in violation of Hazardous Materials Laws (as defined below); or

(4) any violation of or noncompliance with the terms of any environmental permit with respect to the Mortgaged Property or any property of Mortgagor that is adjacent to the Mortgaged Property.

The matters described in clauses (1) through (4) above are referred to collectively in this Section as “Prohibited Activities or Conditions”.

“Hazardous Materials” means petroleum and petroleum products and compounds containing them, including gasoline, diesel fuel and oil; explosives; flammable materials; radioactive materials; polychlorinated biphenyls (“PCBs”) and compounds containing them; lead and lead-based paint; asbestos or asbestos-containing materials in any form that is or could become friable; underground or above-ground storage tanks, whether empty or containing any substance; any substance the presence of which on the Mortgaged Property is prohibited by any federal, state or local authority; any substance that requires special handling; and any other material or substance now or in the future defined as a “hazardous substance,” “hazardous material,” “hazardous waste,” “toxic substance,” “toxic pollutant,” “contaminant,” or “pollutant” within the meaning of any Hazardous Materials Law.

“Hazardous Materials Laws” means all federal, state, and local laws, ordinances and regulations and standards, rules, policies and other governmental requirements, administrative rulings and court judgments and decrees in effect now or in the future and including all amendments, that relate to Hazardous Materials and apply to Mortgagor or to the Mortgaged Property. Hazardous Materials Laws include, but are not limited to, the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. Section 9601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., the Toxic Substance Control Act, 15 U.S.C. Section 2601, et seq., the Clean Water Act, 33 U.S.C. Section 1251, et seq., and the Hazardous Materials Transportation Act, 49 U.S.C. Section 5101, et seq., and their state analogs.

(b) Prohibited Activities or Conditions shall not include the safe and lawful use and storage of quantities of (1) pre-packaged supplies, cleaning materials and petroleum products customarily used in the operation and maintenance of comparable multifamily properties, (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use and used by tenants and occupants of residential dwelling units in the Mortgaged Property; and (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, so long as all of the foregoing are used, stored, handled, transported and disposed of in compliance with Hazardous Materials Laws.

(c) Mortgagor shall take all commercially reasonable actions (including the inclusion of appropriate provisions in any Leases executed after the date of this Mortgage) to prevent its employees, agents, and contractors, and all tenants and other occupants from causing or permitting any Prohibited Activities or Conditions. Mortgagor shall not lease or allow the sublease or use of all or any portion of the Mortgaged Property to any tenant or subtenant for nonresidential use by any user that, in the ordinary course of its business, would cause or permit any Prohibited Activities or Conditions.

(d) If an O&M Program has been established with respect to Hazardous Materials, Mortgagor shall comply in a timely manner with, and cause all employees, agents, and contractors of Mortgagor and any other persons present on the Mortgaged Property to comply with the O&M Program. All costs of performance of Mortgagor's obligations under any O&M Program shall be paid by Mortgagor.

(e) Mortgagor shall promptly notify Mortgagee in writing upon the occurrence of any of the following events:

(1) Mortgagor's discovery of any Prohibited Activities or Conditions;

(2) Mortgagor's receipt of or knowledge of any complaint, order, notice of violation or other communication from any governmental authority or other person with regard to present or future alleged Prohibited Activities or Conditions or any other environmental, health or safety matters affecting the Mortgaged Property or any other property of Mortgagor that is adjacent to the Mortgaged Property; and

(3) any representation or warranty in this Section becomes untrue after the date of this Mortgage.

Any such notice given by Mortgagor shall not relieve Mortgagor of, or result in a waiver of, any obligation under this Mortgage, the Note, or any other Loan Document (if any).

(g) Mortgagor shall cooperate with any inquiry by any governmental authority and shall comply with any governmental or judicial order which arises from any alleged Prohibited Activities or Conditions.

## B. GENERAL PROVISIONS; COVENANTS

B.1. Amendment. No alteration or amendment of this Mortgage shall be effective unless in writing and signed by the parties sought to be charged or bound thereby.

B.2. Governing Law; Venue. This Mortgage shall be construed in accordance with the internal laws (without regard to the conflict of laws provisions) of the State of Texas, but giving effect to federal laws applicable to national banks, with venue being in any State or Federal Court located in New York County.

B.3. Extensions and Modifications. From time to time, without affecting the obligation of Mortgagor or Mortgagor's successors or assigns to pay the sums secured by this Mortgage and to observe the covenants of Mortgagor contained herein, and without affecting the lien or priority of the lien hereof on the Mortgaged Property, Mortgagee may, at Mortgagee's option, without giving notice to or obtaining the consent of Mortgagor, Mortgagor's successors or assigns or of any other lien holder, and without liability on Mortgagee's part, extend the time for payment of said indebtedness or any part thereof, reduce the payments thereon, release anyone liable on any of said indebtedness, modify in accordance with the Loan Documents or applicable law the terms and time of payment of said indebtedness, release from this Mortgage any part of the Mortgaged Property, take or release other or additional security, reconvey any part of the Mortgaged Property, consent to the granting of any easement or dedication, join in any extension



or subordination agreement, and agree in writing with Mortgagor to modify the rate of interest or period of amortization of the Note or change the amount of the installments payable thereunder.

B.4. Waiver by Mortgagor. Mortgagor waives any requirements of presentment, demands for payment, notices of nonpayment or late payment, protest, notices of protest, notices of dishonor, and all other formalities or notices of any kind not otherwise required hereby or by the other Loan Documents. To the full extent permitted by law, Mortgagor agrees that it will not at any time or in any manner whatsoever take any advantage of any stay, exemption or extension law or any so-called "Moratorium Law" now or at any time hereafter in force, nor take any advantage of any law now or hereafter in force providing for the valuation or appraisal of the Mortgaged Property, or any part thereof, prior to any sale thereof to be made pursuant to any provisions herein contained, or to any decree, judgment or order of any court of competent jurisdiction; or after such sale, claim or exercise any rights under any statute now or hereafter in force to redeem the property so sold, or any part thereof, or relating to the marshaling thereof, upon foreclosure sale or other enforcement hereof. To the full extent permitted by law, Mortgagor hereby expressly waives any and all rights it may have to require that the Mortgaged Property be sold as separate tracts or units in the event of foreclosure.

B.5. Corrections. Mortgagor will, upon the reasonable request of Mortgagee, promptly correct any defect, error or omission which may be discovered in the formal aspects of this Mortgage or in the execution or acknowledgment hereof, and will execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or as may be reasonably requested by Mortgagee for the purpose of curing any formal defect or omission or to subject to the lien and security interest hereby created any of Mortgagor's properties, rights or interest covered or intended to be covered hereby, and to perfect and maintain such lien and security interest.

B.6. No Third Parties Benefited. This Mortgage is made and entered into for the sole protection and benefit of Mortgagee, Mortgagor and its respective successors and permitted assigns, and no other person or persons shall have any right to action hereon or rights to Loan disbursements at any time.

B.7. Heirs, Successors and Assigns. This Mortgage shall be binding upon and inure to the benefit of the heirs, successors, permitted assigns and personal representatives of the parties hereto. This Mortgage shall run with the land and the term "Mortgagor" shall include any subsequent owner or owners of the Mortgaged Property.

B.8. Time. Time is of the essence of this Mortgage and each provision hereof of which time is an element.

B.9. Severability. If any provision of this Mortgage or the application hereof to any person or situation shall, to any extent, be held invalid or unenforceable, the remainder of this Mortgage, and the application of such provision to persons or situations other than those to which it shall have been held invalid or unenforceable, shall not be affected thereby, but shall continue to be valid and enforceable to the fullest extent permitted by law.

B.10. Paragraph Headings. Paragraph headings are provided herein for convenience only and shall not serve as a basis for interpretation or construction of this Mortgage, nor as evidence of the intention of the parties hereto.

B.11. No Merger. It being the desire and the intention of the parties hereto that this Mortgage and the lien hereof do not merge in fee simple title to the Mortgaged Property, it is hereby understood and agreed that should Mortgagee acquire any additional or other interests in or to said property or the ownership thereof, then, unless a contrary intent is manifested by Mortgagee as evidenced by an appropriate document duly recorded, this Mortgage and the lien hereof shall not merge in the fee simple title, toward the end that this Mortgage may be foreclosed as if owned by a stranger to the fee simple title.

B.12. Insurance Provisions. To the extent there are any provisions in the Loan Documents for insurance policies to bear mortgagee clauses or other loss payable clauses or endorsements in favor of Mortgagee, or to confer authority upon Mortgagee to settle or participate in the settlement of losses under policies of insurance or to hold and disburse or otherwise control use of insurance proceeds, from and after the entry of judgment of foreclosure, all such rights and powers of Mortgagee shall continue in Mortgagee as judgment creditor or mortgagee until confirmation of sale. In the event of a foreclosure sale, Mortgagee is hereby authorized, without the consent of Mortgagor, to assign any and all insurance policies to the purchaser at such sale, or to take such other steps as Mortgagee may deem advisable to cause the interest of such purchaser to be protected by any such insurance policies.

B.13. Taxes. Mortgagor shall pay prior to delinquency all taxes, assessments, levies and charges imposed by any public or quasi-public authority or utility company which are or which may become liens upon or cause a loss in value of the Mortgaged Property or any interest therein.

B.14. Transfer. Mortgagor shall not sell, assign, mortgage, or otherwise transfer the Mortgaged Property except with Mortgagee's written consent.

## C. DEFAULTS AND REMEDIES

C.1. Events of Default. Any breach of any obligation under this Mortgage by Mortgagor that continues for a period of 30 calendar days after written notice from Mortgagee to Mortgagor (or such longer period of time if a cure cannot be completed within 30 days and Mortgagor has commenced a cure and is acting in good faith), shall constitute an "Event of Default" hereunder.

C.2. Remedies Upon an Event of Default. Subject to the provisions of Sections C.9 and C.10 below, at any time after the occurrence of an Event of Default hereunder and during the continuance thereof, Mortgagee, at its option, and without further notice or demand, may declare all other amounts secured hereby immediately due and payable, and irrespective of whether Mortgagee exercises such option, and regardless of (i) Mortgagee's delay in exercising such option, (ii) Mortgagee's failure to exercise such option on the occasion of any prior Event of Default, or (iii) the adequacy of Mortgagee's security, it may, at its option and in its sole discretion,

without any additional notice or demand to or upon Mortgagor do one or more of the following to the fullest extent permitted by law:

(a) Mortgagee may in person or by agent enter upon, take possession of, complete construction of, manage and operate and make repairs and alterations to, the Mortgaged Property or any part thereof, and do any other acts which Mortgagee deems proper to protect and maintain the security hereof; and either with or without taking possession, terminate the license granted to Mortgagor in Paragraph A.4 hereof to receive the Rents and sue for or otherwise collect and receive said Rents, including those past due and unpaid. Mortgagee or Mortgagee's agent shall have access during Mortgagor's normal business hours to the books and records used in the operation and maintenance of the Mortgaged Property and shall be liable to account only for those Rents and sales proceeds actually received. Mortgagee shall not be liable to Mortgagor, anyone claiming under or through Mortgagor or anyone having an interest in the Mortgaged Property by reason of anything done or left undone by Mortgagee, other than an intentional tort or act of gross negligence by Mortgagee. Nothing contained in this Paragraph C.2 shall require Mortgagee to incur any expense or do any act. Notwithstanding Mortgagee's continuance in possession, undertaking of other actions pursuant to this subparagraph (a), or receipt and application of Rents or sales proceeds, Mortgagee shall be entitled to exercise every right provided for in this Mortgage or by law upon or after the occurrence and during the continuance of an Event of Default.

(b) Mortgagee, without regard to the adequacy of any security for the indebtedness hereby secured and whether or not waste has occurred, and without notice to any Mortgagor, shall be entitled to the appointment of a receiver by any court having jurisdiction to take possession of and protect the Mortgaged Property, operate the same, collect the Rents therefrom and perform any and all other acts which Paragraph C.2(a) hereof states that Mortgagee may perform.

(c) Mortgagee may bring an action in any court of competent jurisdiction to foreclose this Mortgage or to enforce any of the covenants hereof. In any suit to foreclose the lien hereof, there shall be allowed and included as additional Indebtedness in the decree for sale all costs and expenses which may be paid or incurred by or on behalf of Mortgagee or subsequent holders of the Note for reasonable attorneys' fees, appraisers' fees, receiver's costs and expenses, insurance, taxes, outlays for documentary and expert evidence, costs for preservation of the Mortgaged Property, stenographer's charges, publication costs and costs of procuring all abstracts of title, title searches and examinations, guarantee policies and similar data and assurances with respect to title as Mortgagee may deem to be reasonably necessary either to prosecute such suit or to evidence to bidders at any sale which may be had pursuant to such decree the true condition of the title to or value of the Mortgaged Property or for any other reasonable purpose. The amount of any such costs and expenses which may be paid or incurred after the decree for sale is entered may be estimated and the amount of such estimate may be allowed and included as additional Indebtedness secured hereby in the decree for sale. In the event of a foreclosure sale or other disposition of the Mortgaged Property or any portion thereof, the proceeds of said sale or other disposition shall be applied, first, to such costs and expenses, then to payment of the Indebtedness, and finally the remainder, if any, shall be paid to Mortgagor. If the Mortgaged Property consists of several lots or parcels, Mortgagee may elect to sell the Mortgaged Property either as a whole or in separate lots or parcels. If Mortgagee elects to sell in separate lots or parcels, Mortgagee may designate the order in which such lots or parcels shall be offered for sale or sold. Any person,

including Mortgagor or Mortgagee, may purchase at the sale. Notwithstanding the foregoing or any other provision contained herein, Mortgagor's obligation to pay costs and expenses shall be required only to the extent of, Net Cash Flow and Net Cash Proceeds (each as defined in the Partnership Agreement).

(d) Mortgagee may dispose of any part of the Mortgaged Property constituting personal property in any manner now or hereafter permitted by Article 9 of the Texas UCC or in accordance with any other remedy provided by law. Mortgagee shall be eligible to purchase any part or all of such property at any such disposition. Any such disposition may be either public or private as Mortgagee may so elect, subject to the provisions of the Texas UCC. Mortgagee shall give Mortgagor at least ten (10) days' prior written notice of the time and place of any public sale or other disposition of such property or of the day on or after which any private sale or any other intended disposition is to be made, and if such notice is sent to the Mortgagor's address above, it shall constitute reasonable notice to the Mortgagor.

(e) Nonjudicial Foreclosure. At any time during the existence of an Event of Default, Mortgagee, at Mortgagee's option, may declare the Indebtedness to be immediately due and payable without further demand, and may invoke the power of sale and any other remedies permitted by Texas law or provided in this Mortgage or in any other Loan Document. Mortgagor acknowledges that the power of sale granted in this Mortgage may be exercised by Mortgagee without prior judicial hearing. Mortgagee shall be entitled to collect all reasonable costs and expenses incurred in pursuing such remedies, including reasonable attorneys' fees, costs of documentary evidence, abstracts and title reports.

If Mortgagee invokes the power of sale, Mortgagee may, by and through the Trustee, or otherwise, sell or offer for sale the Mortgaged Property in such portions, order and parcels as Mortgagee may determine, with or without having first taken possession of the Mortgaged Property, to the highest bidder for cash at public auction in accordance with Texas law, including without limitation, the Texas Property Code.

Trustee shall deliver to the purchaser at the sale, within a reasonable time after the sale, a deed conveying the Mortgaged Property so sold in fee simple with covenants of general warranty. Mortgagor covenants and agrees to defend generally the purchaser's title to the Mortgaged Property against all claims and demands. The recitals in Trustee's deed shall be prima facie evidence of the truth of the statements contained in those recitals.

If all or any part of the Mortgaged Property is sold pursuant to this Section C.2(e), Mortgagor will be divested of any and all interest and claim to the Mortgaged Property, including any interest or claim to all insurance policies, utility deposits, bonds, loan commitments and other intangible property included as a part of the Mortgaged Property. Additionally, after a sale of all or any part of the Mortgaged Property, Mortgagor will be considered a tenant at sufferance of the purchaser of the same, and the purchaser shall be entitled to immediate possession of such property. If Mortgagor shall fail to vacate the Mortgaged Property immediately, the purchaser may and shall have the right, without further notice to Mortgagor, to go into any justice court in any precinct or county in which the Mortgaged Property is located and file an action in forcible entry and detainer, which action shall lie against Mortgagor or its assigns or legal representatives, as a tenant at

sufferance. This remedy is cumulative of any and all remedies the purchaser may have under this Mortgage or otherwise.

(f) Trustee. Trustee may resign by giving of notice of such resignation in writing to Mortgagee. If Trustee shall die, resign or become disqualified from acting under this Mortgage or shall fail or refuse to act in accordance with this Mortgage when requested by Mortgagee or if for any reason and without cause Mortgagee shall prefer to appoint a substitute trustee to act instead of the original Trustee named in this Mortgage or any prior successor or substitute trustee, Mortgagee shall have full power to appoint a substitute trustee and, if preferred, several substitute trustees in succession who shall succeed to all , rights, powers and duties of the original Trustee named in this Mortgage. Such appointment may be executed by an authorized officer, agent or attorney in fact of Mortgagee (whether acting pursuant to a power of attorney or otherwise), and such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by Mortgagee.

Any successor Trustee appointed pursuant to this Section shall, without any further act, deed or conveyance, become vested with all properties, rights, powers and trusts of the predecessor Trustee with like effect as if originally named as Trustee in this Mortgage; but, nevertheless, upon the written request of Mortgagee or such successor Trustee, the Trustee ceasing to act shall execute and deliver an instrument transferring to such successor Trustee, all s, properties, rights, powers and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and monies held by the Trustee ceasing to act to the successor Trustee.

Trustee may authorize one or more parties to act on Trustee's behalf to perform the ministerial functions required of Trustee under this Mortgage, including the transmittal and posting of any notices.

(g) Rights of Tenants. Mortgagee shall have the right and option to commence a civil action to foreclose this Mortgage and to obtain a decree of foreclosure and sale subject to the right of any tenant or tenants of the Premises having an interest in the Premises. The failure to join any such tenant or tenants of the Premises as party defendant or defendants in any such civil action or the failure of any decree of foreclosure and sale to foreclose their rights shall not be asserted by Mortgagor as a defense in any civil action instituted to collect the indebtedness secured hereby, or any part thereof or any deficiency remaining unpaid after foreclosure and sale of the Mortgaged Property, any statute or rule of law at any time existing to the contrary notwithstanding.

C.3. Foreclosure Procedure. To the fullest extent permitted by law, Mortgagor hereby expressly waives any right which it may have to direct the order in which any of the Mortgaged Property shall be sold in the event of any foreclosure of this Mortgage.

C.4. Foreclosure Purchase. Upon any sale of the Mortgaged Property pursuant to judicial proceedings, if Mortgagee or its nominee is a purchaser at such sale, it shall be entitled to use and apply all or any portion of the amounts then secured hereby for or in settlement or payment of all or any portion of the purchase price of the property purchased, and in such case, this Mortgage, the Note and documents evidencing expenditures secured hereby shall be presented

to the person conducting the sale in order that the amount of said indebtedness so used or applied may be credited thereon as having been paid.

C.5. Cumulative Remedies. No remedy herein conferred upon or reserved to Mortgagee is intended to be exclusive of any other remedy herein or in any other Loan Document or by law provided, but each shall be cumulative and shall be in addition to every other remedy given hereunder or any other Loan Document or now or hereafter existing at law or in equity or by statute. Every power or remedy given by this instrument to Mortgagee, or to which Mortgagee may be otherwise entitled, may be exercised from time to time to the fullest extent permitted by law and as often as may be deemed expedient by Mortgagee, and Mortgagee may pursue inconsistent remedies. If there exists additional security for the performance of the obligations secured hereby, Mortgagee, at its sole option and without limiting or affecting any rights or remedies hereunder, may exercise any of the rights and remedies to which it may be entitled hereunder either concurrently with whatever other rights it may have in connection with such other security or in such order as it may determine.

C.6. WAIVER OF TRIAL BY JURY. MORTGAGOR HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT THAT IT MAY HAVE TO A TRIAL BY JURY IN ANY LITIGATION ARISING IN ANY WAY IN CONNECTION WITH THIS MORTGAGE, THE NOTE, OR ANY OF THE OTHER LOAN DOCUMENTS, THE LOAN OR ANY OTHER STATEMENTS OR ACTIONS OF MORTGAGOR OR MORTGAGEE. MORTGAGOR ACKNOWLEDGES THAT IT HAS BEEN REPRESENTED IN THE SIGNING OF THIS MORTGAGE AND IN THE MAKING OF THIS WAIVER BY INDEPENDENT LEGAL COUNSEL SELECTED OF ITS OWN FREE WILL, AND THAT IT HAS DISCUSSED THIS WAIVER WITH SUCH LEGAL COUNSEL. MORTGAGOR FURTHER ACKNOWLEDGES THAT (i) IT HAS READ AND UNDERSTANDS THE MEANING AND RAMIFICATIONS OF THIS WAIVER, (ii) THIS WAIVER IS A MATERIAL INDUCEMENT FOR MORTGAGEE TO MAKE THE LOAN, ENTER INTO THIS MORTGAGE AND EACH OF THE OTHER LOAN DOCUMENTS, AND (iii) THIS WAIVER SHALL BE EFFECTIVE AS TO EACH OF SUCH OTHER LOAN DOCUMENTS AS IF FULLY INCORPORATED THEREIN.

C.7. Reserved.

C.8. Subordinate Mortgage. This Mortgage is subject and subordinate to the terms of (i) Series 2019 Bond Regulatory Agreement (as defined in the Partnership Agreement) and (ii) the Multifamily Mortgage, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated as of the date hereof, by Mortgagor in favor of the Texas Department of Housing and Community Affairs for a loan in the amount of \$[ ], each recorded in the Real Property Records, Dallas County immediately prior hereto.

C.9. Limited Partner Cure Rights. Notwithstanding anything to the contrary contained herein, Mortgagee hereby agrees that any cure of any Event of Default made or tendered by RAH Investor 226 LLC, a Mississippi limited liability company (the "Investment Limited Partner") and/or Sterling Corporate Services LLC, a New York limited liability company (the "Special Limited Partner" and together with the Investor Limited Partner, the "Tax Credit Investor") shall be deemed to be a cure by Mortgagor, and accepted or rejected on the

same basis as if made or tendered by Mortgagor. The Tax Credit Investor shall have a period of thirty (30) calendar days after receipt of notice, or such longer period of time as may be set forth herein, to cure an Event of Default prior to exercise of remedies by the Mortgagee under this Mortgage or the Note. Copies of all notices regarding an Event of Default which are sent to Mortgagor shall also be sent to the Tax Credit Investor at: [ ] **[Investor to provide]**.

C.10. Forbearance. Notwithstanding anything to the contrary in this Mortgage or the Note, Mortgagee shall not take any action or exercise any remedies against Mortgagor under this Mortgage other than an action for specific performance of the obligations hereunder until the earlier of (i) the Maturity Date (as defined in the Note) or (ii) the date no prior Mortgage or Regulatory Agreement (as each is defined in the Partnership Agreement) encumbers the Mortgaged Property; but in all events, Mortgagee shall not accelerate the Note or take any other action or exercise any remedies against Mortgagor, other than an action for specific performance of the obligations hereunder, prior to the expiration of the Compliance Period (as defined in the Partnership Agreement).

D. Non-Recourse. Neither Mortgagor nor Mortgagor's partners, agents or representatives shall have personal liability for the Indebtedness or other obligations hereunder.

E. Restrictive Covenants. Mortgagee acknowledges that Mortgagor has or will enter into an extended low-income housing commitment ("Restrictive Covenants") described in Section 42(h)(6)(B) of the Internal Revenue Code, as amended (the "Code"), and Mortgagee agrees to comply with the provisions of the Restrictive Covenants pertaining to Code Section 42(h)(6)(E)(ii).

F. Fixture Filing. This Mortgage is also a fixture filing under the Uniform Commercial Code of Texas.

G. CONSTRUCTION DEED OF TRUST. THIS MORTGAGE SECURES AN OBLIGATION INCURRED FOR THE CONSTRUCTION OF IMPROVEMENTS ON THE PREMISES. THIS MORTGAGE IS A "CONSTRUCTION MORTGAGE" FOR PURPOSES OF SECTIONS 9.334(H) AND 2A.309 OF THE TEXAS BUSINESS AND COMMERCE CODE.

H. Loan Charges. Mortgagor and Mortgagee intend at all times to comply with the laws of the State of Texas governing the maximum rate or amount of interest payable on or in connection with the Indebtedness (or applicable United States federal law to the extent that it permits Mortgagee to contract for, charge, take, reserve or receive a greater amount of interest than under Texas law). If the applicable law is ever judicially interpreted so as to render usurious any amount payable under the Note, this Mortgage or any other Loan Document, or contracted for, charged, taken, reserved or received with respect to the Indebtedness, or if acceleration of the maturity of the Indebtedness, or if any prepayment by Mortgagor results in Mortgagor having paid any interest in excess of that permitted by any applicable law, then Mortgagor and Mortgagee expressly intend that all excess amounts collected by Mortgagee shall be applied to reduce the unpaid principal balance of the Indebtedness (or, if the Indebtedness has been or would thereby be paid in full, shall be refunded to Mortgagor), and the provisions of the Note, this Mortgage and the other Loan Documents immediately shall be deemed reformed and the amounts thereafter collectible under the Loan Documents reduced, without the necessity of the execution of any new

documents, so as to comply with any applicable law, but so as to permit the recovery of the fullest amount otherwise payable under the Loan Documents. The right to accelerate the maturity of the Indebtedness does not include the right to accelerate any interest which has not otherwise accrued on the date of such acceleration, and Mortgagee does not intend to collect any unearned interest in the event of acceleration. All sums paid or agreed to be paid to Mortgagee for the use, forbearance or detention of the Indebtedness shall, to the extent permitted by applicable law, be amortized, prorated, allocated and spread throughout the full term of the Indebtedness until payment in full so that the rate or amount of interest on account of the Indebtedness does not exceed the applicable usury ceiling. Notwithstanding any provision contained in the Note, this Mortgage or any other Loan Document that permits the compounding of interest, including any provision by which any accrued interest is added to the principal amount of the Indebtedness, the total amount of interest that Mortgagor is obligated to pay and Mortgagee is entitled to receive with respect to the Indebtedness shall not exceed the amount calculated on a simple (i.e., non-compounded) interest basis at the maximum rate on principal amounts actually advanced to or for the account of Mortgagor, including all current and prior advances and any advances made pursuant to the Mortgage or any other Loan Document (such as for the payment of Impositions and similar expenses or costs).

ENTIRE AGREEMENT. THIS MORTGAGE, THE NOTE AND THE OTHER LOAN DOCUMENTS REPRESENT THE FINAL AGREEMENT BETWEEN THE PARTIES AND MAY NOT BE CONTRADICTED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS. THERE ARE NO UNWRITTEN ORAL AGREEMENTS BETWEEN THE PARTIES.

I.           .

[SIGNATURE PAGE FOLLOWS]



IN WITNESS WHEREOF, Mortgagor has duly executed and delivered this Mortgage as of the day and year first above written.

**MORTGAGOR:**

**NORTHGATE PRESERVATION, L.P.**

By: Northgate Preservation GP, LLC,  
its general partner

By: \_\_\_\_\_  
Name: Matthew Finkle  
Title: Vice President

STATE OF NEW YORK  
COUNTY OF NEW YORK

On \_\_\_\_\_, 2019, I, the undersigned, a Notary Public, in and for the County and State aforesaid, DO HEREBY CERTIFY, that Matthew Finkle, personally known to me to be a Vice President of Northgate Preservation GP, LLC, the general partner of Northgate Preservation, L.P., and personally known to me to be the same person whose name is subscribed to the foregoing instrument, appeared before me this day in person and acknowledged that as such Vice President, he signed and delivered the said instrument, as his/her free and voluntary act, and as the free and voluntary act and deed of said company, for the uses and purposes therein set forth.

\_\_\_\_\_  
Notary Public

My Commission Expires:

[NOTARIAL SEAL]

**EXHIBIT A**  
LEGAL DESCRIPTION

**NOTICE OF CONFIDENTIALITY RIGHTS: IF YOU ARE A NATURAL PERSON, YOU MAY REMOVE OR STRIKE ANY OR ALL OF THE FOLLOWING INFORMATION FROM ANY INSTRUMENT THAT TRANSFERS AN INTEREST IN REAL PROPERTY BEFORE IT IS FILED FOR RECORD IN THE PUBLIC RECORDS: YOUR SOCIAL SECURITY NUMBER OR YOUR DRIVER'S LICENSE NUMBER.**

SUBORDINATE  
MULTIFAMILY DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING

from

NORTHGATE PRESERVATION, L.P.,  
Grantor,

to

\_\_\_\_\_,  
Trustee,

for the benefit of  
THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.

and

TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS,  
together, Grantee

Dated as of [June] 1, 2019

Relating to:

\$19,000,000  
Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through - Northgate Village), Series 2019

**THIS SECURITY INSTRUMENT IS TO BE FILED AND INDEXED IN THE REAL ESTATE RECORDS AND IS ALSO TO BE INDEXED IN THE INDEX OF FINANCING STATEMENTS UNDER THE NAMES OF GRANTOR AS "DEBTOR" AND GRANTEE AS "SECURED PARTY." THIS INSTRUMENT SHALL ALSO BE EFFECTIVE FROM THE DATE OF ITS RECORDING AS A FINANCING STATEMENT FILED AS A FIXTURE FILING WITH RESPECT TO ALL GOODS CONSTITUTING PART OF THE PROPERTY WHICH ARE OR ARE TO BECOME FIXTURES**

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**SUBORDINATE  
MULTIFAMILY DEED OF TRUST,  
SECURITY AGREEMENT AND FIXTURE FILING**

This SUBORDINATE MULTIFAMILY DEED OF TRUST, SECURITY AGREEMENT AND FIXTURE FILING, dated as of [June] 1, 2019 (as the same may be amended, modified or supplemented from time to time, this “**Deed of Trust**”), by NORTHGATE PRESERVATION, L.P., a Texas limited partnership (together with its successors and assigns, “**Grantor**”), having its principal office at c/o Related Companies, 60 Columbus Circle, 18th Floor, New York, New York 10023, to [\_\_\_\_\_] and [his/her] successors and assigns (the “**Trustee**”), for the benefit of THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A., as trustee (together with any successor trustee under the Indenture described below and their respective successors and assigns, the “**Bond Trustee**”), a national banking association organized and existing under the laws of the United States of America, having offices at [\_\_\_\_\_] and TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS (the “**Issuer**” and, together with the Bond Trustee, the “**Grantee**”), a public and official agency of the State of Texas having offices at 221 East 11th Street, Austin, Texas 78701.

W I T N E S S E T H:

**WHEREAS**, the Issuer is authorized by the provisions of Chapter 2306, Texas Government Code, as amended (the “**Act**”), to issue one or more series of its revenue bonds and loan the proceeds thereof to finance residential rental housing facilities for individuals and families of low, very low and extremely low income and families of moderate income; and

**WHEREAS**, by proceedings adopted pursuant to and in accordance with the provisions of the Act, the Issuer has authorized the issuance of its Multifamily Housing Revenue Bonds (Pass-Through - Northgate Village), Series 2019, in the original aggregate principal amount of \$19,000,000 (the “**Bonds**”) pursuant to an Indenture of Trust between the Issuer and the Bond Trustee dated as of the date hereof (as the same may be modified, amended or supplemented from time to time, the “**Indenture**”); and

**WHEREAS**, Grantor proposes to borrow an amount equal to the aggregate principal amount of the Bonds (the “**Mortgage Loan Amount**”) from the Issuer pursuant to that certain Financing Agreement dated as of [June] 1, 2019 by and among the Issuer, the Bond Trustee, Regions Bank, as lender (the “**Lender**”) and the Grantor (as the same may be amended, modified or supplemented from time to time, the “**Financing Agreement**”); and

**WHEREAS**, Grantor has executed and delivered to the Issuer, and the Issuer has assigned to the Lender that certain promissory note dated the Closing Date (as the same may be amended, modified or supplemented from time to time, the “**Mortgage Note**”), which evidences the portion of the Mortgage Loan Amount being loaned by the Issuer to the Grantor pursuant to the Financing Agreement (the “**Mortgage Loan**”); and

**WHEREAS**, the proceeds of the Mortgage Loan will be utilized by Grantor to pay the costs of acquiring, equipping and rehabilitating a multifamily rental housing development known as Northgate Village Apartments (the “**Development**”); and

**WHEREAS**, the Mortgage Note provides that the Mortgage Loan matures on the final maturity date of the Bonds, being [\_\_\_\_\_] (the “**Maturity Date**”), upon which date all of the outstanding and unpaid principal and interest under the Mortgage Note will be due and payable; and

**WHEREAS**, the Issuer requires that this Deed of Trust be executed and delivered as a condition to making the Mortgage Loan and as security for the Grantor’s obligations under the Financing Agreement other than repayment of principal and interest on the Mortgage Note pursuant to Section 4.01 of the Financing Agreement (the “**Mortgage Note Payments**”).

#### GRANTING CLAUSES

**NOW, THEREFORE**, in consideration of the sum of TEN DOLLARS (\$10.00) and other good and valuable consideration, the receipt and legal sufficiency of which are hereby acknowledged, in order to secure the payment of the Indebtedness (as hereinafter defined), and any other sums payable under the Financing Documents (as hereinafter defined) other than the Mortgage Note Payments; and to secure the performance and observance of all other provisions of the Financing Documents, Grantor hereby grants, bargains, sells, warrants, conveys, assigns, sets over and confirms to Trustee, in trust for the benefit of Grantee, with power of sale, and grants to Grantee a security interest and lien in, all of the following (all of which is hereinafter collectively referred to as the “**Mortgaged Property**”):

I. The fee simple interest of Grantor in those certain tract(s) or parcel(s) of land (the “**Land**”), being situated in Dallas County, Texas, being more fully described as set forth in Exhibit A attached hereto and hereby referred to and incorporated herein for all purposes, together with all right, title and interest of the Grantor, including any after-acquired right, title or reversion, in and to the beds of the ways, streets, avenues and alleys adjoining the Land subject to the Permitted Encumbrances, and all Improvements;

II. The fee simple interest of Grantor in all (i) buildings and other improvements and additions thereto now erected or hereafter constructed or placed upon the Land or any part thereof (the “**Improvements**”); (ii) the name or names, if any, as may now or hereafter be used for each Improvement or otherwise in connection with the Land, and the books and records and good will associated therewith, and all licenses, permits, and approvals in connection with the construction and operation of the Improvements; and (iii) refrigerators, dishwashers, air conditioners, microwave ovens, washers, dryers, exercise equipment, lawn care equipment, pool equipment and furniture, devices, apparatus, interior improvements, appurtenances, heating, electrical, mechanical, lighting, plumbing, ventilating, air conditioning, refrigerating, incinerating and elevator equipment and systems, stoves, ranges, vacuum cleaning systems, call systems, sprinkler systems and other fire prevention and extinguishing apparatus and materials, motors, machinery, pipes, appliances, fittings, fixtures, equipment and building materials of every kind and nature whatsoever now or hereafter attached to or placed in or upon the Land or the Improvements, or any part thereof, or used or procured for use in connection with the operation of the Land or the Improvements or any business conducted thereon (except for fixtures and personal property that are at any time the property of Space Tenants, as hereinafter defined), all of the foregoing items set forth in this clause (iii), except as aforesaid, hereinafter collectively called the “**Equipment**”;

III. All screens, awnings, shades, blinds, curtains, draperies, carpets, rugs, furniture, furnishings, decorations, chattels and other personal property now or hereafter in, on or at said Land (except for trade fixtures, furniture and furnishings that are at any time the property of Space Tenants), all of the foregoing, except as aforesaid, hereinafter collectively called the “**Furnishings**”;

IV. All unearned premiums, accrued, accruing or to accrue under insurance policies now or hereafter obtained, or caused to be obtained, by Grantor and all proceeds of the conversion, voluntary or involuntary, of the Mortgaged Property or any part thereof into cash or liquidated claims, including, without limitation, proceeds of casualty insurance, title insurance or any other insurance maintained on the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof (collectively, “**Proceeds**”) and all awards and other compensation (collectively “**Awards**”) heretofore and hereafter made to the present and all subsequent owners of the Land, the Improvements, the Equipment or the Furnishings or any part of any thereof by any governmental or other lawful authorities for the taking by eminent domain, condemnation or otherwise, of all or any part thereof or any easement or other right therein, including Awards for any change of grade of streets, all of which Proceeds and Awards are hereby assigned to Grantee;

V. If applicable pursuant to Section 4.1 hereof, all of the rents, issues, income, receipts, revenues, benefits and profits of the Mortgaged Property (collectively, the “**Rents**”), including all leases, subleases, occupancy agreements, licenses, franchises and appurtenances now or hereafter entered into covering any part of the Mortgaged Property, including all interest of Grantor as landlord in and to any of the same, including, without limitation, the interest of Grantor in and to all cash, promissory notes and securities deposited thereunder and the right to receive and collect the Rents and any other sums payable thereunder, all of which are hereby assigned to Grantee;

VI. All rights under any easement or related agreements and all royalties and rights appertaining to the use and enjoyment of the Land, including, without limitation, alley, vault, drainage, mineral, ditch, reservoir, water, oil and gas rights, if any, together with any and all other rights, privileges and interests appurtenant thereto or used in connection with the Land or the Improvements, whether existing now or hereafter acquired;

VII. All construction contracts, subcontracts, architectural agreements, labor, material and payment bonds, guarantees and warranties, plans and specifications, and permits and approvals relating to the construction of the Improvements, whether now or hereafter existing;

VIII. All books, records and good will associated with the Land and the Improvements, all logos, trademarks and tradenames used in connection with the Land and Improvements, all management contracts now in effect or hereafter entered into, and all extensions, renewals and replacements thereof, and all permits, licenses and approvals for the operation of the Improvements;

IX. Upon foreclosure under this Deed of Trust, all tax credits or abatement certificates under Federal, State or local law arising out of or related to the Mortgaged Property and all of the Grantor’s title and interest in and to any instrument, document or agreement relating thereto,



including, without limitation, any regulatory agreement relating to the leasing of individual units comprising the Mortgaged Property; and

X. All extensions, improvements, betterments, substitutions and replacements of, and all additions and appurtenances to, the Land, the Improvements, the Equipment and the Furnishings, hereafter acquired by or released to Grantor or constructed, assembled or placed on the Land, and all conversions of the security constituted thereby immediately upon such acquisition, release, construction, assembling, placement or conversion, as the case may be, and in each such case, without any further mortgage, conveyance, assignment or other act by Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described herein.

**TO HAVE AND TO HOLD** the Mortgaged Property, together with all rights, hereditaments and appurtenances in any wise appertaining or belonging thereto, unto Trustee, its substitutes or its successors and assigns, forever for the uses set forth herein, and Grantor hereby binds itself and its successors and assigns to warrant and forever defend the Mortgaged Property unto Trustee, its substitutes or successors and assigns, against the claim or claims of all Persons claiming or to claim the same or any part thereof.

## **ARTICLE I**

### **CERTAIN DEFINITIONS**

In addition to other definitions contained herein, the following terms shall have the meanings set forth below, unless the context of this Deed of Trust otherwise requires. All other capitalized terms used herein which are defined in either the Indenture or the Financing Agreement, and not defined herein, shall have the respective meanings ascribed thereto in the Indenture or Financing Agreement, unless otherwise expressly provided or unless the context otherwise requires.

(a) “Condemnation” means any taking of title, of use, or of any other property interest under the exercise of the power of eminent domain, by any governmental body or by any person acting under governmental authority.

(b) “Default Rate” shall mean a per annum rate of interest equal to the lower of (a) 12% per annum, or (b) the Maximum Amount.

(c) “Development” shall have the meaning ascribed to such term in the recitals to this Deed of Trust.

(d) “Due and Payable” shall mean (i) when used with reference to the Indebtedness, or when referring to any and all other sums secured by this Deed of Trust, due and payable, whether at the monthly or other date of payment as specified in the Financing Agreement or other Financing Documents, and (ii) when used with reference to Impositions, the last day upon which any such charge may be paid without penalty or interest and without becoming a lien upon the Mortgaged Property.

(e) “Environmental Laws” shall mean and include each and every federal, state or local statute, regulation or ordinance or any judicial or administrative decree, policy, guidance or decision, whether now existing or hereafter enacted, promulgated or issued, governing or relating to the protection of the environment, natural resources and human health and safety, with respect to any Hazardous Substances (as hereinafter defined), Environmentally Sensitive Areas (as hereinafter defined), drinking water, groundwater, wetlands, landfills, open dumps, storage tanks, underground storage tanks, solid waste, waste water, storm water run-off, waste emissions, wells or radon.

(f) “Environmentally Sensitive Area” shall mean (i) a wetland or other “water of the United States” for purposes of the Clean Water Act or other similar area regulated under any State Environmental Law, (ii) a floodplain or other flood hazard area as defined pursuant to any applicable State Environmental Law, (iii) a portion of the coastal zone for purposes of the Federal Coastal Zone Management Act, or (iv) any other area, development of which is specifically restricted under applicable Environmental Laws by reason of its physical characteristics or prior use.

(g) “Event of Default” shall mean each of the events and circumstances described as such in Section 6.1 hereof.

(h) “Financing Documents” shall mean this Deed of Trust, the Financing Agreement, the Tax Exemption Agreement and the Regulatory Agreement.

(i) “Governmental Authority” means any federal, state, county, municipal or local government or any department, commission, board, legislature or office thereof, having or claiming jurisdiction over the Mortgaged Property.

(j) “Hazardous Substances” shall mean each and every element, compound, chemical mixture, contaminant, pollutant, material, waste or other substance which is defined, determined or identified as hazardous or toxic under any Environmental Law, including, without limitation, asbestos, asbestos-containing materials, poly-chlorinated biphenyls, urea foam formaldehyde insulation, radon and lead-based paint; provided, such term shall not include (1) pre-packaged supplies, cleaning materials and petroleum products in such quantities and types as are customarily used for residential purposes or in the operation and maintenance of comparable multifamily properties; (2) cleaning materials, personal grooming items and other items sold in pre-packaged containers for consumer use in such quantities and types as are customarily found in comparable multifamily properties and which are used by tenants and occupants of residential dwelling units in the Mortgaged Property; (3) petroleum products used in the operation and maintenance of motor vehicles from time to time located on the Mortgaged Property’s parking areas, in such quantities and types as are customarily used in the operation and maintenance of comparable multifamily properties; (4) petroleum products (including natural gas) stored in above-ground and underground storage tanks, so long as the existence of such above-ground and underground storage tanks has been previously disclosed by Borrower to Lender in writing and any such tank complies with and at all times continues to comply with all requirements of Environmental Laws; and (5) natural gas when transported and used for residential purposes in combustion appliances.

(k) “Impositions” shall mean all duties, taxes, water and sewer rents, rates and charges, assessments (including, but not limited to, all assessments for public improvement or benefit), charges for public utilities, excises, levies, licenses and permit fees and other charges, ordinary or extraordinary, whether foreseen or unforeseen, of any kind and nature, whatsoever, which prior to or during the term of this Deed of Trust will have been or may be laid, levied, assessed or imposed upon or become due and payable out of or in respect of, or become a lien on, the Mortgaged Property or any part thereof or appurtenances thereto, or which are levied or assessed against the rent and income received by Grantor from the Space Leases (as hereinafter defined) by virtue of any present or future law, order or ordinance of the United States of America or of any state, county or local government or of any department, office of bureau thereof or of any other Governmental Authority.

(l) “Indebtedness” shall mean and include all payments, sums, charges, obligations and liabilities of Grantor due or to become due at any time under the Financing Agreement other than the Mortgage Note Payments, and all other sums, charges, obligations and liabilities of Grantor due or to become due at any time to Grantee under this Deed of Trust, or any other Financing Document.

(m) “Land” shall mean that certain parcel of land more particularly described in Exhibit A annexed hereto and incorporated herein, including all and singular, the easements, rights, privileges, tenements, hereditaments and appurtenances (including air rights) thereunto belonging or in any way appertaining thereto, and the reversion and the remainder thereof; and all of the estate, right, title, interest, claim or demand of Grantor therein and in and to any land lying in the bed of any street, road or avenue, open or proposed, thereof, either at law or in equity, in possession or expectancy, now or hereafter acquired and in all strips and gores therein or adjoining thereto, the air space and right to use said air space thereinabove and all rights of ingress and egress by motor vehicles to parking facilities thereon or therein.

(n) “Maximum Amount” shall mean the maximum amount permitted to be charged under applicable usury laws or other applicable laws relating to the payment of interest from time to time in effect including, without limitation, Chapter 1204 of the Texas Government Code.

(o) “Mortgage Loan” shall have the meaning ascribed to such term in the recitals to this Deed of Trust.

(p) “Net Proceeds”, when used with respect to any Condemnation awards or insurance proceeds allocable to the Development, means the gross proceeds from Condemnation or insurance remaining after payment of all reasonable expenses (including attorneys’ fees) incurred in the collection of such gross proceeds.

(q) “Permitted Encumbrances” shall mean, collectively, the mortgage on the Development securing the Mortgage Loan (the “**First Mortgage**”), the Regulatory Agreement, those liens, easements, rights of way, covenants, restrictions, encumbrances and other matters affecting title to the Mortgaged Property set forth in Schedule B of the mortgagee policy of title insurance insuring this Deed of Trust (or commitment to issue such policy in existence as of the date of this Deed of Trust) and any other liens, easements, rights of way, covenants, restrictions,

encumbrances and other matters affecting title to the Mortgaged Property approved in writing by the Grantee.

(r) “Person” shall mean any natural person, firm, partnership, association, corporation, trust, or public body.

(s) “Space Lease” shall mean any lease, sublease, license, concession agreement or any other form of agreement, however denominated, granting the right to use and occupy the Mortgaged Property, or any portion thereof, and all renewals, extensions, modifications, amendments and other agreements affecting the same.

(t) “Space Tenant” shall mean the tenant or other user or occupant of part or all of the Mortgaged Property under any Space Lease.

(u) “Spill” shall mean any release, spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, storing, escaping, leaching, dumping, or discarding, burying, abandoning, or disposing into the environment.

(v) “State” shall mean the state in which the Land is located.

(w) “Threat of Spill” shall mean a substantial likelihood of a Spill which requires action to prevent or mitigate damage to the environment which may result from such Spill.

## ARTICLE II

### PARTICULAR COVENANTS OF GRANTOR

Grantor covenants and agrees as follows:

SECTION 2.1. Payment of Indebtedness. Grantor shall duly and punctually pay to Issuer and/or to Bond Trustee, as applicable, as and when Due and Payable, the Indebtedness.

SECTION 2.2. Warranty of Title. Grantor warrants that (a) it is the lawful owner of fee title to the Land and all of the Mortgaged Property; (b) the Mortgaged Property is free and clear of all deeds of trust, deeds to secure debt, mortgages, liens, charges and encumbrances whatsoever except for the Permitted Encumbrances; (c) except as provided in Section 4.1 hereof, Grantor has not heretofore assigned the Rents; (d) it will maintain and preserve the lien and priority of this Deed of Trust until the Indebtedness has been paid in full and all other obligations owing to Grantee by Grantor in connection with the Loan have been satisfied; (e) it has good right and lawful authority to mortgage and assign the Mortgaged Property as provided in and by this Deed of Trust; and (f) except for the Permitted Encumbrances, it will warrant and defend the same against any and all claims and demands whatsoever.

SECTION 2.3. No Defaults. Grantor represents and warrants that no Event of Default or event which, with the giving of notice or passage of time, would constitute an Event of Default exists under the provisions of this Deed of Trust or the other Financing Documents or in the performance of any of the terms, covenants, conditions or warranties hereof or thereof on the part of Grantor to be performed or observed.

SECTION 2.4. To Pay Impositions. Grantor will pay or cause to be paid as and when due and payable all Impositions levied upon the Mortgaged Property or any part thereof and, within fifteen (15) days after the payment thereof, will deliver to Grantee receipts evidencing the payment or bonding of all such Impositions. Notwithstanding the foregoing, if by law, any Imposition may at the option of the taxpayer be paid in installments (whether or not interest shall accrue on the unpaid balance thereof), Grantor shall have the right, provided that no Event of Default shall then exist under this Deed of Trust or any other of the Financing Documents, to exercise such option and to cause to be paid or to pay the same (and any accrued interest on the unpaid balance of such Imposition) in installments, as they fall due, and before any fine, penalty, further interest or cost may be added thereto.

SECTION 2.5. To Maintain Priority of Lien. Grantor will maintain this Deed of Trust as a valid lien on the Mortgaged Property, and Grantor will not, directly or indirectly, create or suffer or permit to be created, or to stand against the Mortgaged Property or any portion thereof, or against the Rents therefrom and will promptly discharge, any lien or charge whatsoever other than the Permitted Encumbrances, whether prior to, upon a parity with, or junior to the lien of this Deed of Trust; provided, however, that nothing herein contained shall require Grantor to pay or cause to be paid any Imposition prior to the time the same shall become due and payable. Grantor will keep and maintain the Mortgaged Property, and every part thereof, free from all liens of Persons supplying labor and materials in connection with the construction, alteration, repair, improvement or replacement of the Improvements, the Equipment or the Furnishings. If any such liens shall be filed against the Mortgaged Property, or any part thereof, Grantor shall immediately release or discharge the same of record, by payment, bonding or otherwise, or otherwise provide security satisfactory to Grantee in Grantee's sole discretion, within fifteen (15) days after the filing thereof. In the event that Grantor fails to make payment of or bond over, such liens, Grantee may make payment thereof, and any amounts paid by Grantee as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately due and payable by Grantor to Grantee and until paid, shall be added to and become a part of the Indebtedness, and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust. Grantor shall deliver to Grantee, upon request, all receipts or other satisfactory evidence of the payment of taxes, assessments, charges, claims, liens or any other item which, if unpaid, may cause any such lien to be filed against the Mortgaged Property.

SECTION 2.6. To Pay Recording Fees, Taxes and Other Charges. Grantor will pay all filing, registration or recording fees, and all costs and expenses of Grantee, including without limitation, reasonable attorneys' fees actually incurred and disbursements, title insurance premiums, search fees and survey costs, incident to or in connection with the preparation, execution, delivery or acknowledgment of this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Mortgage Loan and any instrument of further assurance, and all federal, state, county and municipal stamp taxes and other taxes, duties, imposts, assessments and charges arising out of or in connection with the execution and delivery of the Mortgage Note, this Deed of Trust, any supplement hereto, any security instrument with respect to any collateral relating to the Mortgage Loan, the other Financing Documents, or any instrument of further assurance.

SECTION 2.7. Maintenance of Mortgaged Property; Covenants Against Waste; Inspection by Grantee. Grantor will not commit or permit physical waste on the Mortgaged Property and will keep and maintain at its own expense the Improvements, the Equipment and the Furnishings in a condition and state of repair such that each of the same shall meet or surpass the requirements of any applicable Governmental Authority and customary standards in the general area set by buildings of similar type, age and function for attractiveness of appearance, cleanliness and general soundness of condition, but in any event consistent with multifamily housing projects of a similar type and purpose. Grantor shall do all such further maintenance and repair work as may be required under the Space Leases and applicable law. Grantor will neither do nor permit to be done anything to the Mortgaged Property that may impair the value thereof or which may violate any covenant, condition or restriction affecting the same, or any part thereof, or permit any change therein or in the condition or use thereof which could increase the danger of fire or other hazard arising out of the construction or operation thereof. The Improvements shall not be removed or demolished (except for tenant improvements), without the prior written consent of Grantee. The Equipment and Furnishings shall not be removed without the prior written consent of the Grantee, except where appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items removed. Grantee and its authorized employees and agents, may enter and inspect the Mortgaged Property at any time upon advance notice during usual business hours, and Grantor shall, within fifteen (15) business days after demand by Grantee (or immediately upon demand in case of emergency), commence such repairs, replacements, renewals or additions, or perform such items of maintenance, to the Mortgaged Property as the Grantee may, in its sole reasonable discretion, require in order to cause the Mortgaged Property to comply with the above standards, shall diligently make the same and shall complete the same as promptly as practicable.

SECTION 2.8. After-Acquired Property. All right, title and interest of Grantor in and to all improvements, betterments, renewals, substitutes and replacements of, and all additions, accessions and appurtenances to, the Mortgaged Property hereafter acquired, constructed, assembled or placed by Grantor on the Land, and all conversions of the security constituted thereby, immediately upon such acquisition, construction, assembly, placement or conversion, as the case may be, and in each such case without any further mortgage, conveyance or assignment or other act of Grantor, shall become subject to the lien of this Deed of Trust as fully and completely, and with the same effect, as though now owned by Grantor and specifically described in the Granting Clauses hereof, but at any time and at all times Grantor, on demand, will execute, acknowledge and deliver to Grantee any and all such further assurances, mortgages, conveyances or assignments thereof as Grantee may require in its sole discretion for the purpose of expressly and specifically subjecting the same to the liens and security interests of this Deed of Trust; provided that in no event shall any such further act increase or expand the liability of the Grantor.

SECTION 2.9. Further Assurances. Grantor shall, at its sole cost and without expense to Grantee, on demand, do, execute, acknowledge and deliver all and every such further acts, deeds, conveyances, mortgages, assignments, notices of assignment, transfers and assurances as Grantee shall from time to time require in its sole discretion for better assuring, conveying, assigning, transferring, confirming and perfecting unto Grantee the property and rights hereby conveyed, mortgaged or assigned or intended now or hereafter so to be, or which Grantor may be or may hereafter become bound to convey, mortgage or assign to Grantee, or for carrying out the

intention or facilitating the performance of the terms of this Deed of Trust, or for filing, registering or recording this Deed of Trust.

SECTION 2.10. Status of Grantor. Grantor shall not without the prior written consent of Grantee: (a) change its name; (b) change its state of organization through dissolution, merger, transfer of assets or otherwise; or (c) change its type of organization through conversion, reorganization or otherwise.

SECTION 2.11. Recorded Instruments. Grantor will promptly perform and observe, or cause to be performed and observed, all of the terms, covenants and conditions of all instruments of record affecting the Mortgaged Property. Grantor shall do or cause to be done all things required to preserve intact and unimpaired and to renew any and all rights-of-way, easements, grants, appurtenances, privileges, licenses, franchises and other interests and rights in favor of or constituting any portion of the Mortgaged Property. Other than Permitted Encumbrances, Grantor will not, without the prior written consent of the Grantee, initiate, join in or consent to any private restrictive covenant or other public or private restriction as to the use of the Mortgaged Property other than the Extended Use Agreement described in Section 8.6 hereof. Grantor shall, however, and shall cause all Space Tenants to, comply with all lawful restrictive covenants and zoning ordinances and other public or private restrictions affecting the Mortgaged Property and other laws and ordinances of any Governmental Authority affecting the Mortgaged Property.

SECTION 2.12. Environmental Provisions. Grantor hereby represents, warrants and covenants that:

2.12.1. Except as set forth in the Phase I report prepared by Partner Engineering and Science, Inc. and dated October 4, 2018 (the “**Phase I**”), (a) no condition, activity or conduct exists on or in connection with the Mortgaged Property which constitutes a violation of any Environmental Laws; (b) there has been no Spill or Threat of Spill of any Hazardous Substances on, upon, into or from the Mortgaged Property nor, to Grantor’s knowledge, a Spill which, through soil or groundwater migration, could reasonably be expected to come to be located on the Mortgaged Property; (c) there are no existing or closed underground or aboveground storage tanks on the Mortgaged Property; (d) there are no existing or closed sanitary landfills, solid waste disposal sites, or hazardous waste treatment, storage or disposal facilities on or affecting the Land; (e) no notice has been issued to Grantor by any agency, authority, or unit of government that Grantor has been identified as a potentially responsible party under any Environmental Laws; (f) no portion of the Mortgaged Property constitutes an Environmentally Sensitive Area; (g) there exists no investigation, action, proceeding, or claim by any Governmental Authority or by any third party which could result in any liability, penalty, sanction, or judgment under any Environmental Laws with respect to any condition, use or operation of the Mortgaged Property; (h) there has been no claim by any party that any use, operation, or condition of the Mortgaged Property has caused any nuisance or any other liability or adverse condition on any other property; and (i) Grantor need not obtain any permit or approval for any part of the Development and need not notify any federal, state or local governmental authority having jurisdiction of the Development regarding any part of the Development pursuant to any Environmental Laws.

2.12.2. Grantor shall: (a) comply with and cause all activities at the Mortgaged Property to comply with all Environmental Laws; (b) not store or dispose of (except in compliance with all Environmental Laws pertaining thereto), nor Spill or allow the Spill of any Hazardous Substances on the Property; (c) neither directly nor indirectly transport or arrange for the transport of any Hazardous Substances (except in compliance with all Environmental Laws pertaining thereto); (d) neither install nor permit to be installed any temporary or permanent tanks for storage of any liquid or gas above or below ground except after obtaining written permission from the Grantee to do so and in compliance with Environmental Laws; and (e) comply with all terms and conditions of all permits, authorizations, approvals, waivers, judgments or decrees or notices from Governmental Authorities issued or sent pursuant to Environmental Laws.

2.12.3. Grantor, promptly upon the written request of Grantee from time to time (but no more frequently than once per calendar year) shall provide Grantee, at Grantor's sole cost and expense, with an environmental site assessment or environmental audit report, or an update of such an assessment or report, all in scope, form and content reasonably satisfactory to the Grantee.

2.12.4. In the event of any Spill or Threat of Spill affecting the Mortgaged Property, whether or not the same originates or emanates from the Mortgaged Property or any contiguous real estate, or if Grantor or the Mortgaged Property otherwise shall fail to comply with any of the requirements of Environmental Laws, Grantee may at its election, but without the obligation so to do, give such notices, cause such work to be performed at the Mortgaged Property and take any and all other actions as Grantee shall reasonably deem necessary or advisable in order to remedy said Spill or the conditions constituting a Threat of Spill or cure said failure of compliance and any amounts paid as a result thereof, together with interest thereon at the Default Rate from the date of payment by Grantee, shall be immediately due and payable by Grantor to Grantee and until paid shall be added to and become a part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

2.12.5. Grantor covenants and agrees to conduct representative radon sampling in the Improvements on the Land to determine whether indoor radon levels are below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that said radon sampling results reveal indoor radon levels in excess of 4.0pCi/L, Grantor covenants and agrees to implement radon mitigation techniques to reduce or prevent the build-up or migration of radon in the Improvements on the Land. In the event that radon mitigation is required to be implemented, Grantor further covenants and agrees to conduct radon sampling in the Improvements on the Land following such implementation to confirm that the radon mitigation techniques have succeeded in reducing or preventing the build-up of radon in the Improvements on the Land to below the United States Environmental Protection Agency's recommended threshold of 4.0pCi/L. In the event that such radon sampling results reveal that levels of radon in the Improvements on the Land are still in excess of the above-referenced United States Environmental Protection Agency threshold, Grantor covenants and agrees to undertake any additional measures necessary to reduce radon levels in the Improvements on the Land and bring the Mortgaged Property into compliance with applicable Environmental Laws.



Notwithstanding the foregoing, if the Borrower satisfies the radon mitigation requirements contained in the Mortgage Loan Documents (if any), then Borrower will be deemed to have satisfied the requirements set forth in this paragraph.

2.12.6. The Grantor shall comply with the Environmental Laws and regulations with respect to on-site wetlands, including, but not limited to obtaining, complying with and maintaining any wetland permits, wetland permit requirements, development restrictions, setback and/buffers, habitat protection and mitigation requirements.

2.12.7. The Grantor shall handle any subsurface contamination encountered at the Land during the course of rehabilitation in accordance with a site-specific Health and Safety Plan developed in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations, and any such contamination shall be remediated and disposed of in accordance with Environmental Laws and other applicable federal, state and local laws, rules and regulations.

SECTION 2.13. Mold Coverage. In the event that Grantor is covered by a commercial general liability insurance policy which contains an exclusion for loss or damage caused by mold, dangerous fungi, bacterial or microbial matter, contamination or pathogenic organisms that reproduce through the release of spores or the splitting of cells (collectively, “**Mold**”) or a property insurance policy which contains an exclusion for loss or damage caused by Mold, in connection with another covered peril (e.g., Mold in connection with water damage caused by a storm or fire), Grantor shall demonstrate to the satisfaction of Grantee that such insurance without the aforementioned exclusions is not available at ordinary and customary insurance rates and either: (i) Grantor shall demonstrate to the satisfaction of Grantee that the potential risk for loss or damage caused by Mold, fungus, moisture, microbial contamination or pathogenic organisms at the Mortgaged Property is minimal because of precautionary measures or techniques to be utilized in the construction or rehabilitation of the Improvements, including without limitation, the use of vapor barriers or other liners to limit the growth and reproduction of Mold; or (ii) Grantor shall implement a moisture management and control program (the “**Moisture Management Program**”) for the Improvements at the Mortgaged Property to prevent the occurrence of Mold, at, on or under the Mortgaged Property, which Moisture Management Program shall include, at a minimum: (a) periodic inspections of the Improvements at the Mortgaged Property for Mold, (b) removing or cleaning up any Mold in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee, and (c) in the event that the Mold identified at the Improvements at the Mortgaged Property cannot be removed or cleaned from any impacted building materials (e.g., porous materials such as carpeting, certain types of ceiling materials, etc.) and/or equipment, removing all such impacted building materials and/or equipment from the Mortgaged Property, all in accordance with the procedures set forth in the United States Environmental Protection Agency’s (“EPA”) guide entitled “Mold Remediation in Schools and Commercial Buildings”, EPA No. 402-K-01-001, dated March 2001, and in a manner consistent with best industry practices and utilizing an experienced remediation contractor acceptable to and approved by Grantee. Grantor further covenants and agrees that, in connection with any mold remediation undertaken by or on behalf of Grantor hereunder, the source (e.g., leaking pipe, water damage, water infiltration, etc.) of any Mold at the Improvements at the Mortgaged Property shall be promptly identified and corrected to prevent the occurrence or re-occurrence of

any Mold. Notwithstanding the foregoing, if the Borrower satisfies the mold mitigation requirements contained in the Mortgage Loan Documents (if any), then Borrower will be deemed to have satisfied the requirements set forth in this paragraph.

## ARTICLE III

### CASUALTY AND CONDEMNATION

#### SECTION 3.1. Casualty.

3.1.1. If any of the Improvements, Equipment or Furnishings shall be damaged or destroyed, in whole or part, by fire or other casualty, Grantor shall give prompt notice thereof to Grantee. The Grantee are hereby authorized and empowered by Grantor, to settle, adjust or compromise in a commercially reasonable manner any and all claims for loss, damage or destruction under any policy of insurance.

3.1.2. Subject to the provisions of the Mortgage Loan Documents, any Net Proceeds received as payment for any loss under any insurance policies required to be maintained by Grantor in accordance with this Section shall be applied in accordance with the Financing Documents.

3.1.3. Subject to the provisions of the Mortgage Loan Documents, in the event of the happening of any casualty of any kind or nature, ordinary or extraordinary, foreseen or unforeseen (including any casualty for which insurance was not obtainable), resulting in damage to or destruction of the Mortgaged Property or any part thereof, if Grantee elects to apply any Net Proceeds received by it in connection with such casualty towards the restoration of the Mortgaged Property, Grantor shall promptly, whether or not the Net Proceeds, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the Mortgaged Property as nearly as possible to its value, condition and character immediately prior to such damage or destruction.

#### SECTION 3.2. Condemnation.

3.2.1. Grantor shall promptly notify Grantee if Grantor shall become aware of the threat or institution of any proceeding or negotiations for the taking of the Mortgaged Property, or any part thereof, whether for permanent or temporary use and occupancy in condemnation or by the exercise of the power of eminent domain or by agreement of interested parties in lieu of such condemnation (all the foregoing herein called a “**taking**”); and shall keep Grantee currently advised, in detail, as to the status of such proceedings or negotiations and will promptly give to Grantee copies of all notices, pleadings, judgments, determinations and other papers received or delivered by Grantor therein. Grantee shall have the right to appear and participate therein and may be represented by counsel of its choice. Grantor will not, without the Grantee’s prior written consent, enter into any agreement for the taking of the Mortgaged Property, or any part thereof, with anyone authorized to acquire the same by eminent domain or in condemnation.

3.2.2. In the event of any such taking, and subject to the terms of the Mortgage Loan Documents, the Net Proceeds payable in connection therewith shall be applied in accordance with the Financing Documents.

3.2.3. In the event of the happening of any permanent taking, provided that Grantee elects to apply any Net Proceeds received by it in connection with such taking towards the restoration of the Mortgaged Property, Grantor shall promptly, whether or not the Net Proceeds, if any, shall be sufficient for the purpose, commence and diligently continue to restore, repair and rebuild the portion of the Mortgaged Property not subject to the taking as nearly as possible to its value, condition and character immediately prior to such taking.

SECTION 3.3. Reserved.

## ARTICLE IV

### ASSIGNMENT OF SPACE LEASES AND RENT

SECTION 4.1. Assignment of Space Leases and Rents. Contemporaneously with the execution of this Deed of Trust, Grantor has assigned its interests in the Space Leases and Rents to the Lender in the First Mortgage to secure the payment of the Mortgage Loan. In the event of the payment of the Mortgage Loan and release of the First Mortgage without the release of this Deed of Trust, Grantor hereby grants, conveys, assigns, transfers and sets over to Grantee to be effective as of the date of the release of the First Mortgage, the Space Leases now or hereafter entered into by Grantor with respect to all or any part of the Mortgaged Property, and all renewals, extensions, subleases or assignments thereof and all other occupancy agreements (written or oral), by concession, license or otherwise, together with all of the Rents and proceeds arising therefrom and from the Mortgaged Property pursuant to and in accordance with the provisions of Chapter 64 of the Texas Property Code.

## ARTICLE V

### SECURITY AGREEMENT UNDER UNIFORM COMMERCIAL CODE

SECTION 5.1. Security Agreement. It is the intent of the parties hereto that this Deed of Trust shall constitute a Security Agreement within the meaning of the Uniform Commercial Code of the State (the "UCC") with respect to so much of the Mortgaged Property as is considered or as shall be determined to be of the type in which a security interest can be created under Article 9 of the UCC, together with all replacements thereof, substitutions therefor or additions thereto (the "**Collateral**"), and that a security interest shall attach thereto for the benefit of Grantee to secure the Indebtedness and all other sums and charges which may become due hereunder or under the Financing Documents. Grantor hereby authorizes Grantee to file financing and continuation statements and amendments thereto with respect to the Collateral without the signature of Grantor, if same is lawful; otherwise Grantor agrees to execute such financing and continuation statements and amendments thereto as Grantee may request. The Bond Trustee shall cause to be filed a continuation statement with respect to each Uniform Commercial Code financing statement relating to the Deed of Trust 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 Bond Trustee by the Issuer) were made. The Grantor shall be responsible for the reasonable costs incurred by the Bond Trustee in the preparation and filing of all such continuation statements hereunder. Notwithstanding anything to the contrary contained herein, the Bond Trustee 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 Bond Trustee shall have been notified by the Issuer or Grantor that any such initial filing or description of collateral was or has become defective, the Bond Trustee shall be fully protected in relying on such initial filing and descriptions in filing any continuation statements or modifications thereto pursuant to this Section 5.1 and in filing any continuation statements in the same filing offices as the initial filings were made. If there shall exist an Event of Default under this Deed of Trust, Grantee, pursuant to the appropriate provisions of the UCC, shall have the option of proceeding as to both real and personal property in accordance with its rights to both real and personal property, in which event the default provisions of the UCC shall not apply. The parties agree that, in the event Grantee shall elect to proceed with respect to the Collateral separately from the real property, unless a greater period shall then be mandated by the UCC, ten (10) days' notice of the sale of the Collateral shall be reasonable notice. The expenses of retaking, holding, preparing for sale, selling and the like incurred by Grantee shall be assessed against Grantor and shall include, but shall not be limited to, reasonable attorneys' fees, disbursements and other legal expenses incurred by Grantee. Grantor agrees that it will not remove or permit to be removed from the Mortgaged Property any of the Collateral without the prior written consent of Grantee, unless appropriate replacements free of superior title, liens or claims are immediately made having a value at least equal to the value of the items removed. All replacements, renewals and additions to the Collateral shall be and become immediately subject to the security interest of this Deed of Trust and the provisions of this Article. Grantor warrants and represents that all Collateral now is, and that replacements thereof, substitutions therefor or additions thereto, unless Grantee otherwise consents in writing, shall be free and clear of liens, encumbrances or security interests of others created after the date hereof other than Permitted Encumbrances.

From the date of its recording, this Deed of Trust shall be effective as a financing statement filed as a fixture filing with respect to all goods constituting part of the Collateral which are or are to become fixtures related to the real estate described herein. For this purpose, the following information is set forth:

A. Name and Address of Debtor:

Northgate Preservation, L.P.  
c/o Related Companies  
60 Columbus Circle, 18th Floor  
New York, New York 10023  
Attention: Matthew Finkle

B. Name and Address of Secured Party:

The Bank of New York Mellon Trust Company, N.A.  
2001 Bryan Street  
Dallas, Texas 75201  
Attn: Marcus Wilson

Texas Department of Housing and Community Affairs  
221 East 11th Street  
Austin, Texas 78701  
Attn: Manager of Multifamily Bonds

C. This document covers goods which are or are to become fixtures.

D. State of Debtor's Organization and Organizational Identification No.:  
State: New York  
I.D. No.: 5442116

E. This filing is made in connection with a public finance transaction as described in Sections 9.515(b) and 9.102(a)(68) of the UCC.

## ARTICLE VI

### EVENTS OF DEFAULT AND REMEDIES

SECTION 6.1. Events of Default Defined. The entire amount of the Indebtedness shall become due, at the option of Grantee, subject to any prepayment premium or penalty provided for in the Financing Agreement, if any, upon the happening of any of the following events (each, individually, an “**Event of Default**” and collectively, “**Events of Default**”):

6.1.1. if Grantor shall fail or neglect to comply with or otherwise perform, keep or observe any term, provision, condition, covenant, warranty or representation contained in this Deed of Trust that is required to be complied with or otherwise performed, kept or observed by Grantor beyond any notice, grace or cure period expressly provided in this Deed of Trust; or

6.1.2. if an “Event of Default” as defined in any of the Financing Documents shall have occurred with respect to the Grantor, the Mortgaged Property or the Development.

Grantee hereby agrees that any cure of a default or an Event of Default hereunder or under any of the other Financing Documents made or tendered by the Tax Credit Investor shall be deemed to be a cure by the Grantor, and shall be accepted or rejected by the Grantee on the same basis as if made or tendered by the Grantor.

SECTION 6.2. Remedies. Upon the occurrence of any Event of Default hereunder, Grantee may, without notice, presentment, demand or protest, notice of intent to accelerate, or notice of acceleration, all of which are hereby expressly waived by Grantor to the extent permitted by applicable law, take such action as Grantee deems advisable, to protect and enforce its rights in and to the Mortgaged Property, including, but without limiting the generality of the

foregoing, the following actions, each of which may be pursued concurrently or otherwise, at such time and in such manner as Grantee may determine, in its sole discretion, without impairing or otherwise affecting the other rights and remedies of Grantee hereunder, under the other Financing Documents, or at law or in equity:

6.2.1. declare the entire amount of the Indebtedness, together with all accrued and unpaid interest thereon, to be immediately due and payable, and upon such declaration such amounts shall become and be immediately due and payable, anything in this Deed of Trust or the other Financing Documents to the contrary notwithstanding;

6.2.2. after such proceedings as may be required by any applicable law or ordinance and subject to the provisions of Section 8.7 hereof regarding the subordination of this Deed of Trust to the First Mortgage, either in person, or by its agents or attorneys, or by a court-appointed receiver, enter into and upon all or any part of the Mortgaged Property and each and every part thereof and exclude Grantor, its agents and servants wholly therefrom; and having and holding the same, use, operate, manage and control the Mortgaged Property and conduct the business thereof, either personally or by its superintendents, managers, agents, servants, attorneys or the receiver; and upon every such entry, Grantee, at the expense of the Mortgaged Property, from time to time, either by purchase repairs or construction, may maintain and restore the Mortgaged Property and, likewise, may make all necessary or proper repairs, renewals and replacements and such alterations, betterments, additions and improvement thereto and thereon as it may deem advisable; and in every such case Grantee shall have the right to manage and operate the Mortgaged Property and to carry on the business thereof and exercise all rights and powers of Grantor as Grantor's attorney-in-fact, or otherwise as it shall deem best; and Grantee shall be entitled to collect and receive all Rents and after deducting the expenses of conducting the business thereof and all maintenance, repairs, renewals, replacements, alterations, additions, betterments and improvements and amounts necessary to pay for Impositions, insurance and prior or other proper charges upon the Mortgaged Property or any part thereof, as well as just and reasonable compensation for the services of Grantee and for all attorneys, counsel, agents, clerks, servants and other employees or professionals engaged or employed by it, Grantee shall apply the moneys arising as aforesaid, first to the payment of the Indebtedness, whether or not then matured; next, to the payment of any other sums required to be paid by Grantor under this Deed of Trust; and the balance, if any, shall be turned over to Grantor or such other Person as may be lawfully entitled thereto; or

6.2.3. with or without entry, personally or by its agents or attorneys insofar as applicable:

(a) foreclose this Deed of Trust in accordance with the laws of the State and the provisions hereof, for the entire Indebtedness or for any portion of the Indebtedness or any other sums secured hereby which are then due and payable, subject to the continuing lien of this Deed of Trust for the balance of the Indebtedness not then due, and for such purposes Grantor grants to Trustee for the benefit of Grantee a continuing power of sale of the Mortgaged Property; or

(b) take such steps to protect and enforce its rights whether by action, suit or proceeding in equity or at law for the specific performance of any covenant, condition or

agreement in this Deed of Trust or any other Financing Document, or in aid of the execution of any power herein granted, or for any foreclosure hereunder, or for the enforcement of any other appropriate legal or equitable remedy or otherwise as Grantee shall elect.

SECTION 6.3. Foreclosure; No Marshaling of Assets; One Tract; Appointment of Receiver.

6.3.1. Grantee may foreclose this Deed of Trust either by judicial action or by non-judicial foreclosure through the Trustee. In the case of a foreclosure sale, all of the Mortgaged Property may be sold in one parcel, notwithstanding that the proceeds of such sale exceed or may exceed the Indebtedness. Moreover, Grantee shall not be required to proceed hereunder before proceeding against any other security, shall not be required to proceed against other security before proceeding hereunder, and shall not be precluded from proceeding against any or all of any security in any order or at the same time. In the event that this Deed of Trust is foreclosed, Grantor hereby waives and releases any right to have the Mortgaged Property or any part thereof marshaled, and Grantor and Grantee have jointly agreed that the Mortgaged Property is one project and one tract for all purposes legal, economic and all other. Grantor for itself, its successors and assigns irrevocably waives any right it may have in the event of foreclosure to request that the Mortgaged Property be sold as separate tracts pursuant to any applicable law or statute.

6.3.2. Grantee, in any action to foreclose this Deed of Trust or otherwise upon the occurrence and during the continuance of an Event of Default, shall be entitled (and, to the extent permitted under the laws of the State, without notice, without regard to the adequacy of any security for the Indebtedness and without regard to the solvency of any Person liable for the payment thereof) to the appointment of a receiver of the Mortgaged Property and the Rents, if the assignment of Rents pursuant to Section 4.1 hereof is then effective.

6.3.3. Grantor agrees, to the full extent that it may lawfully do so, that in any foreclosure or other action brought by Grantee hereunder, it will not at any time insist upon or plead or in any way take advantage of any appraisal, valuation, stay, extension, redemption or moratorium law now or hereafter in force and effect so as to prevent, hinder or delay the enforcement of the provisions of this Deed of Trust or any right or remedies Grantee may have hereunder or by law.

6.3.4. If Grantor shall default hereunder and Grantee shall elect to accelerate the Indebtedness, Grantor, within five (5) days after demand, will pay over to Grantee, or any receiver appointed in connection with the foreclosure of this Deed of Trust, any and all amounts then held as security deposits under all Space Leases if the assignment of Space Leases pursuant to Section 4.1 hereof is then effective.

6.3.5. Upon the acceleration of the Indebtedness or upon an Event of Default under the Mortgage Note or Event of Default hereunder, and in addition to all other rights of Grantee provided herein or by law, Grantor shall, on demand of Grantee, surrender possession of the Mortgaged Property to Grantee; and Grantor hereby consents that Grantee may exercise any or all of the rights specified herein. Grantor hereby irrevocably appoints Grantee attorney-in-

fact, which appointment shall be coupled with an interest, of Grantor for such purposes. In the event that Grantor is an occupant of the Mortgaged Property, it agrees to vacate and surrender the possession of that portion of the Mortgaged Property which it occupies to Grantee immediately upon the acceleration of the Indebtedness or any Event of Default hereunder; and if Grantor remains in possession, such possession shall be as tenant of Grantee, and Grantor shall pay monthly, in advance, to Grantee or to any receiver appointed to collect the Rents, the fair and reasonable rental value for the use and occupation of any portion of the Mortgaged Property occupied by Grantor, and upon the failure of Grantor to make any such payment, Grantor may be evicted by summary proceedings or otherwise. In case of the appointment of a receiver of the Rents, the covenants of this subsection may be enforced by such receiver.

6.3.6. GRANTOR HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY.

SECTION 6.4. Remedies Cumulative; No Waiver; Etc.

6.4.1. No remedy herein conferred upon or reserved to Grantee is intended to be exclusive of any other remedy or remedies, and each and every such remedy shall be cumulative, and shall be in addition to every other remedy given hereunder or now or hereafter existing at law or in equity or by statute. No delay or omission of Grantee 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 any acquiescence therein; and every power and remedy given by this Deed of Trust to Grantee may be exercised from time to time as often as may be deemed expedient by Grantee. Nothing in this Deed of Trust or in any other Financing Document shall affect the obligation of Grantor to perform its obligations under the Financing Documents.

6.4.2. A waiver in one or more instances of any of the terms, covenants, conditions or provisions hereof, of any Financing Document shall apply to the particular instance or instances and at the particular time or times only, and no such waiver shall be deemed a continuing waiver, but all of the terms, covenants, conditions and other provisions of this Deed of Trust and of the other Financing Documents shall survive and continue to remain in full force and effect; and no waiver shall be effective unless in writing, dated and signed by Grantee.

6.4.3. Grantor hereby waives and renounces all homestead and similar exemption rights with respect to the Mortgaged Property provided for by the Constitution and the laws of the United States and the State as against the collection of the Indebtedness, or any part thereof, or the Financing Documents; and Grantor agrees that where, by the terms of this Deed of Trust or the other Financing Documents secured hereby, a day is named or a time fixed for the payment of any sum of money or the performance of any agreement, the day and time stated enters into the consideration and is of the essence of the whole agreement between Grantor and Grantee.

SECTION 6.5. No Merger. It is the intention of the parties hereto that if Grantee shall at any time hereafter acquire title to all or any portion of the Mortgaged Property, then and until the Indebtedness has been paid in full, the interest of Grantee hereunder and the lien of this Deed of Trust shall not merge or become merged in or with the estate and interest of Grantee as the holder and owner of title to all or any portion of the Mortgaged Property and that, until such



payment, the estate of Grantee in the Mortgaged Property and the lien of this Deed of Trust and the interest of Grantee hereunder shall continue in full force and effect to the same extent as if Grantee had not acquired title to all or any portion of the Mortgaged Property. If, however, Grantee shall consent in writing to such merger or such merger shall nevertheless occur without its consent, then this Deed of Trust shall attach to and cover and be a lien upon the fee title or any other estate, title or interest in the premises demised under the leasehold estate acquired by the fee owner and the same shall be considered as granted, released, assigned, transferred, pledged, and set over to Grantee and the lien hereof spread to cover such estate with the same force and effect as though specifically herein granted, released, assigned, transferred, pledged, set over and spread.

## ARTICLE VII

### PROVISIONS OF GENERAL APPLICATION

SECTION 7.1. Modifications. No change, amendment, modification, cancellation or discharge hereof, or of any part hereof, shall be valid unless in writing, dated and signed by the party against whom such change, amendment, modification, cancellation or discharge is sought to be enforced.

SECTION 7.2. Notices. Except for notices of foreclosure that shall be sent as required by law, all notices, demands, requests, consents, approvals, certificates or other communications hereunder (hereinafter collectively called the “**Notices**”) shall be sufficiently given if given in accordance with the provisions of Section 9.01 of the Financing Agreement. A copy of any notice given to the Grantor hereunder shall also be sent concurrently to the Tax Credit Investor and the Tax Credit Investor shall have the right, but not the obligation, to cure any default on behalf of the Grantor on the same terms provided to the Grantor in this Deed of Trust.

SECTION 7.3. Grantee’s Rights to Perform Grantor’s Covenants. If Grantor shall fail to pay or cause payment to be made to Grantee in accordance with the terms of this Deed of Trust, or to perform or observe any other term, covenant, condition or obligation required to be performed or observed by Grantor under this Deed of Trust or any other Financing Document, without limiting any other provision of this Deed of Trust, and without waiving or releasing Grantor from any obligation or default hereunder, without notice to Grantor, Grantee (or any receiver of the Mortgaged Property) shall have the right, but not the obligation, to make any such payment, or to perform any other act or take any appropriate action, including, without limitation, entry on the Mortgaged Property and performance of work thereat, as it, in its sole discretion, may deem necessary to cause such other term, covenant, condition or obligation to be performed or observed on behalf of Grantor or to protect the security of this Deed of Trust. All monies expended by Grantee in exercising its rights under this Section (including, but not limited to, legal expenses and disbursements), together with interest thereon at the Default Rate from the date of each such expenditure, shall be paid by Grantor to Grantee forthwith upon demand by Grantee, secured by this Deed of Trust and added to and deemed part of the Indebtedness with the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust.

If Grantor fails to maintain any insurance which is required by any of the Financing Documents, Grantee may obtain the same, but must secure the insurance only in its own name and may insure only its interest in the Mortgaged Property, and in connection with Grantee securing any such insurance, the following notice is given and delivered pursuant to §307.052 of the Texas Finance Code:

**NOTICE:**

**(A) GRANTOR IS REQUIRED TO: (i) KEEP THE PROPERTY INSURED AGAINST DAMAGE IN THE AMOUNT EQUAL TO GRANTOR'S INDEBTEDNESS TO GRANTEE; (ii) PURCHASE THE INSURANCE FROM AN INSURER THAT IS AUTHORIZED TO DO BUSINESS IN THE STATE OF TEXAS OR AN ELIGIBLE SURPLUS LINES INSURER; AND (iii) NAME THE GRANTEE AS THE PERSON TO BE PAID UNDER THE POLICY IN THE EVENT OF LOSS, SUBJECT TO THE FIRST MORTGAGE;**

**(B) GRANTOR MUST, IF REQUIRED BY GRANTEE, DELIVER TO GRANTEE A COPY OF THE POLICY AND PROOF OF THE PAYMENT OF THE PREMIUMS; AND**

**(C) IF GRANTOR FAILS TO MEET ANY REQUIREMENT LISTED IN CLAUSE (A) OR (B) ABOVE, GRANTEE MAY OBTAIN COLLATERAL PROTECTION INSURANCE ON BEHALF OF GRANTOR AT GRANTOR'S EXPENSE.**

SECTION 7.4. Additional Sums Payable by Grantor. All sums which, by the terms of this Deed of Trust or the other Financing Documents secured hereby, or by the instruments executed and delivered by Grantor to Grantee as additional security for this Deed of Trust and the other Financing Documents, are payable by Grantor to Grantee shall, together with the interest thereon provided for herein or in the other Financing Documents, be secured by this Deed of Trust and added to and deemed part of the Indebtedness and shall have the benefit of the lien hereby created as a part thereof prior to any right, title or interest in or claim upon the Mortgaged Property attaching or accruing subsequent to the lien of this Deed of Trust, whether or not the provision which obligates Grantor to make any such payment to Grantee specifically so states.

SECTION 7.5. Captions. The captions herein are inserted only as a matter of convenience and for reference, and in no way define, limit, enlarge or describe the scope or intent of this Deed of Trust or the construction of any provision hereof.

SECTION 7.6. Successors and Assigns. The covenants and agreements contained in this Deed of Trust shall run with the land and bind Grantor, the heirs, executors, administrators, principals, legal representatives, successors and assigns of Grantor and each Person constituting Grantor and all subsequent owners, encumbrancers and Space Tenants of the Mortgaged Property, or any part thereof, and shall inure to the benefit of Grantee, its successors and assigns and all subsequent beneficial owners of this Deed of Trust.

SECTION 7.7. Gender and Number. Wherever the context of this Deed of Trust so requires, the neuter gender includes the masculine or feminine gender and the singular number includes the plural.

SECTION 7.8. Severability. In case any one or more of the provisions contained in this instrument shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality or unenforceability shall not affect any other provisions hereof, but this Deed of Trust shall be construed as if such invalid, illegal or unenforceable provision had never been included.

SECTION 7.9. Subrogation. Should the proceeds of the Mortgage Loan be used directly or indirectly to pay off, discharge, or satisfy, in whole or in part, any prior lien or encumbrance upon the Mortgaged Property or any part thereof, then Grantee shall be subrogated to such other lien or encumbrance and to any additional security held by the holder thereof and shall have the benefit of the priority of all of the same.

SECTION 7.10. Incorporation of the Financing Documents. This Deed of Trust has been executed and delivered to secure the Indebtedness pursuant to the Financing Documents, the provisions of which, including, but not limited to, any usury saving provisions in the Financing Agreement, as the same may be amended, modified or supplemented from time to time, are incorporated herein by reference with the same force and effect as if herein fully set forth.

SECTION 7.11. Controlling Law. This Deed of Trust shall be governed by, and construed and enforced in accordance with, the laws of the State of Texas.

## ARTICLE VIII

### SPECIAL PROVISIONS

SECTION 8.1. Foreclosure—Power of Sale. Grantee may request Trustee to proceed with foreclosure under the power of sale which is hereby conferred, such foreclosure to be accomplished in accordance with the following provisions:

8.1.1. Trustee is hereby authorized and empowered, and it shall be Trustee's special duty, upon such request of Grantee, to sell the Mortgaged Property, or any part thereof, at public auction to the highest bidder for cash, with or without having taken possession of same. Any such sale (including notice thereof) shall comply with the applicable requirements, at the time of the sale, of Chapter 51 of the Texas Property Code, as amended, or, if and to the extent the statutes within said Chapter 51 are not then in force, with the applicable requirements, at the time of the sale, of the successor statute or statutes, if any, governing sales of Texas real property under powers of sale conferred by deeds of trust. If there is no statute in force at the time of the sale governing sales of Texas real property under powers of sale conferred by deeds of trust, such sale shall comply with applicable law, at the time of the sale, governing sales of Texas real property under powers of sale conferred by deeds of trust.

8.1.2. Subject to any applicable requirements at the time of sale governing sales of Texas real property under the powers of sale conferred by deeds of trust, at any time during the bidding, the Trustee may require a bidding party (A) to disclose its full name, state

and city of residence, occupation, and specific business office location, and the name and address of the principal the bidding party is representing (if applicable), and (B) to demonstrate reasonable evidence of the bidding party's financial ability (or, if applicable, the financial ability of the principal of such bidding party), as a condition to the bidding party submitting bids at the foreclosure sale. If any such bidding party (the "**Questioned Bidder**") declines to comply with the Trustee's requirement in this regard, or if such Questioned Bidder does respond but the Trustee deems the information or the evidence of the financial ability of the Questioned Bidder (or, if applicable, the principal of such bidding party) to be inadequate, then the Trustee may continue the bidding with reservation; and in such event (1) the Trustee shall be authorized to caution the Questioned Bidder concerning the legal obligations to be incurred in submitting bids, and (2) if the Questioned Bidder is not the highest bidder at the sale, or if having been the highest bidder the Questioned Bidder fails to deliver the cash purchase price payment promptly to the Trustee, all bids by the Questioned Bidder shall be null and void. The Trustee may determine that a credit bid is in the best interest of Grantor and Grantee, and elect to sell the Mortgaged Property for credit or for a combination of cash and credit; provided, however, (i) the Trustee shall have no obligation to accept any bid except an all cash bid and (ii) the Trustee shall be required to accept the highest bid. In the event the Trustee requires a cash bid and cash is not delivered within a reasonable time after conclusion of the bidding process, as specified by the Trustee, but in no event later than 3:45 p.m. local time on the day of sale, then said contingent sale shall be null and void, the bidding process may be recommenced provided that it is recommenced within the time frame set forth in the Notice of Sale given pursuant to Section 51.002 of the Texas Property Code, and any subsequent bids or sale shall be made as if no prior bids were made or accepted.

8.1.3. In addition to the rights and powers of sale granted under the preceding provisions of this subsection, if an Event of Default shall have occurred hereunder, Grantee may at once or at any time thereafter while an Event of Default is continuing, without declaring the entire Indebtedness to be due and payable, orally or in writing direct Trustee to enforce this trust and to sell the Mortgaged Property subject to such unmatured Indebtedness and to the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of such unmatured Indebtedness, in the same manner, all as provided in the preceding provisions of this subsection. Sales made without acceleration of the unmatured balance of the Indebtedness may be made hereunder whenever an Event of Default shall have occurred and be continuing hereunder, without exhausting the power of sale granted hereby, and without affecting in any way the power of sale granted under this subsection, the unmatured balance of the Indebtedness or the rights, powers, liens, security interests, and assignments securing or providing recourse for payment of the Indebtedness.

8.1.4. Sale of a part of the Mortgaged Property shall not exhaust the power of sale, but sales may be made from time to time until the Indebtedness is paid in full. It is intended by each of the foregoing provisions of this subsection that Trustee may, after any request or direction by Grantee, sell not only the Land and the Improvements, but also the Equipment and Furnishings and other interests constituting a part of the Mortgaged Property or any part thereof, along with the Land and the Improvements or any part thereof, as a unit and as a part of a single sale, or may sell at any time or from time to time any part or parts of the Mortgaged Property separately from the remainder of the Mortgaged Property. It shall not be necessary to have present or to exhibit at any sale any of the Mortgaged Property.

8.1.5. After any sale under this subsection, Trustee shall make good and sufficient deeds, assignments, and other conveyances to the purchaser or purchasers thereunder in the name of Grantor, conveying the Mortgaged Property or any part thereof so sold to the purchaser or purchasers with general warranty of title by Grantor. It is agreed that in any deeds, assignments or other conveyances given by Trustee, any and all statements of fact or other recitals therein made as to the identity of Grantee, the occurrence or existence of any Event of Default, the notice of intention to accelerate, or acceleration of, the maturity of the Indebtedness, the request to sell, notice of sale, time, place, terms and manner of sale, and receipt, distribution, and application of the money realized therefrom, the due and proper appointment of a substitute Trustee, and without being limited by the foregoing, any other act or thing having been duly done by or on behalf of Grantee or by or on behalf of Trustee, shall be taken by all courts of law and equity as prima facie evidence that such statements or recitals state true, correct, and complete facts and are without further question to be so accepted, and Grantor does hereby ratify and confirm any and all acts that Trustee may lawfully do in the premises by virtue hereof.

8.1.6. The following shall be the basis for the finder of fact's determination of the fair market value of the Mortgaged Property as of the date of the foreclosure sale in proceedings governed by Sections 51.003, 51.004 and 51.005 of the Texas Property Code (as amended from time to time): (i) the Mortgaged Property shall be valued in an "as is" condition as of the date of the foreclosure sale, without any assumption or expectation that the Mortgaged Property will be repaired or improved in any manner before a resale of the Mortgaged Property after foreclosure; (ii) the valuation shall be based upon an assumption that the foreclosure purchaser desires a resale of the Mortgaged Property for cash promptly (but no later than twelve (12) months) following the foreclosure sale; (iii) all reasonable closing costs customarily borne by the seller in commercial real estate transactions should be deducted from the gross fair market value of the Mortgaged Property, including, without limitation, brokerage commissions, title insurance, a survey of the Mortgaged Property, tax proration, attorneys' fees, and marketing costs; (iv) the gross fair market value of the Mortgaged Property shall be further discounted to account for any estimated holding costs associated with maintaining the Mortgaged Property pending sale, including, without limitation, utilities expenses, property management fees, taxes and assessments (to the extent not accounted for in (ii) and/or (iii) above), and other maintenance, operational and ownership expenses; and (v) any expert opinion testimony given or considered in connection with a determination of the fair market value of the Mortgaged Property must be given by persons having at least five (5) years' experience in appraising property similar to the Mortgaged Property and who have conducted and prepared a complete written appraisal of the Mortgaged Property taking into consideration the factors set forth above.

SECTION 8.2. Non-Recourse. The monetary obligations of the Grantor under this Deed of Trust shall be non-recourse to the Grantor and its partners to the extent provided in Section 5.11 of the Financing Agreement.

SECTION 8.3. Concerning the Trustee.

8.3.1. Trustee shall not be required to take any action toward the execution and enforcement of the trust hereby created or to institute, appear in, or defend any action, suit, or other proceeding in connection therewith where, in Trustee's opinion, such action would be likely to involve Trustee in expense or liability, unless requested so to do by a written instrument

signed by Grantee and unless Trustee is tendered security and indemnity satisfactory to Trustee against any and all cost, expense, and liability arising therefrom and if such request is made and such security and indemnity is tendered, the Trustee shall act in accordance with Grantee's request. Trustee shall not be responsible for the execution, acknowledgment, or validity of the Financing Documents, or for the proper authorization thereof, or for the sufficiency of the lien and security interest purported to be created hereby, and Trustee makes no representation in respect thereof or in respect of the rights, remedies, and recourses of Grantee.

8.3.2. With the approval of Grantee, Trustee shall have the right to take any and all of the following actions: (i) to select, employ, and advise with counsel (who may be, but need not be, counsel for Grantee) upon any matters arising hereunder, including the preparation, execution, and interpretation of the Financing Documents, and shall be fully protected in relying as to legal matters on the advice of counsel, (ii) to execute any of the trusts and powers hereof and to perform any duty hereunder either directly or through his agents or attorneys, (iii) to select and employ, in and about the execution of his duties hereunder, suitable accountants, engineers and other experts, agents and attorneys in fact, either corporate or individual, not regularly in the employ of Trustee, and Trustee shall not be answerable for any act, default, negligence, or misconduct of any such accountant, engineer or other expert, agent or attorney in fact, if selected with reasonable care and approved by the Grantee, or for any error of judgment or act done by Trustee in good faith and in accordance with the terms hereof, or be otherwise responsible or accountable under any circumstances whatsoever, except for Trustee's gross negligence or bad faith or failure to act in accordance with the terms hereof, and (iv) any and all other lawful action as Grantee may instruct Trustee to take to protect or enforce Grantee's rights hereunder. Trustee shall not be personally liable in case of entry by Trustee, or anyone entering by virtue of the powers herein granted to Trustee, upon the Mortgaged Property for debts contracted for or liability or damages incurred in the management or operation of the Mortgaged Property. Trustee shall have the right to rely on any instrument, document, or signature authorizing or supporting any action taken or proposed to be taken by Trustee hereunder, believed by Trustee in good faith to be genuine. Trustee shall be entitled to reimbursement for actual, out-of-pocket expenses reasonably incurred by Trustee in the performance of Trustee's duties hereunder and to reasonable compensation for such of Trustee's services hereunder as shall be rendered. Grantor will, from time to time, pay the compensation due to Trustee hereunder and reimburse Trustee for, and save Trustee harmless against, any and all liability and expenses which may be incurred by Trustee in the performance of Trustee's duties.

8.3.3. All moneys received by Trustee shall, until used or applied as herein provided, be held in trust for the purposes for which they were received, but need not be segregated in any manner from any other moneys (except to the extent required by applicable law) and Trustee shall be under no liability for interest on any moneys received by Trustee hereunder.

8.3.4. Trustee may resign by the giving of notice of such resignation in writing or verbally to Grantee. If Trustee shall die, resign, or become disqualified from acting in the execution of this trust, or if, for any reason, Grantee shall prefer to appoint a substitute Trustee or multiple substitute Trustees, or successive substitute Trustees or successive multiple substitute Trustees, to act instead of the aforementioned Trustee, Grantee shall have full power to appoint a substitute Trustee (or, if preferred, multiple substitute Trustees) in succession who shall succeed

(and if multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall succeed) to all the estates, rights, powers, and duties of the aforementioned Trustee. Such appointment may be executed by any authorized agent of Grantee, and if such Grantee be a corporation and such appointment be executed in its behalf by any officer of such corporation, such appointment shall be conclusively presumed to be executed with authority and shall be valid and sufficient without proof of any action by the board of directors or any superior officer of the corporation. Grantor hereby ratifies and confirms any and all acts which the aforementioned Trustee, or Trustee's successor or successors in this trust, shall do lawfully by virtue hereof. If multiple substitute Trustees are appointed, each of such multiple substitute Trustees shall be empowered and authorized to act alone without the necessity of the joinder of the other multiple substitute Trustees, whenever any action or undertaking of such substitute Trustees is requested or required under or pursuant to this Deed of Trust or applicable law.

8.3.5. Should any deed, conveyance, or instrument of any nature be required from Grantor by any Trustee or substitute Trustee to more fully and certainly vest in and confirm to the Trustee or substitute Trustee such estates, rights, powers, and duties, then, upon request by the Trustee or substitute Trustee, any and all such deeds, conveyances and instruments shall be made, executed, acknowledged, and delivered and shall be caused to be recorded and/or filed by Grantor.

8.3.6. Any substitute Trustee appointed pursuant to any of the provisions hereof shall, without any further act, deed, or conveyance, become vested with all the estates, properties, rights, powers, and trusts of its or his predecessor in the rights hereunder with like effect as if originally named as Trustee herein; but nevertheless, upon the written request of Grantee or of the substitute Trustee, the Trustee ceasing to act shall execute and deliver any instrument transferring to such substitute Trustee, upon the trusts herein expressed, all the estates, properties, rights, powers, and trusts of the Trustee so ceasing to act, and shall duly assign, transfer and deliver any of the property and moneys held by such Trustee to the substitute Trustee so appointed in the Trustee's place.

8.3.7. By accepting or approving anything required to be observed, performed, or fulfilled or to be given to Trustee or Grantee pursuant to the Financing Documents, including without limitation, any officer's certificate, balance sheet, statement of profit and loss or other financial statement, survey, appraisal, or insurance policy, neither Trustee nor Grantee shall be deemed to have warranted, consented to, or affirmed the sufficiency, legality, effectiveness, or legal effect of the same, or of any term, provision, or condition thereof, and such acceptance or approval thereof shall not be or constitute any warranty or affirmation with respect thereto by Trustee or Grantee.

**SECTION 8.4. Indemnity. GRANTOR SHALL INDEMNIFY, DEFEND, PROTECT AND HOLD HARMLESS GRANTEE AND TRUSTEE, THEIR RESPECTIVE PARENTS, SUBSIDIARIES, DIRECTORS, OFFICERS, EMPLOYEES, REPRESENTATIVES, AGENTS, SUCCESSORS, AND ASSIGNS FROM AND AGAINST AND DOES HEREBY RELEASE GRANTEE AND TRUSTEE FROM ANY AND ALL LIABILITY, DAMAGE, LOSS, COST, OR EXPENSE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS' FEES AND EXPENSES), ACTION, PROCEEDING, CLAIM OR DISPUTE INCURRED OR SUFFERED BY THE**

**FOREGOING PARTIES SO INDEMNIFIED WHETHER OR NOT AS THE RESULT OF THE NEGLIGENCE OR GROSS NEGLIGENCE (BUT NOT THE WILLFUL MISCONDUCT, FRAUD OR BAD FAITH) OF ANY PARTY SO INDEMNIFIED, WHETHER VOLUNTARILY OR INVOLUNTARILY INCURRED OR SUFFERED, IN RESPECT OF THE FOLLOWING:**

(i) ANY LITIGATION CONCERNING THIS DEED OF TRUST, THE OTHER FINANCING DOCUMENTS OR THE MORTGAGED PROPERTY, OR ANY INTEREST OF GRANTOR OR GRANTEE THEREIN, OR THE RIGHT OF OCCUPANCY THEREOF BY GRANTOR OR GRANTEE, WHETHER OR NOT ANY SUCH LITIGATION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT;

(ii) ANY DISPUTE, INCLUDING DISPUTES AS TO THE DISBURSEMENT OF PROCEEDS OF THE MORTGAGE NOTE NOT YET DISBURSED, AMONG OR BETWEEN ANY OF THE CONSTITUENT PARTIES OR OTHER PARTNERS OR VENTURERS OF GRANTOR IF GRANTOR IS A GENERAL OR LIMITED PARTNERSHIP, OR AMONG OR BETWEEN ANY EMPLOYEES, OFFICERS, DIRECTORS, SHAREHOLDERS, MEMBERS OR MANAGERS OF GRANTOR IF GRANTOR IS A CORPORATION OR LIMITED LIABILITY COMPANY, OR AMONG OR BETWEEN ANY MEMBERS, TRUSTEES OR OTHER RESPONSIBLE PARTIES IF GRANTOR IS AN ASSOCIATION, TRUST OR OTHER ENTITY;

(iii) ANY ACTION TAKEN OR NOT TAKEN BY GRANTEE OR TRUSTEE WHICH IS ALLOWED OR PERMITTED UNDER THIS DEED OF TRUST OR ANY OF THE OTHER FINANCING DOCUMENTS RELATING TO GRANTOR, THE MORTGAGED PROPERTY, ANY CONSTITUENT PARTIES OR OTHERWISE IN CONNECTION WITH THE FINANCING DOCUMENTS, INCLUDING WITHOUT LIMITATION, THE PROTECTION OR ENFORCEMENT OF ANY LIEN, SECURITY INTEREST OR OTHER RIGHT, REMEDY OR RECOURSE CREATED OR AFFORDED BY THIS DEED OF TRUST OR THE OTHER FINANCING DOCUMENTS;

(iv) ANY ACTION BROUGHT BY GRANTEE OR TRUSTEE AGAINST GRANTOR UNDER THIS DEED OF TRUST OR THE OTHER FINANCING DOCUMENTS, WHETHER OR NOT SUCH ACTION IS PROSECUTED TO A FINAL, NON APPEALABLE JUDGMENT; AND

(v) ANY AND ALL LOSS, DAMAGE, COSTS, EXPENSE, ACTION, CAUSES OF ACTION, OR LIABILITY (INCLUDING REASONABLE ATTORNEYS' FEES AND COSTS) DIRECTLY OR INDIRECTLY ARISING FROM OR ATTRIBUTABLE TO THE USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE OF A HAZARDOUS SUBSTANCE ON, IN, UNDER OR ABOUT THE MORTGAGED PROPERTY, WHETHER KNOWN OR UNKNOWN AT THE TIME OF THE EXECUTION HEREOF, INCLUDING WITHOUT LIMITATION (A) ALL



FORESEEABLE CONSEQUENTIAL DAMAGES OF ANY SUCH USE, GENERATION, MANUFACTURE, PRODUCTION, STORAGE, RELEASE, THREATENED RELEASE, DISCHARGE, DISPOSAL, OR PRESENCE, AND (B) THE COSTS OF ANY REQUIRED OR NECESSARY ENVIRONMENTAL INVESTIGATION OR MONITORING, ANY REPAIR, CLEANUP, OR DETOXIFICATION OF THE MORTGAGED PROPERTY, AND THE PREPARATION AND IMPLEMENTATION OF ANY CLOSURE, REMEDIAL, OR OTHER REQUIRED PLANS.

**GRANTEE AND/OR TRUSTEE MAY EMPLOY AN ATTORNEY OR ATTORNEYS TO PROTECT OR ENFORCE ITS RIGHTS, REMEDIES AND RECOURSES UNDER THIS DEED OF TRUST AND THE OTHER FINANCING DOCUMENTS, AND TO ADVISE AND DEFEND GRANTEE AND/OR TRUSTEE WITH RESPECT TO ANY SUCH ACTIONS AND OTHER MATTERS. GRANTOR SHALL REIMBURSE GRANTEE AND/OR TRUSTEE FOR THEIR RESPECTIVE REASONABLE ATTORNEYS' FEES AND EXPENSES (INCLUDING EXPENSES AND COSTS FOR EXPERTS) IMMEDIATELY UPON RECEIPT OF A WRITTEN DEMAND THEREFOR, WHETHER ON A MONTHLY OR OTHER TIME INTERVAL, AND WHETHER OR NOT AN ACTION IS ACTUALLY COMMENCED OR CONCLUDED. ALL OTHER REIMBURSEMENT AND INDEMNITY OBLIGATIONS HEREUNDER SHALL BECOME DUE AND PAYABLE WHEN ACTUALLY INCURRED BY GRANTEE AND/OR TRUSTEE. ANY PAYMENTS NOT MADE WITHIN TEN (10) DAYS AFTER WRITTEN DEMAND THEREFOR SHALL BEAR INTEREST AT THE DEFAULT RATE FROM THE DATE OF SUCH DEMAND UNTIL FULLY PAID. THE PROVISIONS OF THIS SECTION 8.4 SHALL SURVIVE REPAYMENT OF THE INDEBTEDNESS AND PERFORMANCE OF THE OBLIGATIONS, THE RELEASE OF THE LIEN OF THIS DEED OF TRUST, ANY FORECLOSURE (OR ACTION IN LIEU OF FORECLOSURE), THE TRANSFER BY GRANTOR OF ANY OR ALL OF ITS RIGHT, TITLE AND INTEREST IN OR TO THE PROPERTY AND THE EXERCISE BY GRANTEE OF ANY AND ALL REMEDIES SET FORTH HEREIN OR IN THE OTHER FINANCING DOCUMENTS.**

SECTION 8.5. Purpose of Mortgage Loan. This Deed of Trust is given pursuant to the Financing Documents and secures Grantor's obligations to pay the Indebtedness as described herein and as advanced under the Financing Documents, to pay the costs of acquiring, constructing, improving and equipping the Development, among other purposes set forth in the Financing Documents.

SECTION 8.6. Extended Low-Income Housing Commitment. The Grantor and Grantee agree that the lien of this Deed of Trust shall be subordinate to any extended low-income housing commitment (as such term is defined in Section 42(h)(6)(B) of the Internal Revenue Code) (the "**Extended Use Agreement**") recorded against the Mortgaged Property; provided that such Extended Use Agreement, by its terms, must terminate upon foreclosure under this Deed of Trust or upon a transfer of the Mortgaged Property by instrument in lieu of foreclosure or comparable conversion of the Mortgage Loan, in accordance with Section 42(h)(6)(E) of the Internal

Revenue Code. The Grantor acknowledges and agrees that any default, Event of Default, or breach (however such terms may be defined) under the Extended Use Agreement shall be an Event of Default under this Deed of Trust and that any costs, damages or other amounts, including reasonable attorneys' fees, incurred by the Grantee as a result of an Event of Default by the Grantor and any amounts paid to cure any default under the Extended Use Agreement, shall be an obligation of the Grantor and become a part of the Indebtedness secured by this Deed of Trust.

SECTION 8.7. Subordination. The liens and security interests hereby granted and conveyed by Grantor to Grantee against the Mortgaged Property are subordinate to the First Mortgage and shall remain subordinate to the First Mortgage regardless of the frequency or manner of renewal, extension, change or alteration of the First Mortgage or the Mortgage Loan secured by the First Mortgage. By its acceptance of this Deed of Trust, the Grantee agrees to the subordination of this Deed of Trust to the First Mortgage and to the foregoing provisions and to the provisions of that certain Subordination Agreement dated as of the date hereof among Fannie Mae, the Lender, the Grantor, the Issuer and the Bond Trustee.

SECTION 8.8. Entire Agreement. THIS INSTRUMENT, AND THE OTHER FINANCING DOCUMENTS CONTAIN THE FINAL, ENTIRE AGREEMENT BETWEEN THE PARTIES HERETO RELATING TO THE SUBJECT MATTER HEREOF AND THEREOF AND ALL PRIOR AGREEMENTS, WHETHER WRITTEN OR ORAL, RELATIVE HERETO AND THERETO WHICH ARE NOT CONTAINED HEREIN OR THEREIN ARE SUPERSEDED AND TERMINATED HEREBY, AND THIS INSTRUMENT, AND THE OTHER FINANCING DOCUMENTS MAY NOT BE CONTRADICTED OR VARIED BY EVIDENCE OF PRIOR, CONTEMPORANEOUS OR SUBSEQUENT ORAL AGREEMENTS OR DISCUSSIONS OF THE PARTIES HERETO. THERE ARE NO UNWRITTEN ORAL AGREEMENTS AMOUNT THE PARTIES HERETO.

*[Signature Page Follows]*



**EXHIBIT A**

**LEGAL DESCRIPTION**

[legal description to come from Borrower]

Prepared by, and after recording  
return to:  
Krooth & Altman LLP  
1850 M Street, N.W., Suite 400  
Washington, D.C. 20036  
Attn: Sameer Upadhya, Esq.

----- [Space Above This Line For Recording Data] -----

**SUBORDINATION AGREEMENT  
(Affordable)**

This SUBORDINATION AGREEMENT (this “**Agreement**”) dated as of \_\_\_\_\_, 2019, is executed by and among (i) **REGIONS BANK**, an Alabama banking corporation (“**Senior Lender**”), (ii) **TEXAS DEPARTMENT OF HOUSING AND COMMUNITY AFFAIRS**, a public and official agency of the State of Texas, its successors and assigns (the “**Issuer**”), (iii) **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 (“**Trustee**”, and together with Issuer, “**Subordinate Lender**”), and (iv) **NORTHGATE PRESERVATION, L.P.**, a New York limited partnership (“**Borrower**”).

**RECITALS:**

A. Pursuant to that certain Multifamily Loan and Security Agreement dated as of the date hereof, executed by and between Borrower and Senior Lender (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Loan Agreement**”), Issuer has agreed to make a loan to Borrower in the original principal amount of \$[19,000,000] (the “**Senior Loan**”), as evidenced by that certain Multifamily Note dated as of the date hereof, executed by Borrower and made payable to the order of Issuer in the amount of the Senior Loan (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Note**”).

B. In addition to the Senior Loan Agreement, the Senior Loan and the Senior Note are also secured by a certain Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing dated as of the date hereof (as amended, restated, replaced, supplemented or otherwise modified from time to time, the “**Senior Security Instrument**”), encumbering the property described in the Senior Security Instrument as the “**Mortgaged Property**.” The Senior Loan Agreement, the Senior Note, the Senior Security Instrument and all

other documents executed in connection with the Senior Loan (the “**Senior Loan Documents**”) have been transferred and assigned to Senior Lender as of the date hereof.

C. Borrower has requested Senior Lender to permit the Subordinate Mortgage (as defined herein) to be recorded against the Mortgaged Property, which mortgage lien will secure the obligations of Borrower (the “**Subordinate Lien**”) under the Financing Agreement among Issuer, Trustee, Borrower and Senior Lender (“**Financing Agreement**”).

D. Senior Lender has agreed to permit the Subordinate Mortgage to be recorded against the Mortgaged Property subject to all of the conditions contained in this Agreement.

### **AGREEMENTS:**

NOW, THEREFORE, in order to induce Senior Lender to permit the Subordinate Lien to Borrower and to allow a subordinate mortgage lien against the Mortgaged Property, and in consideration thereof, Senior Lender, Subordinate Lender and Borrower agree as follows:

#### **1. Recitals.**

The recitals set forth above are incorporated herein by reference.

#### **2. Definitions.**

In addition to the terms defined in the Recitals to this Agreement, for purposes of this Agreement the following terms have the respective meanings set forth below:

“**Affiliate**” means, when used with respect to a Person, any corporation, partnership, joint venture, limited liability company, limited liability partnership, trust or individual Controlled by, under common Control with, or which Controls such Person, and in all cases any other Person that holds fifty percent (50%) or more of the ownership interests in such Person.

“**Bond**” or “**Bonds**” means the Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds ((Pass-Through – Northgate Village), Series 2019 of Issuer issued, authenticated and delivered under the Indenture.

“**Borrower**” means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Borrower, including without limitation, a receiver, trustee or debtor-in-possession and any other Person (other than Senior Lender) who acquires title to the Mortgaged Property after the date of this Agreement.

“**Business Day**” means any day other than (a) a Saturday, (b) a Sunday, (c) a day on which Senior Lender is not open for business, or (d) a day on which the Federal Reserve Bank of New York is not open for business.

“**Condemnation Action**” means any action or proceeding, however characterized or named, relating to any condemnation or other taking, or conveyance in lieu thereof, of all or any part of the Mortgaged Property, whether direct or indirect.

**“Control”** (including with correlative meanings, the terms “Controlling,” “Controlled by” and “under common Control with”), as applied to any entity, means the possession, directly or indirectly, of the power to direct or cause the direction of the management or operations of such entity, whether through the ownership of voting securities, ownership interests or by contract or otherwise.

**“Default Notice”** means: (a) a copy of any written notice from Senior Lender to Borrower and Subordinate Lender stating that a Senior Loan Default has occurred under the Senior Loan Documents; or (b) a copy of the written notice from Subordinate Lender to Borrower and Senior Lender stating that a Subordinate Lien Default has occurred under the Subordinate Lien Documents. Each Default Notice shall specify the default upon which such Default Notice is based.

**“Indenture”** means the Indenture of Trust, dated as of \_\_\_\_\_, 2019, between Issuer and Trustee, and any and all supplements thereto, authorizing the issuance of the Bonds.

**“Person”** means an individual, an estate, a trust, a corporation, a partnership, a limited liability company or any other organization or entity (whether governmental or private).

**“Senior Lender”** means the Person named as such in the first paragraph on Page 1 of this Agreement, its successors and assigns and any other Person who becomes the legal holder of the Senior Loan after the date of this Agreement.

**“Senior Loan Default”** means the occurrence of an “Event of Default” as that term is defined in the Senior Loan Documents.

**“Senior Loan Documents”** means the Senior Security Instrument, the Senior Note, the Senior Loan Agreement, and all other “Loan Documents” as that term is defined in the Senior Loan Agreement.

**“Subordinate Lender”** means the Person named as such in the first paragraph on page 1 of this Agreement, any successor or assign of Subordinate Lender, including without limitation, a receiver, trustee or debtor-in-possession and any other Person who becomes the legal holder of the Subordinate Mortgage after the date of this Agreement.

**“Subordinate Lien Default”** means a default by Borrower in performing or observing any of the terms, covenants or conditions in the Subordinate Lien Documents to be performed or observed by it, which continues beyond any applicable period provided in the Subordinate Lien Documents for curing the default.

**“Subordinate Lien Documents”** means the Financing Agreement, the Subordinate Mortgage and all other documents evidencing, securing or otherwise executed and delivered in connection with the Subordinate Lien.

**“Subordinate Mortgage”** means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing dated as of the date hereof encumbering the Mortgaged Property as security for

the Subordinate Lien, which Subordinate Lender will cause to be recorded among the applicable land records immediately before this Agreement.

“**Trustee**” means the Person named as such in the first paragraph on Page 1 of this Agreement in its capacity as bond trustee, and its successors and assigns.

### **3. Permission to Place Mortgage Lien Against Mortgaged Property.**

Senior Lender agrees, notwithstanding the prohibition against inferior liens on the Mortgaged Property contained in the Senior Loan Documents and subject to the provisions of this Agreement, to permit Subordinate Lender to record the Subordinate Mortgage and other recordable Subordinate Lien Documents against the Mortgaged Property to secure Borrower’s obligation to repay the obligations, indebtedness and liabilities of Borrower to Subordinate Lender under and in connection with the Subordinate Lien.

### **4. Borrower’s and Subordinate Lender’s Representations and Warranties.**

Borrower and Subordinate Lender each makes the following representations and warranties to Senior Lender:

#### **(a) Subordinate Lien Documents.**

The Subordinate Lien is evidenced by the Financing Agreement and is secured by the Subordinate Mortgage and the Subordinate Lien Documents.

#### **(b) [Intentionally Omitted].**

#### **(c) Relationship of Borrower to Subordinate Lender and Senior Lender.**

Subordinate Lender is not an Affiliate of Borrower and is not in possession of any facts which would lead it to believe that Senior Lender is an Affiliate of Borrower.

#### **(d) [Intentionally Omitted].**

#### **(e) Subordinate Lien Documents.**

The executed Subordinate Lien Documents are substantially in the same forms as those submitted to, and approved by, Senior Lender prior to the date of this Agreement.

### **5. Deliveries.**

Borrower shall provide true and correct certified copies of the Subordinate Lien Documents to Senior Lender as of the Effective Date (as defined in the Senior Loan Agreement). Borrower agrees to provide certified copies of the Senior Loan Documents to Subordinate Lender within ten (10) days after the Effective Date.



## **6. Terms of Subordination.**

### **(a) Agreement to Subordinate.**

Senior Lender and Subordinate Lender agree that (1) the indebtedness evidenced by the Subordinate Lien Documents is and shall be subordinated in right of payment, to the extent and in the manner provided in this Agreement, to the prior payment in full of the Indebtedness evidenced by the Senior Loan Documents, and (2) the liens, terms, covenants and conditions of the Subordinate Mortgage and the other Subordinate Lien Documents are and shall be subject and subordinate in all respects to the liens, terms, covenants and conditions of the Senior Security Instrument and the other Senior Loan Documents and to all advances heretofore made or which may hereafter be made pursuant to the Senior Security Instrument and the other Senior Loan Documents (including but not limited to, all sums advanced for the purposes of (A) protecting or further securing the lien of the Senior Security Instrument, curing defaults by Borrower under the Senior Loan Documents or for any other purpose expressly permitted by the Senior Loan Documents, or (B) constructing, renovating, repairing, furnishing, fixturing or equipping the Mortgaged Property).

### **(b) Subordination of Subrogation Rights.**

Subordinate Lender agrees that if, by reason of its payment of real estate taxes or other monetary obligations of Borrower, or by reason of its exercise of any other right or remedy under the Subordinate Lien Documents, it acquires by right of subrogation or otherwise a lien on the Mortgaged Property which (but for this subsection) would be senior to the lien of the Senior Security Instrument, then, in that event, such lien shall be subject and subordinate to the lien of the Senior Security Instrument.

### **(c) Payments Before Senior Loan Default.**

Until Subordinate Lender receives a Default Notice (or otherwise acquires actual knowledge) of a Senior Loan Default, Subordinate Lender shall be entitled to retain for its own account all payments made under or pursuant to the Subordinate Lien Documents.

### **(d) Payments After Senior Loan Default.**

Borrower agrees that, after it receives a Default Notice (or otherwise acquires knowledge) of a Senior Loan Default, it will not make any payments under or pursuant to the Subordinate Lien Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Lien Documents) without Senior Lender's prior written consent. Subordinate Lender agrees that, after it receives a Default Notice from Senior Lender with written instructions directing Subordinate Lender not to accept payments from Borrower on account of the Subordinate Lien, it will not accept any payments under or pursuant to the Subordinate Lien Documents (including but not limited to principal, interest, additional interest, late payment charges, default interest, attorneys' fees, or any other sums secured by the Subordinate Lien Documents) without Senior Lender's prior written consent. If Subordinate Lender receives written notice from Senior Lender that the Senior Loan Default which gave rise to Subordinate Lender's obligation not to accept payments has been

cured, waived, or otherwise suspended by Senior Lender, the restrictions on payment to Subordinate Lender in this Section 6 shall terminate, and Senior Lender shall have no right to any subsequent payments made to Subordinate Lender by Borrower prior to Subordinate Lender's receipt of a new Default Notice from Senior Lender in accordance with the provisions of this Section 6(d).

**(e) Remitting Subordinate Lien Payments to Senior Lender.**

If, after Subordinate Lender receives a Default Notice from Senior Lender in accordance with Section 6(d), Subordinate Lender receives any payments under the Subordinate Lien Documents, Subordinate Lender agrees that such payment or other distribution will be received and held in trust for Senior Lender and unless Senior Lender otherwise notifies Subordinate Lender in writing, will be promptly remitted, in kind to Senior Lender, properly endorsed to Senior Lender, to be applied to the principal of, interest on and other amounts due under the Senior Loan Documents in accordance with the provisions of the Senior Loan Documents. By executing this Agreement, Borrower specifically authorizes Subordinate Lender to endorse and remit any such payments to Senior Lender, and specifically waives any and all rights to have such payments returned to Borrower or credited against the Subordinate Lien. Borrower and Senior Lender acknowledge and agree that payments received by Subordinate Lender, and remitted to Senior Lender under this Section 6, shall not be applied or otherwise credited against the Subordinate Lien, nor shall the tender of such payment to Senior Lender waive any Subordinate Lien Default which may arise from the inability of Subordinate Lender to retain such payment or apply such payment to the Subordinate Lien.

**(f) [Intentionally Omitted].**

**(g) Agreement Not to Commence Bankruptcy Proceeding.**

Subordinate Lender agrees that during the term of this Agreement it will not commence, or join with any other creditor in commencing any bankruptcy, reorganization, arrangement, insolvency or liquidation proceedings against or with respect to Borrower, without Senior Lender's prior written consent.

**(h) No Senior Lender Rights with Respect to Funds Held Under the Indenture.** Notwithstanding anything in this Agreement or any Senior Loan Document to the contrary, in no event shall the Senior Lender have any claim to, lien upon or any other rights whatsoever with respect to (a) any of the funds or accounts created or to be created under or pursuant to Section 5.02 of the Indenture, including, without limitation, amounts deposited in such funds and accounts by the Senior Lender as advances on the Senior Loan, (b) the proceeds derived from the sale of the Bonds, (c) any securities in which moneys in such funds and accounts are invested, or (d) the proceeds derived therefrom, provided however, subject to the terms and conditions set forth in the Indenture, upon funding of the Collateral Security Fund as provided in Section 4.02 of the Indenture, the Trustee shall promptly disburse an amount of Bond proceeds from the Proceeds Fund to the Borrower on the closing date, at the direction of the Senior Lender and Subordinate Lender, for purposes of funding the Borrower's acquisition cost of the Project. In furtherance of the foregoing sentence, and not by way of limitation of the generality thereof, the

Senior Lender shall have no rights whatsoever with respect to funds and securities in the Bond Fund or transferred thereto from the Collateral Security Fund, or the Operating Fund by reason of the fact that such funds and securities are credited against the Borrower's obligation to make payments of principal of and interest on the Bonds pursuant to Section 4.01 of the Financing Agreement. For purposes of this section 6(h), any capitalized terms not defined in this Agreement shall have the meanings ascribed thereto in the Indenture.

**7. Default Under Subordinate Lien Documents.**

**(a) Notice of Subordinate Lien Default and Cure Rights.**

Subordinate Lender shall deliver to Senior Lender a Default Notice within five (5) Business Days in each case where Subordinate Lender has given a Default Notice to Borrower. Failure of Subordinate Lender to send a Default Notice to Senior Lender shall not prevent the exercise of Subordinate Lender's rights and remedies under the Subordinate Lien Documents, subject to the provisions of this Agreement. Senior Lender shall have the right, but not the obligation, to cure any Subordinate Lien Default within sixty (60) days following the date of such notice, if such default is capable of being cured by the payment of money or, in the event of any other default, the Senior Lender commences to cure such default and thereafter diligently proceeds with such cure, provided that such longer cure period may be agreed to by the Subordinate Lender and the Trustee upon receipt of an opinion of Bond Counsel that such period will not adversely affect the exemption of interest on the Bonds from gross income for federal income tax purposes; provided, however that Subordinate Lender shall be entitled, during such sixty (60) day period, to continue to pursue its rights and remedies under the Subordinate Lien Documents, subject to Section 7(b) below. All amounts paid by Senior Lender in accordance with the Senior Loan Documents to cure a Subordinate Lien Default shall be deemed to have been advanced by Senior Lender pursuant to, and shall be secured by, the Senior Loan Agreement and the Senior Security Instrument.

**(b) Subordinate Lender's Exercise of Remedies After Notice to Senior Lender.**

If a Subordinate Lien Default occurs and is continuing, Subordinate Lender agrees that, without Senior Lender's prior written consent, it will not commence foreclosure proceedings with respect to the Mortgaged Property under the Subordinate Lien Documents or exercise any other rights or remedies it may have under the Subordinate Lien Documents, including, but not limited to accelerating the Subordinate Lien or the Bonds (and enforcing any "due on sale" provision included in the Subordinate Lien Documents), collecting rents, appointing (or seeking the appointment of) a receiver, causing a redemption of the Bonds or exercising any other rights or remedies thereunder without the prior written consent of Senior Lender, however, Subordinate Lender shall be entitled to exercise and enforce all other rights and remedies available to Subordinate Lender under the Subordinate Lien Documents and/or under applicable laws, including without limitation, rights to enforce covenants and agreements of Borrower relating to income, rent, or affordability restrictions contained in any land use restriction agreement.

**(c) Cross Default.**

Borrower and Subordinate Lender agree that a Subordinate Lien Default shall constitute a Senior Loan Default under the Senior Loan Documents and Senior Lender shall have the right to exercise all rights or remedies under the Senior Loan Documents in the same manner as in the case of any other Senior Loan Default. If Subordinate Lender notifies Senior Lender in writing that any Subordinate Lien Default of which Senior Lender has received a Default Notice has been cured or waived, as determined by Subordinate Lender in its sole discretion, then provided that Senior Lender has not conducted a sale of the Mortgaged Property pursuant to its rights under the Senior Loan Documents, any Senior Loan Default under the Senior Loan Documents arising solely from such Subordinate Lien Default shall be deemed cured, and the Senior Loan shall be reinstated, provided, however, that Senior Lender shall not be required to return or otherwise credit for the benefit of Borrower any default rate interest or other default related charges or payments received by Senior Lender during such Senior Loan Default.

**8. Default Under Senior Loan Documents.**

**(a) Notice of Senior Loan Default and Cure Rights.**

Senior Lender shall deliver to Subordinate Lender a Default Notice within five (5) Business Days in each case where Senior Lender has given a Default Notice to Borrower. Failure of Senior Lender to send a Default Notice to Subordinate Lender shall not prevent the exercise of Senior Lender's rights and remedies under the Senior Loan Documents, subject to the provisions of this Section 8(a), nor shall such failure constitute a default by Senior Lender under this Agreement. Subordinate Lender shall have the right, but not the obligation, to cure any such Senior Loan Default within sixty (60) days following the date of such Default Notice or the date on which Subordinate Lender otherwise acquires actual knowledge of Senior Loan Default; provided, however, that Senior Lender shall be entitled during such sixty (60) day period to continue to pursue its remedies under the Senior Loan Documents. Subordinate Lender may have up to ninety (90) days from the date of the Default Notice to cure a non-monetary default if during such ninety (90) day period Subordinate Lender keeps current all payments required by the Senior Loan Documents. In the event that such a non-monetary default creates an unacceptable level of risk relative to the Mortgaged Property, or Senior Lender's secured position relative to the Mortgaged Property, as determined by Senior Lender in its sole discretion, then Senior Lender may exercise during such ninety (90) day period all available rights and remedies to protect and preserve the Mortgaged Property and the rents, revenues and other proceeds from the Mortgaged Property. All amounts paid by Subordinate Lender to Senior Lender to cure a Senior Loan Default shall be deemed to have been advanced by Subordinate Lender pursuant to, and shall be secured by the Subordinate Mortgage.

**(b) Cross Default.**

Subordinate Lender agrees that, notwithstanding any contrary provision contained in the Subordinate Lien Documents, a Senior Loan Default shall not constitute a default under the Subordinate Lien Documents (if no other default has occurred under the Subordinate Lien Documents) until either (1) Senior Lender has accelerated the maturity of the Senior Loan,

or (2) Senior Lender has taken affirmative action to exercise its rights under the Senior Loan Documents to collect rent, to appoint (or seek the appointment of) a receiver or to foreclose on (or to exercise a power of sale contained in) the Senior Loan Documents. At any time after a Senior Loan Default is determined to constitute a default under the Subordinate Lien Documents, Subordinate Lender shall be permitted to pursue its remedies for default under the Subordinate Lien Documents, subject to the restrictions and limitations of this Agreement. If at any time Borrower cures any Senior Loan Default to the satisfaction of Senior Lender, as evidenced by written notice from Senior Lender to Subordinate Lender, any default under the Subordinate Lien Documents arising from such Senior Loan Default shall be deemed cured and the Subordinate Lien shall be retroactively reinstated as if such Senior Loan Default had never occurred.

## **9. Conflict.**

Borrower, Senior Lender and Subordinate Lender each agrees that, in the event of any conflict or inconsistency between the terms of the Senior Loan Documents, the Subordinate Lien Documents and the terms of this Agreement, the terms of this Agreement shall govern and control solely as to the following: (a) the relative priority of the security interests of Senior Lender and Subordinate Lender in the Mortgaged Property; (b) the timing of the exercise of remedies by Senior Lender and Subordinate Lender under the Senior Loan Documents and the Subordinate Lien Documents, respectively; and (c) solely as between Senior Lender and Subordinate Lender, the notice requirements, cure rights, and the other rights and obligations which Senior Lender and Subordinate Lender have agreed to as expressly provided in this Agreement. Borrower acknowledges that the terms and provisions of this Agreement shall not, and shall not be deemed to: extend Borrower's time to cure any Senior Loan Default or Subordinate Lien Default, as the case may be; give Borrower the right to notice of any Senior Loan Default or Subordinate Lien Default, as the case may be other than that, if any, provided, respectively under the Senior Loan Documents or the Subordinate Lien Documents; or create any other right or benefit for Borrower as against Senior Lender or Subordinate Lender.

## **10. Rights and Obligations of Subordinate Lender Under the Subordinate Lien Documents and of Senior Lender under the Senior Loan Documents.**

Subject to each of the other terms of this Agreement, all of the following provisions shall supersede any provisions of the Subordinate Lien Documents covering the same subject matter:

### **(a) Protection of Security Interest.**

Subordinate Lender shall not, without the prior written consent of Senior Lender in each instance, take any action which has the effect of increasing the indebtedness outstanding under, or secured by, the Subordinate Lien Documents, except that Subordinate Lender shall have the right to advance funds to cure Senior Loan Defaults pursuant to Section 8(a) and advance funds pursuant to the Subordinate Lien Documents for the purpose of paying real estate taxes and insurance premiums, making necessary repairs to the Mortgaged Property and curing other defaults by Borrower under the Subordinate Lien Documents.

**(b) Condemnation or Casualty.**

Following the occurrence of (1) a Condemnation Action, or (2) a fire or other casualty resulting in damage to all or a portion of the Mortgaged Property (collectively, a “**Casualty**”), at any time or times when the Senior Security Instrument remains a lien on the Mortgaged Property the following provisions shall apply:

(A) Subordinate Lender hereby agrees that its rights (under the Subordinate Lien Documents or otherwise) to participate in any proceeding or action relating to a Condemnation Action or a Casualty, or to participate or join in any settlement of, or to adjust, any claims resulting from a Condemnation Action or a Casualty shall be and remain subject and subordinate in all respects to Senior Lender’s rights under the Senior Loan Documents with respect thereto, and Subordinate Lender shall be bound by any settlement or adjustment of a claim resulting from a Condemnation Action or a Casualty made by Senior Lender; provided, however, this subsection or anything contained in this Agreement shall not limit the rights of Subordinate Lender to file any pleadings, documents, claims or notices with the appropriate court with jurisdiction over the proposed Condemnation Action or Casualty; and

(B) all proceeds received or to be received on account of a Condemnation Action or a Casualty, or both, shall be applied (either to payment of the costs and expenses of repair and restoration or to payment of the Senior Loan) in the manner determined by Senior Lender in its sole discretion; provided, however, that if Senior Lender elects to apply such proceeds to payment of the principal of, interest on and other amounts payable under the Senior Loan, any proceeds remaining after the satisfaction in full of the principal of, interest on and other amounts payable under the Senior Loan shall be paid to, and may be applied by, Subordinate Lender in accordance with the applicable provisions of the Subordinate Lien Documents, provided however, Senior Lender agrees to consult with Subordinate Lender in determining the application of Casualty proceeds, provided further, however, that in the event of any disagreement between Senior Lender and Subordinate Lender over the application of Casualty proceeds, the decision of Senior Lender, in its sole discretion, shall prevail.

**(c) Insurance.**

Subordinate Lender agrees that all original policies of insurance required pursuant to the Senior Security Instrument shall be held by Senior Lender. The preceding sentence shall not preclude Subordinate Lender from requiring that it be named as a loss payee, as its interest may appear, under all policies of property damage insurance maintained by Borrower with respect to the Mortgaged Property, provided such action does not affect the priority of payment of the proceeds of property damage insurance under the Senior Security Instrument, or that it be named as an additional insured under all policies of liability insurance maintained by Borrower with respect to the Mortgaged Property.

**(d) No Modification of Subordinate Lien Documents.**

Borrower and Subordinate Lender each agree that, until the principal of, interest on and all other amounts payable under the Senior Loan Documents have been paid in full, it will not, without the prior written consent of Senior Lender in each instance, increase the amount of the Subordinate Lien, increase the required payments due under the Subordinate Lien, decrease the term of the Subordinate Lien, or otherwise amend the Subordinate Lien terms in a manner that creates an adverse effect upon Senior Lender under the Senior Loan Documents. Any unauthorized amendment of the Subordinate Lien Documents or assignment of Subordinate Lender's interest in the Subordinate Lien without Senior Lender's consent shall be void ab initio and of no effect whatsoever.

**11. Modification or Refinancing of Senior Loan.**

Subordinate Lender consents to any agreement or arrangement in which Senior Lender waives, postpones, extends, reduces or modifies any provisions of the Senior Loan Documents, including any provision requiring the payment of money. Subordinate Lender further agrees that its agreement to subordinate hereunder shall extend to any new mortgage debt which is for the purpose of refinancing all or any part of the Senior Loan (including reasonable and necessary costs associated with the closing and/or the refinancing); and that all the terms and covenants of this Agreement shall inure to the benefit of any holder of any such refinanced debt; and that all references to the Senior Loan, the Senior Note, the Senior Loan Agreement, the Senior Security Instrument, the Senior Loan Documents and Senior Lender shall mean, respectively, the refinance loan, the refinance note loan agreement, the mortgage securing the refinance note, all documents evidencing securing or otherwise pertaining to the refinance note and the holder of the refinance note.

**12. Default by Subordinate Lender or Senior Lender.**

If Subordinate Lender or Senior Lender defaults in performing or observing any of the terms, covenants or conditions to be performed or observed by it under this Agreement, the other, non-defaulting lender shall have the right to all available legal and equitable relief.

**13. Reinstatement.**

To the extent that Borrower makes a payment to Senior Lender or Senior Lender receives any payment or proceeds of the collateral securing the Senior Loan for Borrower's benefit, which payment or proceeds or any part thereof are subsequently invalidated, declared to be fraudulent or preferential, set aside and/or required to be repaid to a trustee, receiver or any other party under any bankruptcy law, state or federal law, common law or equitable doctrine, then to the extent of such payment or proceeds received and not retained by Senior Lender, this Agreement shall be reinstated and continue in full force and effect until full and final payment shall have been made to Senior Lender. Subordinate Lender agrees to hold in trust for Senior Lender and promptly remit to Senior Lender any payments received by Subordinate Lender after such invalidated, rescinded or returned payment was originally made.

**14. Notices.**

**(a) Process of Serving Notice.**

All notices under this Agreement shall be:

- (1) in writing and shall be:
  - (A) delivered, in person;
  - (B) mailed, postage prepaid, either by registered or certified delivery, return receipt requested;
  - (C) sent by overnight courier; or
  - (D) sent by electronic mail with originals to follow by overnight courier;
- (2) addressed to the intended recipient at the address(es) below the signature block, as applicable; and
- (3) deemed given on the earlier to occur of:
  - (A) the date when the notice is received by the addressee; or
  - (B) if the recipient refuses or rejects delivery, the date on which the notice is so refused or rejected, as conclusively established by the records of the United States Postal Service or any express courier service.

**(b) Change of Address.**

Any party to Agreement may change the address to which notices intended for it are to be directed by means of notice given to the other parties identified in this Agreement.

**(c) Receipt of Notices.**

Senior Lender, Subordinate Lender or Borrower shall not refuse or reject delivery of any notice given in accordance with this Agreement. Each party is required to acknowledge, in writing, the receipt of any notice upon request by the other party.

**15. General.**

**(a) Assignment/Successors.**

This Agreement shall be binding upon Borrower, Senior Lender and Subordinate Lender and shall inure to the benefit of the respective legal successors, transferees and assigns of Borrower, Senior Lender and Subordinate Lender. Borrower shall not assign any of its rights and obligations under this Agreement without the prior written consent of Senior Lender.



**(b) No Partnership or Joint Venture.**

Senior Lender's permission for the placement of the Subordinate Lien does not constitute Senior Lender as a joint venturer or partner of Subordinate Lender. Neither party hereto shall hold itself out as a partner, agent or Affiliate of the other party hereto.

**(c) Senior Lender's and Subordinate Lender's Consent.**

Wherever Senior Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Senior Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement. Wherever Subordinate Lender's consent or approval is required by any provision of this Agreement, such consent or approval may be granted or denied by Subordinate Lender in its sole and absolute discretion, unless otherwise expressly provided in this Agreement.

**(d) Further Assurances.**

Subordinate Lender, Senior Lender and Borrower each agrees, at Borrower's expense, to execute and deliver all additional instruments and/or documents reasonably required by any other party to this Agreement in order to evidence that the Subordinate Mortgage is subordinate to the lien, covenants and conditions of the Senior Loan Documents, or to further evidence the intent of this Agreement.

**(e) Amendment.**

This Agreement shall not be amended except by written instrument signed by all parties hereto.

**(f) Governing Law.**

This Agreement shall be governed by the laws of the jurisdiction in which the Mortgaged Property is located without giving effect to any choice of law provisions thereof that would result in the application of the laws of another jurisdiction. Senior Lender, Subordinate Lender and Borrower agree that any controversy arising under or in relation to this Security Instrument shall be litigated exclusively in the jurisdiction in which the Mortgaged Property is located. The state and federal courts and authorities with jurisdiction in such locale shall have exclusive jurisdiction over all controversies that arise under or in relation to this Agreement. The parties hereto irrevocably consent to service, jurisdiction, and venue of such courts for any such litigation and waive any other venue to which any might be entitled by virtue of domicile, habitual residence or otherwise.

**(g) Severable Provisions.**

If any provision of this Agreement shall be invalid or unenforceable to any extent, then the other provisions of this Agreement, shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

**(h) Term.**

The term of this Agreement shall commence on the date hereof and shall continue until the earliest to occur of the following events: (1) the payment in full of the principal of, interest on and other amounts payable under the Senior Loan Documents; (2) the payment in full of the principal of, interest on and other amounts payable under the Subordinate Lien Documents, other than by reason of payments which Subordinate Lender is obligated to remit to Senior Lender pursuant to Section 6 hereof; (3) the acquisition by Senior Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Senior Loan Documents; or (4) the acquisition by Subordinate Lender of title to the Mortgaged Property pursuant to a foreclosure or a deed in lieu of foreclosure of, or the exercise of a power of sale contained in, the Subordinate Lien Documents, but only if such acquisition of title does not violate any of the terms of this Agreement.

**(i) Counterparts.**

This Agreement may be executed in any number of counterparts, each of which shall be considered an original for all purposes; provided, however, that all such counterparts shall together constitute one (1) and the same instrument.

**(j) Sale of Senior Loan.**

Nothing in this Agreement shall limit Senior Lender's (including any assignee or transferee of Senior Lender) right to sell or transfer the Senior Loan, or any interest in the Senior Loan. The Senior Loan or a partial interest in the Senior Loan (together with this Agreement and the other Loan Documents) may be sold one or more times without prior notice to Borrower.

**[Remainder of Page Intentionally Blank]**

**IN WITNESS WHEREOF**, Borrower, Senior Lender and Subordinate Lender have signed and delivered this Agreement under seal (where applicable) or have caused this Agreement to be signed and delivered under seal (where applicable) by a duly authorized representative. Where applicable law so provides, Borrower, Senior Lender and Subordinate Lender intend that this Agreement shall be deemed to be signed and delivered as a sealed instrument.

**SENIOR LENDER:**

**REGIONS BANK,**  
an Alabama banking corporation

By: \_\_\_\_\_  
Name: David A. Kahn  
Title: Managing Director

Address: 1180 West Peachtree Street, NW,  
Suite 1400, Atlanta, Georgia 30309

With a copy to:  
Fannie Mae  
Attention: Multifamily Operations -  
Asset Management  
Drawer AM  
3900 Wisconsin Avenue, N.W.  
Washington, DC 20016

**[ACKNOWLEDGMENT APPEARS ON FOLLOWING PAGE]**

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2019, personally appeared \_\_\_\_\_, Managing Director of **Regions Bank**, an Alabama banking corporation, who acknowledged that he/she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_

Notary's Name (Printed): \_\_\_\_\_

Notary Seal:

**SUBORDINATE LENDER:**

**TEXAS DEPARTMENT OF HOUSING AND  
COMMUNITY AFFAIRS,**  
a public and official agency of the State of Texas

By: \_\_\_\_\_(SEAL)  
Name: J. B. Goodwin  
Title: Chair

Address: P.O. Box 13941  
Austin, Texas 78711  
Attention: Director of  
Multifamily Finance

**ACKNOWLEDGMENT**

STATE OF TRAVIS

COUNTY OF TEXAS

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2019, personally appeared J.B. Goodwin, Chair of Texas Department of Housing and Community Affairs, who acknowledged that he/she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Notary's Name (Printed): \_\_\_\_\_

**SUBORDINATE LENDER:**

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

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

**ACKNOWLEDGMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_ 2019, personally appeared \_\_\_\_\_, \_\_\_\_\_ of **THE BANK OF NEW YORK MELLON TRUST COMPANY, N.A.**, a national banking association, who acknowledged that he/she executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said on behalf of said banking association.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Notary's Name (Printed): \_\_\_\_\_

**BORROWER:**

**NORTHGATE PRESERVATION, L.P.**

a New York limited partnership

By: Northgate Preservation GP, LLC  
a New York limited liability company  
its General Partner

By: \_\_\_\_\_  
Name: Matthew Finkle  
Title: Vice President

c/o Related Companies  
60 Columbus Circle  
New York, NY 10023  
Attn: David Zussman  
Email address: david.zussman@related.com

**ACKNOWLEDGEMENT**

STATE OF \_\_\_\_\_

COUNTY OF \_\_\_\_\_

On this the \_\_\_\_\_ day of \_\_\_\_\_, 2019, personally appeared \_\_\_\_\_, Vice President of Northgate Preservation GP, LLC, a New York limited liability company, the General Partner of **Northgate Preservation, L.P.**, a New York limited partnership, who acknowledged that he executed the foregoing instrument for the purposes therein contained and in the capacity stated on behalf of said entity.

IN WITNESS WHEREOF, I hereunto set my hand and official seal.

\_\_\_\_\_  
Notary Public, State of \_\_\_\_\_  
Notary's Name (Printed): \_\_\_\_\_

Notary Seal:

**EXHIBIT A**  
**Legal Description**



NEW ISSUE – BOOK-ENTRY ONLY

RATING: Moody's: "Aaa"  
(See "RATING" herein)

In the opinion of Bracewell LLP ("Bond Counsel"), assuming compliance with certain covenants and based on certain representations, under existing law (i) interest on the Bonds is excludable from gross income for federal income tax purposes, except with respect to interest on any Bond for any period during which it is held by a "substantial user" of the Project or a "related person" of such a "substantial user" within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended and (ii) interest on the Bonds is not subject to the alternative minimum tax imposed on individuals. See "TAX MATTERS" herein for a discussion of Bond Counsel's opinion.

\$19,000,000\*

**Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds  
(Pass-Through – Northgate Village), Series 2019**

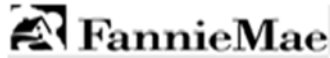
**Maturity Date: July 1, 2036\*; Final Payment Date: July 28, 2036\*; Interest Rate: \_\_\_%; Price: \_\_\_%; CUSIP No.: \_\_\_\_\_ †**

**Dated Date: June 1, 2019\***

The above-captioned bonds (the "Bonds") will be issued under the provisions of an Indenture of Trust dated as of June 1, 2019 (the "Indenture") between the Texas Department of Housing and Community Affairs (the "Issuer") and The Bank of New York Mellon Trust Company, N.A., a national banking association, as trustee for the Bonds (the "Trustee"). The Bonds will be issued in book-entry form only, in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York ("DTC"), as fully registered bonds in the denomination of \$1,000 or any integral multiples of \$1.00 in excess thereof. Interest on and principal of the Bonds will be payable by the Trustee to Cede & Co., as nominee of DTC.

The Bonds are being issued by the Issuer to finance the cost of the acquisition, rehabilitation and equipping of a 168-unit residential rental housing development known as Northgate Village Apartments in Dallas, Texas (the "Project"), and pay certain additional costs related thereto. See "THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS" herein.

The Bonds will initially be collateralized by (i) the deposit into the Collateral Security Principal Account of the Collateral Security Fund under the Indenture of the proceeds received from the assignment to Regions Bank (the "Lender") of a first mortgage loan (the "Mortgage Loan") to be made by the Issuer to Northgate Preservation, L.P., a New York limited partnership (the "Borrower"), and fully funded in an amount equal to the original principal amount of the Bonds on the date of issuance of the Bonds (such assigned Mortgage Loan being referred to herein as the "Assigned Loan"), and (ii) the deposit to the Collateral Security Interest Account of the Collateral Security Fund of Bond proceeds in an amount sufficient to pay the interest on the Bonds to but not including August 27, 2019\* (the "Mandatory Redemption Date"). Upon the satisfaction of certain conditions described herein as set forth in the Indenture, the Trustee will use moneys on deposit in the Collateral Security Fund to acquire a Guaranteed Mortgage Pass-Through Certificate (the "Pass-Through Certificate"), backed by the Mortgage Loan on the Project, and to be issued by Fannie Mae.



It is expected that the Pass-Through Certificate will be acquired by the Trustee prior to July 26, 2019\* (the "First Payment Date"), and in any event prior to the Mandatory Redemption Date, unless such Mandatory Redemption Date is extended as provided in the Indenture. Principal and interest will initially be paid from funds (including accrued interest, if any) on deposit in the Collateral Security Fund until the month following the Purchase Date (as defined herein), at which time payments in an amount equal to the principal and interest paid on the Pass-Through Certificate will be passed through to Bondholders on each Payment Date. "Payment Date" means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the 26<sup>th</sup> day of the month (or the next Business Day if the 26<sup>th</sup> is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date on which a payment of principal, interest, and/or premium, if any, is made pursuant to the Pass-Through Certificate (which shall be the 25<sup>th</sup> day of the month, or the next Business Day if the 25<sup>th</sup> is not a Business Day, after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of exchange of the Bonds for the Pass-Through Certificate, the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable principal amount of the Pass-Through Certificate to or upon the order of the Issuer. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest from July 1, 2036\* (the "Maturity Date") to July 28, 2036\* (the "Final Payment Date").

If the Pass-Through Certificate is not acquired by the Trustee prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the Bonds will be redeemed at a redemption price of par (the "Original Issue Price") plus interest accrued on the Bonds to but not including the Mandatory Redemption Date (as such date may be extended under the Indenture) from moneys on deposit in the Collateral Security Fund under the Indenture.

The Bonds are subject to mandatory redemption at the times and in the events set forth in the Indenture and described herein.

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THE INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OF TEXAS (THE "STATE") OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

IF THE PASS-THROUGH CERTIFICATE IS ISSUED BY FANNIE MAE AND ACQUIRED BY THE TRUSTEE AS COLLATERAL FOR THE BONDS, FANNIE MAE'S OBLIGATIONS WILL BE SOLELY AS PROVIDED IN THE PASS-THROUGH CERTIFICATE AND IN THE FANNIE MAE MBS PROSPECTUS SUMMARIZED AT APPENDIX G – "FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM" AND IN THE FORM OF PROPOSED ADDITIONAL DISCLOSURE ADDENDUM ATTACHED HERETO AS APPENDIX I. THE OBLIGATIONS OF FANNIE MAE UNDER THE PASS-THROUGH CERTIFICATE WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT AND WILL NOT BE A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT AND WILL NOT BE GUARANTEED BY THE FULL FAITH AND CREDIT OF FANNIE MAE OR THE UNITED STATES OF AMERICA.

The Bonds are offered when, as and if issued and received by the Underwriter, and subject to the delivery of the approving legal opinion of Bracewell LLP, Austin, Texas, Bond Counsel to the Issuer, and to certain other conditions. Certain legal matters will be passed upon for the Issuer by McCall, Parkhurst & Horion L.L.P., Dallas, Texas and Mahomes Bolden PC, Dallas, Texas. Certain legal matters will be passed upon for Fannie Mae by its Office of General Counsel and by its Special Counsel, DLA Piper LLP (US). Certain legal matters will be passed upon for the Borrower by its Counsel, Locke Lord LLP, Austin, Texas, and Levitt & Boccio, LLP, New York, New York. RBC Capital Markets, LLC will serve as Underwriter ("Underwriter"). Certain legal matters will be passed upon for the Underwriter by its Counsel, Norris George & Ostrow PLLC, Washington, D.C. Certain financial advisory services will be provided to the Issuer by George K. Baum & Company. It is expected that the Bonds will be available for delivery in New York, New York through the facilities of DTC on or about \_\_\_\_\_, 2019.



RBC Capital Markets®

Dated: \_\_\_\_\_, 2019

\*Preliminary; subject to change.

†CUSIP numbers have been assigned by an independent company not affiliated with the Issuer and are included solely for the convenience of the owners of the Bonds. Neither the State nor the Issuer is responsible for the selection or uses of these CUSIP numbers, and no representation is made as to their correctness on the Bonds or the Pass-Through Certificate or as indicated above. The CUSIP number for a specific maturity is subject to being changed after the issuance of the Bonds as a result of various subsequent actions including, but not limited to, a refunding in whole or in part of such maturity or as a result of the procurement of secondary market portfolio insurance or other similar enhancement by investors that is applicable to all or a portion of certain maturities of the Bonds.

This Preliminary Official Statement and certain of the information contained herein is in a form deemed final for purposes of Rule 15c2-12 under the Securities Exchange Act of 1934, as amended (except for the omission of certain information permitted to be omitted under Rule 15c2-12(b)(1)). The information herein is subject to revision, completion or amendment in a final Official Statement. Under no circumstances shall this Preliminary Official Statement constitute an offer to sell or a solicitation of an offer to buy nor shall there be any sale of these securities in any jurisdiction in which such offer, solicitation or sale would be unlawful prior to registration or qualification under the securities laws of any such jurisdiction.

This Official Statement does not constitute an offer to sell or the solicitation of an offer to buy, nor shall there be any sale of the Bonds to any person in any jurisdiction in which it is unlawful for such person to make such offer, solicitation or sale. No dealer, broker, salesman or other person has been authorized by the Issuer, the Borrower, Fannie Mae or the Underwriter to give any information or to make any representations other than as contained in this Official Statement. If given or made, such other information or representations must not be relied upon as having been authorized by any of the foregoing.

The information set forth herein has been obtained from the Issuer; Fannie Mae; the Borrower (in the case of information contained herein relating to the Borrower, the Mortgage Loan and the Project); and other sources which are believed to be reliable. Such information herein is not guaranteed as to accuracy or completeness, and is not to be construed as a representation by any of such sources as to information from any other source. The information and expressions of opinion herein are subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Issuer, Fannie Mae or the Borrower, since the date hereof.

The information set forth herein relating to the Issuer under the headings “THE ISSUER” and “NO LITIGATION—The Issuer” has been obtained from the Issuer. The Issuer has not reviewed or approved any information in this Official Statement except the information relating to the Issuer under the foregoing headings. The information herein is subject to change without notice, and neither the delivery of this Official Statement nor any sale made hereunder shall under any circumstances create any implication that there has been no change in the affairs of the Issuer and the Borrower since the date hereof. The Issuer has not and will not agree to provide any annual financial statements or other credit information of the Issuer or the Borrower to investors on a periodic basis.

The Underwriter has reviewed the information in this Official Statement in accordance with, and as part of, its responsibilities to investors under the federal securities laws as applied to the facts and circumstances of this transaction, but the Underwriter does not guarantee the accuracy or completeness of such information.

IN CONNECTION WITH THIS OFFERING, THE UNDERWRITER MAY OVER-ALLOT OR EFFECT TRANSACTIONS WHICH STABILIZE OR MAINTAIN THE MARKET PRICE OF THE BONDS AT A LEVEL ABOVE THAT WHICH MIGHT OTHERWISE PREVAIL IN THE OPEN MARKET. SUCH STABILIZING, IF COMMENCED, MAY BE DISCONTINUED AT ANY TIME. THE UNDERWRITER MAY OFFER AND SELL THE BONDS TO CERTAIN DEALERS AND DEALER BANKS AND OTHERS AT A PRICE LOWER THAN THE PUBLIC OFFERING PRICE STATED ON THE COVER PAGE HEREOF AND SAID PUBLIC OFFERING PRICE MAY BE CHANGED FROM TIME TO TIME BY THE UNDERWRITER.

THE BONDS HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION, NOR HAS THE SECURITIES AND EXCHANGE COMMISSION OR ANY STATE SECURITIES COMMISSION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS OFFICIAL STATEMENT.

**Fannie Mae has not reviewed or undertaken to determine the accuracy of any of the information contained in this Official Statement, other than providing a link to the template Fannie Mae MBS Prospectus in APPENDIX G and the Additional Disclosure Addendum in APPENDIX I, and makes no representation or warranty, express or implied, as to any of the other matters contained in this Official Statement, including, but not limited to (i) the accuracy or completeness of such information, (ii) the suitability of the Bonds for any investor, (iii) the feasibility or performance of any project, (iv) the structure, provisions or terms of the Bonds and any cash flows related thereto, or (v) compliance with any securities, tax or other laws or regulations including but not limited to the validity of the Bonds and the tax-exempt status of the Bonds. Fannie Mae’s role with respect to the Bonds is limited to issuing and discharging its obligations under the Pass-Through Certificate if and when delivered.**

Except for any information provided by The Bank of New York Mellon Trust Company, N.A., concerning the Trustee, The Bank of New York Mellon Trust Company, N.A., has no responsibility for any information in this Official Statement. The Bank of New York Mellon Trust Company, N.A., in its capacity as Trustee, assumes no responsibility for the accuracy or completeness of the information concerning the Issuer or the Borrower or their respective affiliates or any other party contained in this document or the related documents or for any failure by the Issuer or the Borrower or any other party to disclose events that may have occurred and may affect the significance or accuracy of such information.

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**\$19,000,000\***  
**Texas Department of Housing and Community Affairs**  
**Multifamily Housing Revenue Bonds**  
**(Pass-Through – Northgate Village), Series 2019**

This Official Statement (including the cover page, the inside cover page and appendices) provides certain information concerning the Issuer in connection with the sale of \$19,000,000\* in aggregate principal amount of its Multifamily Housing Revenue Bonds (Pass-Through - Northgate Village), Series 2019 (the “Bonds”).

The Bonds are authorized to be issued under the provisions of Chapter 2306, Texas Government Code, as amended (the “Act”), and pursuant to an Indenture of Trust, dated as of June 1, 2019 (the “Indenture”) between the Texas Department of Housing and Community Affairs (the “Issuer”) and The Bank of New York Mellon Trust Company, N.A., as Trustee (the “Trustee”). Pursuant to the Indenture, bonds issued thereunder are equally and ratably secured by the pledges and covenants contained therein. Certain defined terms used herein are set forth in APPENDIX A hereto.

**SUMMARY OF THE BONDS**

This summary highlights information contained elsewhere in this Official Statement. As a summary, it speaks in general terms without giving details or discussing any exceptions. Before buying the Bonds one should have the information necessary to make a fully informed investment decision. For that, one must read this Official Statement in its entirety (and any documents to which we refer in this Official Statement).

- The Issuer..... The Texas Department of Housing and Community Affairs (the “Issuer”), a public and official agency of the State of Texas (the “State”). The Issuer is empowered pursuant to the Act to issue its bonds for the purposes, among others, of financing the acquisition, rehabilitation and equipping of multifamily residential rental projects.
- Limited Obligations..... **The Bonds, together with interest thereon, and redemption premium, if any, are not general obligations of the Issuer, but are special, limited obligations of the Issuer secured by the Trust Estate, and will always be payable solely from the revenues and income derived from the Trust Estate (except to the extent paid out of moneys attributable to proceeds of the Bonds or the income from the temporary investment thereof), and are and will always be a valid claim of the owner thereof only against the revenues and income derived from the Trust Estate, which revenues and income may be used for no other purpose than to pay the principal installments of, redemption premium, if any, and interest on the Bonds, except as may be expressly authorized otherwise in the Indenture and in the Financing Agreement. The Bonds and the obligation to pay interest thereon and redemption premium, if any, do not now and will never constitute a debt or an obligation of the State or any political subdivision thereof and neither the State nor any political subdivision thereof will be liable therefor. The Bonds are not and do not create or constitute in any way an obligation, a debt or a liability of the State or any political subdivision thereof, or create or constitute a pledge, giving or lending of the faith, credit, or taxing power of the State or any political subdivision thereof. The Issuer has no taxing power. The Bonds are not a debt of the United States of America, the United States Department of Housing and Urban Development or any other federal governmental agency and are not guaranteed by the full faith and credit of the United States.**

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\* Preliminary; subject to change.

The Borrower.....	Northgate Preservation, L.P., a New York limited partnership (the “Borrower”). The Borrower is a single purpose entity formed to acquire, rehabilitate and operate the Project.
The Project.....	Northgate Village, a 168-unit (including 1 superintendent unit) residential rental housing facility in Dallas, Texas (the “Project”).
The Bonds, the Mortgage Loan and the Pass-Through Certificate.....	The Bonds will be issued under the provisions of the Indenture. The Bonds will be issued in book-entry form only, in the name of Cede & Co., as registered owner and nominee of The Depository Trust Company, New York, New York (“DTC”), as fully registered bonds in the denomination of \$1,000 or any integral multiples of \$1.00 in excess thereof.

The Bonds are being issued by the Issuer to finance a portion of the cost of the acquisition, rehabilitation and equipping of the Project and pay certain additional costs related thereto.

Upon the issuance of the Bonds, Bond proceeds in an amount equal to the interest thereon to but not including August 27, 2019 (the “Mandatory Redemption Date”) (together with accrued interest, if any) will be deposited to the Collateral Security Interest Account of the Collateral Security Fund under the Indenture, and the balance of the Bond proceeds will be deposited into the Proceeds Fund. Pursuant to the terms of a Financing Agreement dated as of June 1, 2019 (the “Financing Agreement”) among the Issuer, the Trustee, the Borrower and Regions Bank (the “Lender”), Bond proceeds deposited into the Proceeds Fund will (i) be used to pay or reimburse the Borrower for payment of certain costs of the Project or (ii) will be deposited to a Rehabilitation Account of the Proceeds Fund and used as directed by the Lender for rehabilitation of the Project. Upon the funding of the Collateral Security Fund, Bond proceeds (other than amounts deposited to the Collateral Security Interest Account, and bond premium, if any, deposited to the Collateral Security Principal Account) shall not be part of the Trust Estate securing repayment of the Bonds.

The Bonds will initially be collateralized, in part, by the deposit into the Collateral Security Principal Account of the Collateral Security Fund under the Indenture of the proceeds received from the assignment to the Lender of a first mortgage loan (the “Mortgage Loan”) to be made by the Issuer to the Borrower and fully funded in an amount equal to the original principal amount of the Bonds on the date of issuance of the Bonds (such assigned Mortgage Loan being referred to herein as the “Assigned Loan”). The Bonds will be further collateralized by the deposit to the Collateral Security Interest Account of the Collateral Security Fund of Bond proceeds in an amount sufficient to pay the interest on the Bonds to but not including the Mandatory Redemption Date. The Trustee will use moneys on deposit in the Collateral Security Fund to acquire a Guaranteed Mortgage Pass-Through Certificate (the “Pass-Through Certificate”), backed by the Mortgage Loan on the Project, and to be issued by Fannie Mae, upon satisfaction of the conditions set forth in the Indenture and upon satisfaction of the conditions precedent to the issuance of the Pass-Through Certificate and compliance with the commitment between Fannie Mae and the Lender.

It is anticipated that the conditions to the issuance of the Pass-Through Certificate will be satisfied and that the Pass-Through Certificate will be

available for acquisition by the Trustee prior to July 26, 2019\* (the “First Payment Date”), and in any event prior to the Mandatory Redemption Date, unless such Mandatory Redemption Date is extended as provided in the Indenture. Payments of principal and interest on the Bonds will initially be payable from funds (including accrued interest, if any) on deposit in the Collateral Security Fund until the month following the Purchase Date (as defined herein), at which time payments in an amount equal to the principal and interest paid on the Pass-Through Certificate, if issued, will be passed through to Bondholders on each Payment Date (as defined below – see “Bond Payment Dates”).

Extraordinary Redemption For Failure to Purchase Pass-Through Certificate.....

If the Pass-Through Certificate is not acquired by the Trustee prior to the Mandatory Redemption Date (as such date may be extended pursuant to the Indenture) the Bonds will be redeemed at a redemption price of par (the “Original Issue Price”), plus interest accrued on the Bonds to but not including the Mandatory Redemption Date (as such date may be extended under the Indenture), from moneys on deposit in the Collateral Security Fund under the Indenture.

Optional Exchange of Bonds for Pass-Through Certificate.....

At certain times, a Beneficial Owner of Bonds may file with the Trustee a written request to exchange Bonds for a like principal amount of the Pass-Through Certificate. See “DESCRIPTION OF THE BONDS – Optional Exchange of Bonds for Pass-Through Certificate or Mandatory Redemption of Bonds.”

Bond Payment Dates.....

Payment Date (on the Bonds) means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the 26th day of the month (or the next Business Day if the 26th is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month, or the next Business Day if the 25th is not a Business Day, after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of exchange of the Bonds for the Pass-Through Certificate, the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable principal amount of the Pass-Through Certificate to or upon the order of the Issuer. The payment of interest on a Payment Date is the interest accrued on the Mortgage Loan and the Pass-Through Certificate at the Pass-Through Rate during the preceding calendar month. For example, if the Pass-Through Certificate is acquired by the Trustee prior to the First Payment Date (July 26, 2019\*), then on such date the Bondholders will receive a payment of interest on the Bonds in an amount equal to the interest at the Pass-Through Rate which is equal to the interest rate on the Bonds, which accrued on the Bonds during the month of June 2019\*. Except as otherwise described herein with respect to certain payments prior to the Purchase Date, the Bonds are pass-through securities designed to pass through to registered owners of the Bonds principal and interest payments on the Pass-Through Certificate one Business Day after their receipt by the Trustee. There shall be no further accrual of interest from the Maturity Date (July 1, 2036\*) to the Final Payment Date on the Bonds (July 28, 2036\*). After the Purchase Date, any balance remaining in the Collateral Security Interest Account of the Collateral Security Fund, after application of moneys therein to pay any accrued interest on the Pass-Through Certificate or interest on the Bonds on the next Payment

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\* Preliminary; subject to change.

Date, as applicable, will be transferred to the Rehabilitation Account of the Proceeds Fund or otherwise disbursed to the Borrower (after application of moneys therein to pay accrued interest). See “Effective Yield on Bonds Lower Than Interest Rate on Pass-Through Certificate” below.

Interest Payments on the  
Bonds.....

Prior to the Purchase Date and in the month the Purchase Date occurs, interest payments on the Bonds will equal accrued interest on the Bonds to but not including the next Payment Date. After the month in which the Purchase Date occurs, interest payments on the Bonds will equal interest payments received by the Trustee on each Distribution Date (as defined herein) for the Pass-Through Certificate, which is expected to commence on July 25, 2019\*. Although interest accrues on the Pass-Through Certificate during a calendar month, as described above, Fannie Mae will not distribute interest to the Trustee as certificateholder until the Distribution Date in the following calendar month. Interest on the Bonds shall be calculated on an “Actual/360” basis. “Actual/360” means a computation of interest accrual on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Bonds by the Pass-Through Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month.

Principal Payments on the  
Bonds.....

Prior to the Purchase Date and in the month the Purchase Date occurs, principal payments on the Bonds will equal the amount set forth in the Mortgage Loan amortization schedule on the first day of the month in which such Payment Date occurs. After the month in which the Purchase Date occurs, principal payments on the Bonds will equal principal payments received by the Trustee on the Pass-Through Certificate on each Distribution Date for the Pass-Through Certificate. The final principal payment on the Pass-Through Certificate will occur on July 25, 2036\*, which principal payment will pass through to the registered owners of the Bonds on the following Business Day.

Regularly scheduled payments of principal (and interest) on the Mortgage Loan will be passed through monthly on the Pass-Through Certificate. Unscheduled principal payments on the Mortgage Loan also will be passed through on the Pass-Through Certificate. A portion of the prepayment premium, if collected, may be shared with certificateholders under the circumstances described in “**YIELD, MATURITY AND PREPAYMENT CONSIDERATIONS—Maturity and Prepayment Considerations—Prepayment of a Mortgage Loan—Prepayment Premiums**” in the Fannie Mae MBS Prospectus. Any prepayment premium that is allocable to certificateholders is not guaranteed by Fannie Mae. Additionally, any prepayment premium paid after the yield maintenance end date (as provided in Appendix H) will not be passed through to certificateholders. See APPENDIX G hereto.

Effective Yield on Bonds  
Lower Than Interest Rate on  
Pass-Through  
Certificate.....

As stated above, because of the lag in payments of interest and principal inherent in the Pass-Through Certificate and the one (additional) Business Day (as defined in the Indenture) lag in payment inherent in the Bonds, the effective yield on the Bonds will be lower than the Pass-Through Rate on the Pass-Through Certificate and the stated interest rate on the Bonds.

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\* Preliminary; subject to change.

Same Terms of Bonds and Pass-Through Certificate.....	Prior to the Purchase Date, the terms of the Bonds, including, without limitation, the dated date, the Pass-Through Rate, Payment Dates and prepayment provisions, shall be the same as would have been the case if the Pass-Through Certificate had already been purchased by the Trustee and had been in place as of the Closing Date.
Tax Exemption.....	On the date of delivery of the Bonds, Bracewell LLP, Bond Counsel, will deliver its opinion that, assuming compliance with certain covenants and based on certain representations, under existing law, (i) interest on the Bonds is excludable from gross income for federal income tax purposes, except with respect to interest on any Bond for any period during which it is held by a “substantial user” of the Project or a “related person” of such a “substantial user” within the meaning of Section 147(a) of the Internal Revenue Code of 1986, as amended and (ii) interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of calculating the alternative minimum tax on individuals. See “TAX MATTERS” herein.

**Limited Role of Fannie Mae**

IF THE PASS-THROUGH CERTIFICATE IS ISSUED BY FANNIE MAE AND ACQUIRED BY THE TRUSTEE AS COLLATERAL FOR THE BONDS, FANNIE MAE’S OBLIGATIONS WILL BE SOLELY AS PROVIDED IN THE PASS-THROUGH CERTIFICATE AND IN THE FANNIE MAE MBS PROSPECTUS SUMMARIZED AT APPENDIX G – “FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM” AND IN THE FORM OF PROPOSED ADDITIONAL DISCLOSURE ADDENDUM ATTACHED HERETO AS APPENDIX I. THE OBLIGATIONS OF FANNIE MAE UNDER THE PASS-THROUGH CERTIFICATE WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT AND WILL NOT BE A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT AND WILL NOT BE GUARANTEED BY THE FULL FAITH AND CREDIT OF FANNIE MAE OR THE UNITED STATES OF AMERICA.

**THE ISSUER**

*The following information has been provided by the Issuer for uses herein. While the information is believed to be reliable, none of the Trustee, the Borrower, the Underwriter nor any of their respective counsel, members, officers or employees make any representations as to the accuracy or sufficiency of such information.*

**General**

The Issuer, a public and official agency of the State was created pursuant to and in accordance with the Act. The Issuer is the successor agency to the Texas Housing Agency (the “Agency”) and the Texas Department of Community Affairs, both of which were abolished by the Act and their functions and obligations transferred to the Issuer. One of the purposes of the Issuer is to provide for the housing needs of individuals and families of low, very low and extremely low income and families of moderate income in the State. Pursuant to the Act, the Issuer may issue bonds, notes or other obligations to finance or refinance residential housing and to refund bonds previously issued by the Agency, the Issuer or certain other quasi-governmental issuers. The Act specifically provides that the revenue bonds of the Agency become revenue bonds of the Issuer.

The Issuer is subject to the Texas Sunset Act (Chapter 325, Texas Government Code, as amended, hereinafter referred to as the “Sunset Act”), and its continued existence is subject to a review process that resulted in passage of legislation in the Seventy-Eighth Legislative Session in 2003 which continued the Issuer in existence until September 1, 2011. House Bill 3361 extended the existence of the Issuer until September 2025, at which time it will be subject to review. The Sunset Act, however, recognizes the continuing obligation of the State to provide for the payment of bonded indebtedness incurred by a State agency abolished under the provisions thereof and provides



that the Governor of the State shall designate an appropriate State agency to continue to carry out all covenants with respect to any bonds outstanding, including the payment of any bonds from the sources provided in the proceedings authorizing such bonds.

In the Act, the State also pledges and agrees with the holders of any bonds issued under the Act (such as the Bonds) that the State will not limit or alter the rights vested in the Issuer to fulfill the terms of any agreements made with the holders thereof that would in any way impair the rights and remedies of such holders until such bonds, together with the interest thereon, interest on any unpaid installments of interest and all costs and expenses incurred in connection with any action or proceeding by or on behalf of such holders are fully met and discharged.

### **Organization and Membership**

Governing Board. The Issuer is governed by a governing board (the “Board”) consisting of seven public members appointed by the Governor, with the advice and consent of the State Senate. Board members hold office for six-year staggered terms. Each member serves until his or her successor is appointed and qualified. Each member is eligible for reappointment. Members serve without compensation, but are entitled to reimbursement for actual expenses incurred in performing their duties of office. The Act requires the Governor to make appointments so that the places on the Board are occupied by persons who have a demonstrated interest in issues related to housing and support services and who broadly reflect the geographic, economic, cultural and social diversity of the State, including ethnic minorities, persons with disabilities, and women.

The Governor of the State designates a member of the Board to serve as the presiding officer (the “Chair”) of the Board at the pleasure of the Governor. The Chair presides at all meetings and performs such other duties as may be prescribed from time to time by the Board and by the Act. In addition, the members of the Board elect one of its members as assistant presiding officer (the “Vice Chair”) to perform the duties of the Chair when the Chair is not present or is incapable of performing such duties. The Board also elects a Secretary and a Treasurer (which offices may be held by one individual, neither of which is required to be a Board member) to perform the duties prescribed by the Board.

One seat on the Board is currently vacant. The current members of the Board, their occupations and their terms of office are as follows:

J.B. GOODWIN, Chair and Board Member. CEO of JB Goodwin Realtors, Austin, Texas. His term expires January 31, 2021.

LESLIE BINGHAM-ESCAREÑO, Vice Chair and Board Member. Chief Executive Officer, Valley Baptist Medical Center-Brownsville. Her term expires January 31, 2019.

PAUL A. BRADEN, Board Member. Partner and Head of Public Finance for the United States at Norton Rose Fulbright, Dallas, Texas. His term expires January 31, 2023.

LEO VASQUEZ, Board Member. Executive Vice President of Cadeco Industries and related companies, Houston, Texas. His term expires January 31, 2023.

SHARON THOMASON, Board Member. President of S Arthur Services, Lubbock, Texas. Her term expires January 31, 2021.

ASUSENA RESÉNDIZ, Board Member. Member of U.S. Global Leadership Coalition Texas Advisory Board. Her term expires January 31, 2019.

All of the above Board members have been appointed by the Governor and confirmed by the State Senate. Texas law requires that confirmations of any such appointment be considered at the next legislative session, whether regular or special. Pursuant to Article XVI, Section 17, of the Texas Constitution, any Board member whose term has expired or who has tendered his or her resignation continues to serve until his or her successor has been appointed.

Administrative Personnel. The Act provides that the Issuer is to be administered by an Executive Director to be employed by the Board with the approval of the Governor. The Executive Director serves at the pleasure of the Board, but may also be removed by a newly elected Governor who did not approve the Executive Director's appointment by action taken within 90 days after such Governor takes office. The Executive Director is responsible for administering the Issuer and its personnel. The Executive Director may employ other employees necessary for the discharge of the duties of the Issuer, subject to the annual budget and the provisions of any resolution authorizing the issuance of the Issuer's bonds.

Currently, the Issuer has 287 employees. The following is a biographical summary of certain of the Issuer's senior staff members who have responsibility with respect to multi-family housing bond matters:

DAVID CERVANTES, Acting Director / Director of Administration. Mr. Cervantes was recently appointed by the Governing Board to serve as Acting Director at the Board meeting of November 8, 2018. During his 30-year-plus tenure with Texas state government, Mr. Cervantes has been responsible for the overall administrative and fiscal management, accounting and financial reporting for the Issuer. In his role as Director of Administration, Mr. Cervantes oversees an agency budget of \$28 million annually and manages the divisions of Financial Administration, Information Systems (including Information Technology security), and Human Resources. The Issuer's Financial Administration Division includes Accounting Operations, Financial Services, Budget, Payroll, Travel, Purchasing and Staff Services. The Division is also responsible for the coordination of information and planning related to the state budget/appropriations process. The annual financial audit, conducted by an independent auditor, is facilitated through the Financial Administration Division; in conjunction with Bond Finance, this Division monitors the financial status of the bonds and performs all responsibilities of the Department in accordance with the bond covenants stated in the bonds' legal documents. Mr. Cervantes received his Bachelor of Business Administration in Accounting and his Master of Business Administration from Southwest Texas State University. He is a member of the Government Finance Officers' Association and a graduate of the 2002 inaugural class of the Texas Fiscal Officers' Academy.

MONICA GALUSKI, Director of Bond Finance and Chief Investment Officer. Ms. Galuski has over 20 years of experience in municipal finance, including 14 years as a single-family housing banker. She oversees the Department's Single Family and Multifamily Mortgage Revenue Bond Programs, including bond issuance, debt and portfolio management, and bond compliance and disclosure. Ms. Galuski received a Bachelor of Science in Financial Management from Arizona State University.

JAMES "BEAU" ECCLES, General Counsel. J. Beau Eccles joined the Issuer in June 2015 as its General Counsel and is responsible for coordination of all internal and external legal counsel for the Issuer. Before joining the Issuer, Mr. Eccles served as an Assistant Texas Attorney General for thirteen years, including five years as Deputy Chief, then two years as Chief, of the General Litigation Division. Mr. Eccles is a graduate of the Texas Tech School of Law, and received his B.A. from the University of Texas at Austin.

The offices of the Issuer are located at 221 East 11th Street, Austin, Texas 78701-2410, and the telephone number for the Issuer is 512/475-3800 or toll-free 800/525-0657.

### **Other Indebtedness of the Issuer**

Single Family Mortgage Revenue Bonds. Since 1979, the year of creation of the Agency, through February 28, 2019, there have been issued by the Agency or the Issuer thirty-six series of Residential Mortgage Revenue Bonds, two series of GNMA Collateralized Home Mortgage Revenue Bonds, fifty-nine series of Single Family Mortgage Revenue Bonds, four series of Junior Lien Single Family Mortgage Revenue Bonds, eleven series of Collateralized Home Mortgage Revenue Bonds, and ten series of Single Family Mortgage Revenue Bonds (Collateralized Home Mortgage Revenue Bonds). As of February 28, 2019, the aggregate outstanding principal amount of bonded indebtedness of the Issuer for single family purposes was \$567,553,931.

Multifamily Housing Revenue Bonds. The Issuer and the Agency, through February 28, 2019, have issued two-hundred thirty-three series of multifamily housing revenue bonds, which have been issued pursuant to separate

trust indentures and are secured by individual trust estates that are separate and distinct from each other. As of February 28, 2019, the aggregate outstanding principal amount of multifamily housing revenue bonds was \$976,492,044.

## **THE MORTGAGE LOAN**

The Indenture authorizes the Issuer to issue the Bonds to finance a portion of the cost of the acquisition, rehabilitation and equipping of the Project and pay certain additional costs related thereto. The Bonds will be secured initially by the proceeds from the assignment by the Issuer to the Lender of the Mortgage Loan (to be funded from sources other than the proceeds of the Bonds in an amount equal to the original principal amount of the Bonds) deposited in the Collateral Security Fund, as described herein (see “SUMMARY OF THE BONDS – The Bonds, the Mortgage Loan and the Pass-Through Certificate”) and then by the Pass-Through Certificate, if issued. Fannie Mae is expected to deliver the Pass-Through Certificate to the Trustee on the Purchase Date, as described herein. The Lender has undertaken to certify that the Pass-Through Certificate has terms consistent with the Term Sheet and meets the requirements set forth in the Indenture, on which certification the Trustee may rely and act without further investigation. The Mortgage Loan is to be evidenced by the Mortgage Note, executed by the Borrower in favor of the Issuer and assigned to the Lender and secured by the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing (the “Mortgage”). The Borrower is required under the Mortgage Note to make monthly payments sufficient in the aggregate to pay debt service on the Mortgage Loan.

The ability of the Borrower to pay the Mortgage Loan is dependent on the revenues derived from the Project. See “THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS – Risk Factors” herein.

Failure of the Borrower to make payments when due under the Mortgage Loan will result in an event of default under the Mortgage Loan and may result in a mandatory redemption of all or a portion of the Bonds. See “DESCRIPTION OF THE BONDS–Redemption of Bonds—Mandatory Redemption from Principal Payments or Prepayments” herein.

The Mortgage Loan is a non-recourse obligation of the Borrower with respect to which neither the Borrower nor its partners have personal liability and as to which the Borrower and its partners have not pledged for the benefit of the Bondholders any of their respective assets, other than the Project and its rents, profits and proceeds.

## **THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS**

### **The Borrower**

The Borrower is Northgate Preservation, L.P., a New York limited partnership (the “Borrower”), formed for the sole purpose of acquiring, rehabilitating and equipping the Project. Upon the issuance of the Bonds, Northgate Preservation GP, LLC, a New York limited liability company (the “General Partner”) is expected to own a 0.005% partnership interest in the Borrower. Northgate Preservation Class B, LLC, a New York limited liability company, will be the Class B limited partner of the Borrower and is an affiliate of the General Partner.

The General Partner and/or its delegates will have the responsibility for supervising the operations of the Borrower and will be responsible for overseeing the rehabilitation, operation and management of the Project. The sole managing member of the General Partner is Related Affordable, LLC, a Delaware limited liability company. The Related Companies, L.P., a New York limited partnership, is the managing member of Related Affordable, LLC.

Operating through an affiliated group of companies referred to collectively as “Related” or “Related Companies”, The Related Companies, L.P. has been active in real estate acquisition, development, financial services and property/asset management since 1972. Today, Related is a fully integrated real estate firm with expertise in acquisition/development, financial services and property/asset management, overseeing a real estate portfolio valued

in excess of \$20 billion. Related's principal offices are in New York City, NY; Irvine, CA; Chicago, IL; and Miami, FL.

The Borrower has not previously engaged in any other business operation and has no historical earnings and has no assets other than its interest in the Project. However, the member(s) of the General Partner, the Investor Limited Partner, and their affiliates are engaged in and will continue to engage in the acquisition, development, ownership and management of similar types of housing projects. They may be financially interested in, as officers, partners or otherwise, and devote substantial times to, business and activities that may be inconsistent or competitive with the interests of the Project.

The Borrower and its partners will not be personally liable for payments on the Mortgage Note, the payments on which are to be applied to pay the principal of and interest on the Bonds; nor will the Borrower be personally liable under the other documents executed in connection with the issuance of the Bonds and the making of the Mortgage Loan. Furthermore, no representation is made, nor is it expected, that the Borrower will have substantial funds available for the Project. Accordingly, neither the Borrower's financial statements nor those of its partners are included in this Official Statement.

### **The Project**

The Bonds are being issued to finance the acquisition, rehabilitation and equipping costs of the Project, which is a 168-unit (including 1 superintendent unit) residential rental housing facility known as Northgate Village, consisting of 15 residential buildings and one office/laundry/maintenance building located at 12303 North Plano Road in Dallas, Texas. The rehabilitation of the Project is anticipated to commence in July 2019\*, and is expected to be completed approximately 12\* months later.

The planned renovation will focus on updating unit interiors, improving energy efficiency, and resident safety. The renovations will generally include painting, flooring replacement, energy efficient lighting and new window treatments. Site improvements such as fencing upgrades, exterior lighting upgrades, courtyard improvements and landscaping will also be included.

The unit mix of the Project is as follows:

<b>Number Of Rental Units</b>	<b>Composition</b>	<b>Approximate Square Footage</b>
16	2 Bedroom / 1 Bath	940
80	3 Bedroom / 1.5 Bath	1,119
72	4 Bedroom / 2 Bath	1,200
<b>Total: 168</b>		

### **The General Contractor**

The general contractor for the project is Legacy Construction Services, LLC, (the "General Contractor"). Based out of Cleveland, Ohio, the General Contractor was formed in 2003 and is an Ohio-licensed contractor. The General Contractor has experience with multifamily housing, commercial, retail, institutional, and hospitality projects. Since inception, the General Contractor has built or rehabilitated over 3,700 units of affordable apartments with contracts totaling over \$200 million, including rehabilitation of over 3,700 occupied units.

### **Property Manager**

The Project will be managed by Related Management Company, L.P., a New York limited partnership (the "Property Manager"), an affiliate of Related. The Property Manager was established in 1974 and currently manages over 50,000 multifamily units in California, Connecticut, Florida, Georgia, Illinois, Iowa, Massachusetts, Maryland, Michigan, Minnesota, North Carolina, North Dakota, New Jersey, New York, Nevada, Pennsylvania, South

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\* Preliminary; subject to change.

Carolina, Tennessee, Texas, Virginia, and Wisconsin. The Property Manager presently manages over 18,000 affordable housing units in 16 states.

### **The Architect**

The architect for the Project will be Basis Architecture & Consulting Inc. (the “Architect”). Founded in 2007, the Architect has been the principal architect on over 115 multifamily projects containing over 9,000 units throughout California, Texas, Hawaii, Washington, Arizona, and Montana.

### **The HAP Contract**

The Borrower will receive the benefit of a new 20-year HAP Contract (the “HAP Contract”) covering all 168 of the units at the Project.

Funding under the HAP Contract is subject to annual Congressional appropriations, as more particularly described below. The Section 8 project-based housing assistance payment program (the “Section 8 Program”) is authorized by Section 8 of the United States Housing Act of 1937, as amended, and in the case of Section 8 contracts is administered by local public housing authorities. Renewals of Section 8 HAP contracts are governed by the Multifamily Assisted Housing Reform and Affordability Act, as amended (“MAHRA”). The Section 8 Program authorizes housing assistance payments to owners of qualified housing for the benefit of low-income families (defined generally as families whose incomes do not exceed 80% of the area median income (“AMI”) for the area as determined by HUD), and very low-income families (defined generally as families whose income do not exceed 50% of the AMI as determined by HUD). Section 8 housing assistance payments generally represent the difference between the “contract rent” for the unit approved by HUD and the eligible tenant’s contribution, which is generally 30% of income, as adjusted for family size and certain expenses, subject to a minimum rent contribution. The rents approved by HUD for the Project, as they may be adjusted from time to time with procedures set forth in MAHRA and the HAP Contracts, are the “contract rents” for the Project. The HAP Contracts will require the Borrower to maintain the Project in decent, safe and sanitary condition and to comply with other statutory and regulatory requirements governing the operation of the Project, use of project funds, and other matters. If the Borrower fails to comply with the terms of a HAP Contract, HUD or the contract administrator could seek to abate or terminate the payments under such HAP Contract, or take other sanctions. MAHRA requires that upon the request of the Borrower, HUD shall renew the HAP Contract under the Section 8 Program. However, because the HAP Contract is subject to receipt of annual appropriations by Congress, there is no assurance that the HAP Contract will be renewed or replaced upon its expiration. Funding for HAP contracts is appropriated by Congress on an annual basis, and there is no assurance that adequate funding will be appropriated each year during the term of the HAP Contract. Since payments received under the HAP Contract constitute a primary source of revenues for the Project, the expiration of the HAP Contract, or the failure of Congress to appropriate funds sufficient to fund the HAP Contract during each year of its term, would have a material adverse effect on the ability of the Project to generate revenues sufficient to pay the principal of and interest of the Mortgage Loan, and may result in a redemption of all or a portion of the Bonds.

### **Income and Rent Restrictions**

The Borrower intends to rehabilitate and operate the Project as a “qualified residential rental project” in accordance with the provisions of Section 142(d) of the Code. At the time of the issuance of the Bonds, the Borrower, the Issuer, and the Trustee will enter into a Regulatory and Land Use Restriction Agreement with respect to the Project (the “Regulatory Agreement”). Under the Regulatory Agreement, the Borrower will agree that the Borrower will rent at least 40% of the units in the Project to persons whose adjusted family income (determined in accordance with the provisions of the Code) is less than 60% of AMI (adjusted for family size) (“Low Income Tenants”). In addition, the Regulatory Agreement requires the Borrower to make 5% of the units in the Project (which may consist of the same units being encumbered in the previous sentence) available to Persons with Special Needs, as more fully described in the Regulatory Agreement. The remaining units within the Project that are not occupied by Low Income Tenants must be occupied, or held open for occupancy, by Eligible Tenants (as defined and more fully described in the Regulatory Agreement). The failure of the Borrower to comply with the Regulatory Agreement could cause interest on the Bonds to be included in gross income for federal income tax purposes.

The Project will also be encumbered by a Declaration of Land Use Restrictive Covenants-Land Use Restriction Agreement for Low Income Housing Tax Credits (the “Extended Use Agreement”) required by Section 42 of the Code relating to the low income housing tax credits (the “Tax Credits”), which is expected to (a) restrict the income levels of up to 100% of the revenue generating units in the Projects to amounts on average not greater than 60% of AMI on a project wide basis, adjusted for family size, and (b) restrict the rents which may be charged for occupancy of such units to not more than 30% of an amount equal to such unit’s AMI threshold, adjusted for family size.

In connection with the HAP Contract, the Borrower will enter into a new Section 8 Use Agreement (“Section 8 Use Agreement”) that encumbers the Project requiring the Borrower to maintain the Project as affordable housing for low-income families for a period of twenty (20) years in accordance with the Section 8 Program.

In the event of any conflict between these regulatory agreements or use agreements, the more restrictive provisions of the Regulatory Agreement, the Extended Use Agreement, or the Section 8 Use Agreement are expected to control. See the summary of the Regulatory Agreement in APPENDIX D to this Official Statement and “TAX MATTERS” herein.

### **Risk Factors**

Due to the inherent uncertainty of future events and conditions, no assurance can be given that revenues generated by the Project will be sufficient to pay expenses of the Project, including without limitation, debt service on the Mortgage Loan, operating expenses, servicing fees, fees due to Fannie Mae, Trustee fees, and fees owed to the Issuer. The ability of the Project to generate sufficient revenues may be affected by a variety of factors including, but not limited to, completion of repairs to the Project, the maintenance of a sufficient level of occupancy, the ability to achieve increases in rents and/or increases under the HAP Contract as necessary to cover debt service and operating expenses, the funding of the HAP Contract, the level of operating expenses, project management, adverse changes in applicable laws and regulations, general economic conditions and other factors in the surrounding market area for the Project. Adverse changes may occur from time to time with respect to any of the preceding factors or other factors or events which may have a negative impact on the occupancy level and rental income of the Project. The Borrower intends to rent up to 100% of the units, less any management units, in the Project to persons or families of low income and the amount of rent that may be charged for such units may be materially less than market rates. A default by the Borrower under the Mortgage Loan Documents may result in a redemption of all or a portion of the Bonds. See “DESCRIPTION OF THE BONDS— Redemption of Bonds — Mandatory Redemption from Principal Payments or Prepayments” herein.

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## Plan of Financing\*

The sources and uses to develop the Project are expected to be approximately as follows:

### Sources of Funds

Bond Proceeds	\$19,000,000
Tax Credit Equity	10,000,000
Seller Note	2,000,000
Deferred Developer Fee	300,000
Total Sources of Funds at Closing	<u>\$31,300,000</u>

### Uses of Funds

Project Acquisition	\$16,000,000
Total Construction Costs (including contingency)	9,000,000
Architect's Fees	150,000
Other Soft Costs	3,100,000
Total Costs of Issuance	700,000
Tax Credit Fees	50,000
Project Reserves and Escrows	600,000
Developer Fee	1,700,000
Total Uses of Funds at Closing	<u>\$31,300,000</u>

## Sources and Uses of Funds Under the Indenture

### Sources of Funds

Bond Proceeds (including accrued interest)	\$
Proceeds of Mortgage Loan	
Total Sources of Funds at Closing	<u>\$</u>

### Uses of Funds

Deposit to Collateral Security Interest Account of the Collateral Security Fund <sup>†</sup>	\$
Deposit of Bond Proceeds (net of deposit to Collateral Security Interest Account) to the Proceeds Fund	
Deposit of Assigned Loan Proceeds to Collateral Security Principal Account of Collateral Security Fund	
Total Uses of Funds at Closing	<u>\$</u>

<sup>†</sup> The deposit to the Collateral Security Interest Account of the Collateral Security Fund has been calculated to be sufficient to cover the interest which will become due on the Bonds to but not including the Initial Mandatory Redemption Date.

## Mortgage Loan

Simultaneously with the closing of the Bonds, the Lender will make the Mortgage Loan to the Borrower in an amount equal to approximately \$19,000,000\*. The Mortgage Loan will be secured by a lien on the property and bear interest at the rate of \_\_\_% per annum. The Mortgage Loan will have a term of 17 years and will be amortized over 35 years. As described herein, on the Purchase Date, Fannie Mae is expected to deliver the Pass-Through Certificate to the Trustee in exchange for Mortgage Loan proceeds in an amount equal to the outstanding principal amount of the Mortgage Loan. Following the Purchase Date, payments on the Bonds will be payable by the Trustee from payments received by the Trustee pursuant to the Pass-Through Certificate.

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\* Preliminary; subject to change.

## Tax Credits

Simultaneously with the issuance of the Bonds, the Borrower expects to admit (i) RAH Investor 226 LLC, a Mississippi limited liability company (the “Investor Limited Partner”) to the Borrower as the limited partner with a [99.98%] ownership interest in the Borrower, and (ii) Sterling Corporate Services LLC, a New York limited liability company (the “Special Limited Partner” and together with the Investor Limited Partner, the “Tax Credit Investor”) to the Borrower as the special limited partner with a [0.01%] ownership interest in the Borrower. The funding of the Tax Credit equity by the Investor Limited Partner is expected to total approximately \$10,000,000\*. The funding levels and the timing of the funding are subject to numerous adjustments and conditions which could result in the amounts funded and/or the timing or even occurrence of the funding varying significantly from the projections set forth above and no representation is made as to the availability of such funds.

## Seller Note and Mortgage

Simultaneously with the closing of the Bonds, Northgate Village Associates, LLC, a Texas limited liability company will make a loan pursuant to a promissory note (the “Seller Note”) in an amount equal to approximately \$2,000,000\* to the Borrower. The Seller Note will be secured by a subordinate mortgage, will bear interest at a rate equal to [6]%, will be repayable with cash flow from operations, and will mature 20 years from the Closing Date.

## FANNIE MAE

The Pass-Through Certificate, if issued by Fannie Mae and acquired by the Trustee as described herein, will be an obligation of Fannie Mae. **The securities of Fannie Mae, including the Pass-Through Certificate, if issued, are not guaranteed by the United States and do not constitute a debt or obligation of the United States or any agency or instrumentality thereof other than Fannie Mae.**

Information on Fannie Mae and its financial condition are contained in periodic reports that are filed with the Securities and Exchange Commission (the “SEC”). Fannie Mae’s SEC filings are available at the SEC’s website at [www.sec.gov](http://www.sec.gov) and are also available on Fannie Mae’s web site at <http://www.fanniemae.com> or from Fannie Mae at the Office of Investor Relations at 202-752-7115.

Fannie Mae makes no representation as to the contents of this Official Statement, the suitability of the Bonds for any investor, the feasibility of performance of any project, or compliance with any securities, tax or other laws or regulations. Fannie Mae’s role with respect to the Bonds is limited to issuing and discharging its obligations under the Pass-Through Certificate and exercising the rights reserved to it in the Indenture.

## DESCRIPTION OF THE BONDS

### General

The Bonds will be issued as registered bonds in authorized denominations of \$1,000 or any integral multiples of \$1.00 in excess thereof. The Bonds will be dated June 1, 2019\*. Principal and interest will initially be paid from funds (including accrued interest, if any) on deposit in the Collateral Security Fund until the month following the Purchase Date, at which time payments in an amount equal to the principal and interest paid on the Pass-Through Certificate will be passed through to Bondholders on each Payment Date. Payment Date is defined as (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the 26<sup>th</sup> day of the month (or the next Business Day if the 26<sup>th</sup> is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25<sup>th</sup> day of the month, or the next Business Day if the 25<sup>th</sup> is not a Business Day, after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of exchange of the Bonds for the Pass-Through Certificate, the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable principal amount of the Pass-Through Certificate to or upon the order of the Issuer. See “DESCRIPTION

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\* Preliminary; subject to change.



OF THE BONDS—Redemption of Bonds” below. The payment of interest on a Payment Date is the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the Final Payment Date. After the Purchase Date, any balance remaining in the Collateral Security Interest Account of the Collateral Security Fund, after application of moneys therein to pay any accrued interest on the Pass-Through Certificate or interest on the Bonds on the next Payment Date, as applicable, will be transferred to the Rehabilitation Account of the Proceeds Fund or otherwise disbursed to the Borrower. As further described herein and in the Fannie Mae MBS Prospectus, the Pass-Through Certificate and the Bonds pay interest monthly on an Actual/360 Basis. “Actual/360” means, in the case of the Bonds, a computation of interest accrual on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Bonds (which is expected to be the same as the balance on the Pass-Through Certificate), by the Pass-Through Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month.

Payment of the principal of and interest or premium, if any, on any Bond shall be made on each Payment Date to the person appearing on the Bond Register as the registered owner thereof, as of the applicable Record Date at the Pass-Through Rate. The principal of and the interest on the Bonds shall be payable in coin or currency of the United States of America which at the time of payment is legal tender for the payment of public and private debts of the United States of America.

### **Registration, Transfer and Exchange of Bonds; Persons Treated as Owners**

The Issuer shall cause books for the registration, transfer and exchange of the Bonds as provided in the Indenture to be kept by the Trustee, which is constituted and appointed the bond registrar with respect to the Bonds (the “Bond Registrar”). At reasonable times and under reasonable regulations established by the Trustee, said books may be inspected and copied by the Issuer or by owners (or a designated representative thereof) of a majority in aggregate principal amount of the Bonds then Outstanding.

The registration of each Bond is transferable by the registered owner thereof in person or by its attorney duly authorized in writing at the designated corporate trust office of the Trustee. Upon surrender for registration of transfer of any Bond at such office, the Trustee shall authenticate and deliver in the name of the transferee or transferees a new Bond of the same maturity or maturities and authorized denomination for the same aggregate principal amount. Bonds to be exchanged shall be surrendered at said designated corporate trust office of the Trustee, and the Trustee shall authenticate and deliver in exchange therefor a Bond of equal aggregate principal amount of the same maturity and authorized denomination.

All Bonds presented for registration of transfer, exchange or payment (if so required by the Issuer or the Trustee) shall be accompanied by a written instrument or instruments of transfer or authorization for exchange, in form and with guaranty of signature satisfactory to the Trustee, duly executed by the registered owner or by its duly authorized attorney.

The Issuer, the Bond Registrar and the Trustee shall not be required (i) to issue, register the transfer of or exchange any Bonds during a period beginning at the Trustee’s opening of business on the applicable Record Date and ending at the Trustee’s close of business on the applicable Payment Date; or (ii) to register the transfer of or exchange any Bond selected, called or being called for redemption as provided in the Indenture. No charge shall be made to any Bondholder for the privilege of registration of transfer as provided in the Indenture, but any Bondholder requesting any such registration of transfer shall pay any tax or governmental charge required to be paid therefor.

New Bonds delivered upon any registration of transfer or exchange shall be valid obligations of the Issuer, evidencing the same debt as the Bonds surrendered, shall be secured by the Indenture and shall be entitled to all of the security and benefits of the Indenture to the same extent as the Bonds surrendered.

The person in whose name any Bond is registered shall be deemed the owner thereof by the Issuer and the Trustee, and any notice to the contrary shall not be binding upon the Issuer or the Trustee. Notwithstanding anything in the Indenture to the contrary, to the extent the Bonds are Book Entry Bonds, the exchange and registration of Bonds shall be made in accordance with the provisions described under the caption “Book-Entry System; Limited Obligation” below.

## **Book-Entry System; Limited Obligation**

The Bonds shall be initially issued in the form of a separate single fully registered Bond (which may be typewritten). Upon initial execution, authentication and delivery, the ownership of each such global Bond shall be registered in the Bond Register in the name of the Nominee as nominee of the Depository. Except as described below under the caption “Transfer Outside Book-Entry System,” all of the Outstanding Bonds shall be registered in the Bond Register kept by the Trustee in the name of the Nominee and the Bonds may be transferred, in whole but not in part, only to the Depository, to a Substitute Depository or to another nominee of the Depository or of a Substitute Depository. Each global Bond shall bear a legend substantially to the following effect: “UNLESS THIS BOND IS PRESENTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AS DEFINED IN THE INDENTURE) TO THE TRUSTEE FOR REGISTRATION OF TRANSFER, EXCHANGE OR PAYMENT, AND ANY BOND ISSUED IS REGISTERED IN THE NAME OF CEDE & CO. OR IN SUCH OTHER NAME AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY (AND ANY PAYMENT IS MADE TO CEDE & CO. OR TO SUCH OTHER ENTITY AS IS REQUESTED BY AN AUTHORIZED REPRESENTATIVE OF THE DEPOSITORY), ANY TRANSFER, PLEDGE OR OTHER USE HEREOF FOR VALUE OR OTHERWISE BY OR TO ANY PERSON IS WRONGFUL INASMUCH AS THE REGISTERED OWNER HEREOF, CEDE & CO., HAS AN INTEREST HEREIN.” See “BOOK-ENTRY ONLY SYSTEM” below.

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Issuer and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of which such a Participant holds a beneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Participant, Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any redemption notice with respect to the Bonds, including any redemption notice following a failure to purchase the Pass-Through Certificate, (c) the selection by the Depository and the Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Participant, Beneficial Owner or any other person, other than the Depository, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Issuer and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bond, for the purpose of giving redemption notices pursuant to the provisions described under the caption “Notice of Redemption” below and other notices with respect to such Bond, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

The Trustee shall pay all principal of, premium, if any, and interest on the Bonds only to or upon the order of the respective Bondholders, as shown in the Bond Register kept by the Trustee, or their respective attorneys duly authorized in writing, and all such payments shall be valid under the Indenture with respect to payment of principal of, premium, if any, and interest on the Bonds to the extent of the sum or sums so paid. No person other than a Bondholder, as shown in the Bond Register, shall receive a Bond evidencing the obligation to make payments of principal of, premium, if any, and interest pursuant to the Indenture. Upon delivery by the Depository to the Trustee and the Issuer of written notice to the effect that the Depository has determined to substitute a new nominee in place of the Nominee, and subject to the provisions of the Indenture with respect to Record Dates, the word Nominee in the Indenture shall refer to such new nominee of the Depository.

The Issuer and the Trustee will recognize the Depository or its nominee as the Bondholder of Book Entry Bonds for all purposes, including receipt of payments, notices and voting, provided the Trustee may recognize votes by or on behalf of Beneficial Owners as if such votes were made by Bondholders of a related portion of the Bonds when such votes are received in compliance with an omnibus proxy of the Depository or otherwise pursuant to the rules of the Depository or the provisions of the Representation Letter or other comparable evidence delivered to the Trustee by the Bondholders.

SO LONG AS A BOOK ENTRY SYSTEM OF EVIDENCE OF TRANSFER OR OWNERSHIP OF ALL THE BONDS IS MAINTAINED IN ACCORDANCE WITH THE INDENTURE, THE PROVISIONS OF THE INDENTURE RELATING TO THE DELIVERY OF PHYSICAL BOND CERTIFICATES SHALL BE DEEMED

TO GIVE FULL EFFECT TO SUCH BOOK ENTRY SYSTEM AND ALL DELIVERIES OF ANY SUCH BONDS SHALL BE MADE PURSUANT TO THE DELIVERY ORDER PROCEDURES OF DTC, AS IN EFFECT FROM TIME TO TIME.

### **Representation Letter**

In order to qualify the Bonds for the Depository's book-entry system, if necessary, any Authorized Officer is authorized to execute, seal, countersign and deliver on behalf of the Issuer to such Depository a letter from the Issuer in substantially the Depository's standard form representing such matters as shall be necessary to so qualify the Bonds (the "Representation Letter"). The Representation Letter includes such letter as it may be amended, supplemented or restated from time to time, or any agreement entered into in substitution therefor. The execution by the Issuer and delivery of the Representation Letter shall not in any way limit the provisions described under the heading "Book-Entry System; Limited Obligation" above, or in any other way impose upon the Issuer any obligation whatsoever with respect to persons having beneficial interests in the Bonds other than the registered owners, as shown in the Bond Register kept by the Trustee. In the written acceptance by the Trustee of the Representation Letter, the Trustee agrees to take all actions necessary for all representations of the Issuer in the Representation Letter with respect to the Trustee to at all times be complied with. In addition to the execution and delivery of the Representation Letter, any Authorized Officer is authorized to take any other actions, not inconsistent with the Indenture, to qualify the Bonds for the Depository's book-entry program.

The terms and provisions of the Representation Letter shall govern in the event of any inconsistency between the provisions of the Indenture and the Representation Letter. The Representation Letter may be amended without Bondholder consent.

### **Transfers Outside Book-Entry System**

If at any time the Depository notifies the Issuer and the Trustee that it is unwilling or unable to continue as Depository with respect to the Bonds or if at any time the Depository shall no longer be registered or in good standing under the Securities Exchange Act of 1934, as amended, or other applicable statute or regulation and a Substitute Depository is not appointed by the Issuer within 90 days after the Issuer and the Trustee receive notice or become aware of such condition, as the case may be, the provisions described under the heading "Book-Entry System; Limited Obligation" above shall no longer be applicable and the Issuer shall execute and the Trustee shall authenticate and deliver bonds representing the Bonds as described below. Bonds issued in exchange for global bonds pursuant to the provisions described under this caption shall be registered in such names and delivered in such authorized denominations as the Depository, pursuant to instructions from the Participants or otherwise, shall instruct the Issuer and the Trustee. The Trustee shall deliver such bonds representing the Bonds to the persons in whose names such Bonds are so registered. To the extent that the holder of the Bonds under the Indenture is not an exempt recipient under Treas. Reg. § 1.6045-1(c)(3), such holder shall provide or cause to be provided to the Trustee information regarding the amount paid for the Bonds, any brokers' fees or commissions, and any other capitalized costs relating to the Bonds, in each case to the extent necessary for 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 ensure the accuracy of such information.

### **Payments and Notices to the Nominee**

Notwithstanding any other provision of the Indenture to the contrary, so long as any Bond is registered in the name of the Nominee, all payments with respect to principal of, premium, if any, and interest on such Bond and all notices with respect to such Bond shall be made and given, respectively, as provided in the Representation Letter or as otherwise instructed by the Depository.

### **Initial Depository and Nominee**

The initial Depository under the Indenture shall be DTC. The initial Nominee shall be Cede & Co., as nominee of DTC. See "BOOK-ENTRY ONLY SYSTEM" below.

## **Payment of Bonds Not in Book-Entry Only Form**

Unless the Bonds are Book Entry Bonds, the principal of the Bonds shall be payable to the registered owners thereof upon presentation (except in connection with a redemption of Bonds as described under the caption “Redemption of Bonds—Mandatory Redemption from Principal Payments or Prepayments” below) at the designated corporate trust office of the Trustee or its successors. Unless the Bonds are Book Entry Bonds, payments of interest on the Bonds and redemption of the Bonds pursuant to the provisions described under the caption “Redemption of Bonds—Mandatory Redemption from Principal Payments or Prepayments” below shall be paid by check mailed to the registered owner thereof at such owner’s address as it appears on the registration books maintained by the Trustee on the applicable Record Date or at such other address as is furnished to the Trustee in writing by such owner. The Trustee shall cause CUSIP number identification with appropriate dollar amounts for each CUSIP number to accompany all payments of interest, principal or Redemption Price made to such owners, whether such payment is made by check or wire transfer. All payments of principal of and interest on Book Entry Bonds shall be made and given at the times and in the manner set out in the Representation Letter, as more fully specified under the captions “Book-Entry System; Limited Obligation” and “Representation Letter” above.

## **Redemption of Bonds**

The Bonds shall be subject to redemption prior to the stated maturity thereof only as set forth in the Indenture as described under this caption.

Mandatory Redemption from Principal Payments or Prepayments. The Bonds are subject to mandatory redemption, in whole or in part, in the amounts and one Business Day after the dates (i) scheduled principal payments are received pursuant to the Pass-Through Certificate at a price equal to 100% of the principal amount received pursuant to the Pass-Through Certificate, plus interest received pursuant to the Pass-Through Certificate, (ii) prepayments are received with respect to the Pass-Through Certificate, at a price equal to 100% of the principal amount received pursuant to the Pass-Through Certificate, plus interest and premium, if any, received pursuant to the Pass-Through Certificate, or (iii) prior to the Purchase Date, on which redemption is otherwise required on any Payment Date in an amount equal to the amount set forth in the Mortgage Loan amortization schedule on the first day of the month in which such Payment Date occurs as included in the Term Sheet from amounts on deposit in the Collateral Security Fund, as provided in the Indenture.

Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate. The Bonds are subject to mandatory redemption in whole on the Mandatory Redemption Date (as such date may be extended pursuant to the Indenture) at a Redemption Price equal to the Original Issue Price plus interest accrued to but not including the Mandatory Redemption Date (as such date may be extended under the Indenture) upon five (5) Business Days’ notice if (i) a Purchase Date has not occurred by the last date on which timely notice of such redemption may be given preceding such Mandatory Redemption Date (as such date may be extended under the Indenture) and (ii) an Extension Deposit has not been made pursuant to the Indenture, at the Original Issue Price plus interest accrued on the Bonds to but not including the Mandatory Redemption Date (as such date may be extended under the Indenture).

Mandatory Redemption in Lieu of Exchange. The Bonds are subject to mandatory redemption in part in the event the Issuer elects pursuant to the provisions described under the caption “Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds” below to redeem a Beneficial Owner’s Bonds for an amount equal to the Cash Value in lieu of delivering to the Beneficial Owner of the Bonds its proportional interest in the Pass-Through Certificate based upon its proportional interest in the Bonds. Any such redemption shall be made in accordance with the provisions described under the caption “Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds” below. The Cash Value (as defined below under the subcaption “Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds”) shall be calculated by the Issuer, or by a financial advisor selected by the Issuer, and shall be verified by an independent verification agent in writing confirming the mathematical accuracy of the calculations.

## **Notice of Redemption**

(a) When the Trustee shall receive notice of (1) a prepayment under clause (ii) described under the subcaption “Mandatory Redemption from Principal Payments or Prepayments” above, that the Pass-Through

Certificate will be prepaid, or (2) an unscheduled principal prepayment pursuant to the last sentence of paragraph (h) in “APPENDIX C – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Collateral Security Fund,” the Trustee, in accordance with the Indenture, shall use its best efforts to give not less than 20 nor more than 30 days’ notice, in the name of the Issuer, of the redemption of the Bonds, which notice shall specify the following: (i) the maturity and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption; (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee’s name and address with a contact person and a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. The notice for the Bonds other than Book Entry Bonds shall be sent to the holders of the Bonds by first-class mail, postage prepaid, at their respective addresses appearing on the Bond Register. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

(b) The Trustee shall give the Bondholders not less than five (5) Business Days’ notice of the redemption of the Bonds pursuant to the provisions described under the subcaption “Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate” above, which notice shall specify the following: (i) the maturity dates and principal amounts of the Bonds to be redeemed; (ii) the CUSIP number, if any, of the Bonds to be redeemed; (iii) the date of such notice; (iv) the issuance date for such Bonds; (v) the interest rate on the Bonds to be redeemed; (vi) the redemption date; (vii) any conditions to the occurrence of the redemption (which may include a condition to the effect that if the Purchase Date occurs not later than the close of business on the second Business Day preceding such Mandatory Redemption Date (as such date may be extended under the Indenture), the noticed mandatory redemption shall not occur); (viii) the place or places where amounts due upon such redemption will be payable; (ix) the Redemption Price; (x) the Trustee’s name and address with a phone number; and (xi) that on the redemption date, the Redemption Price shall be paid. For Bonds other than Book-Entry Bonds such notice shall be sent to the holders of the Bonds by first class mail, postage prepaid, at their respective addresses appearing on the Bond Register. Neither the giving of such notice by the Trustee nor the receipt of such notice by the Bondholders shall be a condition precedent to the effectiveness of any such redemption.

(c) The Bonds to be redeemed pursuant to the provisions described under the caption “Redemption of Bonds” above will be selected in accordance with the operational arrangements of DTC or any successor Substitute Depository, and any partial redemption pursuant thereto shall be made in accordance with the “Pro Rata Pass-Through Distributions of Principal” procedures of DTC or comparable procedures of any successor Substitute Depository. Notice of redemption given pursuant to the provisions described under this paragraph (c) will be given in accordance with the operational arrangements of DTC or any successor Substitute Depository.

(d) In the event that the Pass-Through Certificate has not been purchased by the Trustee ten (10) Business Days prior to any Mandatory Redemption Date, the Trustee shall provide written notice to the Borrower, the Issuer and the Tax Credit Investor of such non-purchase.

Notwithstanding the provisions described under this caption, no prior notice shall be a prerequisite to the effectiveness of any redemption under the provisions described under the caption “Redemption of Bonds” above which redemption shall occur and be effective irrespective of whether the Trustee fulfills its obligation to provide the notice with respect to certain redemption provisions described under the caption “Redemption of Bonds” above required by the provisions described under this caption.

### **Payment of Redemption Price**

With respect to any redemption pursuant to the provisions described under the caption “Redemption of Bonds” above, notice having been given in the manner described under the caption “Notice of Redemption” above (or not required to be given as a result of a redemption pursuant to clauses (i) or (iii) under the subcaption “Mandatory Redemption from Principal Payments or Prepayments” above), and all conditions to the redemption contained in such notice, if applicable, having been met, the Bonds so called for redemption shall become due and payable on the redemption date so designated at the applicable Redemption Price, and (except as provided in the Indenture in connection with a redemption of Bonds pursuant to the provisions described under the subcaption “Mandatory Redemption from Principal Payments or Prepayments” above) upon presentation and surrender thereof

at the offices specified in such notice, together with, in the case of Bonds presented by other than the registered owner, a written instrument of transfer duly executed by the registered owner or its duly authorized attorney; provided, however, that so long as the Bonds are registered in the name of the Depository, payment for such redeemed Bonds shall be made in accordance with the Representation Letter of the Issuer. If, on the redemption date, moneys for the redemption of the Bonds to be redeemed, together with all accrued interest on such Bonds, which shall equal all interest accrued on the Pass-Through Certificate to the redemption date, shall be held by the Trustee so as to be available therefor on said date and if notice of redemption shall have been given as aforesaid, then, from and after the redemption date, interest on the Bonds so called for redemption shall cease to accrue.

A portion of the prepayment premium, if collected, may be shared with certificateholders, and thereby passed through to bondholders, under the circumstances described in “YIELD, MATURITY AND PREPAYMENT CONSIDERATIONS—Maturity and Prepayment Considerations—Prepayment of a Mortgage Loan—Prepayment Premiums” in the Fannie Mae MBS Prospectus. Any prepayment premium that is allocable to certificateholders is not guaranteed by Fannie Mae. Additionally, any prepayment premium paid after the yield maintenance end date (as described in Appendix H) will not be passed through to certificateholders. See APPENDIX G hereto.

### **Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds**

A Beneficial Owner of Bonds may file with the Trustee a written request, in the form attached hereto as Appendix J (the “Request Notice”), to exchange Bonds for a like principal amount of the Pass-Through Certificate, provided, that (i) the principal amount of Bonds and Pass-Through Certificate exchanged will be no less than \$500,000, (ii) the Pass-Through Certificate will be, when delivered pursuant to any Exchange (as defined in the paragraph below), in a face amount equal to \$1,000 or any integral multiples of \$1.00 in excess thereof, and (iii) the Project is complete and placed in service by the Borrower [as evidenced by a certificate of occupancy for the Project delivered by the Borrower to the Trustee] accompanied by a letter from the Borrower confirming that the Project is placed in service for purposes of Section 42 of the Code. The Request Notice must be delivered to the Trustee at least ten (10) Business Days prior to the Exchange Date (as defined in the Request Notice).

Upon receipt of a Request Notice, the Trustee shall promptly provide a copy to the Issuer and the Lender. The Issuer shall then have up to six (6) Business Days, in its sole discretion, to provide written direction to the Trustee to either (i) deliver to the Beneficial Owner its proportional interest in the Pass-Through Certificate based upon such Beneficial Owner’s proportional interest in the Bond (the “Exchange”) or (ii) redeem the Beneficial Owner’s Bonds in accordance with the provisions described under the subcaption “Mandatory Redemption in Lieu of Exchange” above for an amount equal to the Cash Value (as defined below) as of the Exchange Date (as defined in the Request Notice). The Issuer shall have no obligation to exercise either option, and failure by the Issuer to exercise either option is not an Event of Default; provided, however, that any failure of the Issuer to provide written direction to the Trustee within the six (6) Business Day period set forth above shall be deemed a direction to deliver the proportionate interest in the Pass-Through Certificate in lieu of redeeming the Bonds. The Trustee shall notify such Beneficial Owner of the Issuer’s direction within four (4) Business Days of receipt or a deemed direction from the Issuer. Upon receipt of the Bonds in the principal amount set forth in the Request Notice from the requesting Beneficial Owner and compliance with the requirements described under this caption, the Trustee will promptly cancel the Bonds being exchanged or redeemed. Any Bonds so exchanged or redeemed will not be reissued.

Cash Value = original face amount of the Pass-Through Certificate x Related Factor x (1 + Redemption Premium (R) + (Initial Offering Premium (I) x Related Factor)) – an amount equal to the principal to be received by such Beneficial Owner on the next Payment Date (if the date of redemption occurs between the Record Date and such Payment Date)

- Where R = 5% if the exchange occurs during the first five years from the Closing Date;
- = 4% during the sixth year;
- = 3% during the seventh year;
- = 2% during the eighth year;

= 1% during the ninth year; and

= 0% thereafter

and I = initial offering price of the Bonds - 100%

In the event that the Issuer elects to deliver the Beneficial Owner's proportional interest in the Pass-Through Certificate in lieu of redeeming the Bonds, after validating the exchange request, the Trustee shall transfer and deliver to such requesting Beneficial Owner the Trustee's beneficial ownership interest in the Beneficial Owner's proportional interest in the Pass-Through Certificate as of the date specified in the Request Notice promptly following (i) delivery to the Trustee (via DTC withdrawal or Deposit/Withdrawal At Custodian ("DWAC")) of the Bonds being exchanged and (ii) payment by the requesting Beneficial Owner of the Trustee's exchange fee (\$1,000 as of the date of the Indenture) and the Issuer's exchange fee (\$1,000 as of the date of the Indenture). Such Pass-Through Certificate will be (1) in book-entry form and (2) transferred in accordance with (a) the operational arrangements of DTC or any successor Substitute Depository and (b) current market practices, including the applicable provisions of the *SIFMA's Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities*. If the Exchange Date is subsequent to a Record Date and prior to a corresponding Payment Date for the Bonds, the Trustee shall wire the applicable principal and interest payments on the exchanged Bonds to the Beneficial Owner using the wire transfer instructions set forth on the Request Notice.

In the event that the Issuer elects to redeem Bonds in lieu of an Exchange, the Trustee shall transfer a like principal amount of its interest in the Pass-Through Certificate to or upon the order of the Issuer in exchange for an amount equal to the Cash Value plus accrued interest to the date of redemption (less any interest to be received by the Beneficial Owner on the next Payment Date if the redemption occurs between the Record Date and such Payment Date) and apply the proceeds of such transfer to the payment of the Redemption Price of the Bonds on the Payment Date by wiring such amount to the Beneficial Owner at its wire transfer instructions set forth on the Request Notice. The Issuer reserves the right to sell all or a portion of its interest in the Pass-Through Certificate in order to pay the Cash Value.

None of Fannie Mae, the Trustee or the Issuer shall have any liability to the Beneficial Owner arising from (i) any Exchange or redemption of Bonds effected by the Indenture or (ii) any of the costs or expenses thereof. Interest on such Pass-Through Certificate is not excludable from gross income for federal income tax purposes.

### **BOOK-ENTRY ONLY SYSTEM**

*The information in this section concerning DTC and DTC's book-entry system has been obtained from sources that the Borrower believes to be reliable, but the Borrower takes no responsibility for the accuracy thereof.*

The Depository Trust Company, New York, New York ("DTC"), will act as securities depository for the Bonds. The Bonds will be initially issued and issuable only as one fully registered Bond certificate for each maturity, registered in the name of Cede & Co. as partnership nominee of DTC. Those fully registered Bonds will be deposited with and retained in the custody of DTC.

For ease of reference in this and other discussions, reference to "DTC" includes when applicable any successor securities depository and the nominee of the depository.

For all purposes under the Bond proceedings, DTC will be and will be considered by the Issuer and the Trustee to be the owner or Holder of the Bonds.

Owners of book entry interests in the Bonds (book entry interest owners) will not receive or have the right to receive physical delivery of Bonds, and will not be or be considered by the Issuer and the Trustee to be, and will not have any rights as, owners or holders of Bonds under the Bond proceedings.

DTC, the world's largest securities depository, is a limited-purpose trust company organized under the New York Banking Law, a "banking organization" within the meaning of the New York Banking Law, a member of the

Federal Reserve System, a “clearing corporation” within the meaning of the New York Uniform Commercial Code, and a “clearing agency” registered pursuant to the provisions of Section 17A of the Securities Exchange Act of 1934. DTC holds and provides asset servicing for over 3.5 million issues of U.S. and non-U.S. equity issues, corporate and municipal debt issues, and money market instruments (from over 100 countries) that DTC’s participants (“Direct Participants”) deposit with DTC. DTC also facilitates the post-trade settlement among Direct Participants of sales and other securities transactions in deposited securities through electronic computerized book-entry transfers and pledges between Direct Participants’ accounts. This eliminates the need for physical movement of securities certificates. Direct Participants include both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, clearing corporations, and certain other organizations. DTC is a wholly-owned subsidiary of The Depository Trust & Clearing Corporation (“DTCC”). DTCC is the holding company for DTC, National Securities Clearing Corporation and Fixed Income Clearing Corporation, all of which are registered clearing agencies. DTCC is owned by the users of its regulated subsidiaries. Access to the DTC system is also available to others such as both U.S. and non-U.S. securities brokers and dealers, banks, trust companies, and clearing corporations that clear through or maintain a custodial relationship with a Direct Participant, either directly or indirectly (“Indirect Participants”). DTC has an S&P rating of AA+. The DTC Rules applicable to its Participants are on file with the SEC. More information about DTC can be found at [www.dtcc.com](http://www.dtcc.com).

Purchases of Bonds under the DTC system must be made by or through Direct Participants, which will receive a credit for the Bonds on DTC’s records. The ownership interest of each actual purchaser of each Bond (the book entry interest owner) is in turn to be recorded on the Direct and Indirect Participant’s records. Book entry interest owners will not receive written confirmation from DTC of their purchase, but are expected to receive written confirmations providing details of the transaction, as well as periodic statements of their holdings, from the Direct or Indirect Participant through which the book entry interest owner entered into the transaction. Transfers of ownership interests in the Bonds are to be accomplished by entries made on the books of Participants acting on behalf of book entry interest owners. Book entry interest owners will not receive certificates representing their ownership interests in the Bonds, except in the event that use of the book entry system for the Bonds is discontinued. See “DESCRIPTION OF THE BONDS – Transfers Outside Book Entry System” above.

To facilitate subsequent transfers, all Bonds deposited by Direct Participants with DTC are registered in the name of DTC’s partnership nominee, Cede & Co., or such other name as may be requested by an authorized representative of DTC. The deposit of Bonds with DTC and their registration in the name of Cede & Co. or such other DTC nominee do not effect any change in actual ownership. DTC has no knowledge of the book entry interest owners (or beneficial owners) of the Bonds; DTC’s records reflect only the identity of the Direct Participants to whose accounts such Bonds are credited, which may or may not be the book entry interest owners. Participants will remain responsible for keeping account of their holdings on behalf of their customers.

Conveyance of notices and other communications by DTC to Direct Participants, by Direct Participants to Indirect Participants, and by Direct Participants and Indirect Participants to book entry interest owners, will be governed by arrangements among them, subject to any statutory or regulatory requirements as may be in effect from time to time.

Redemption notices shall be sent to DTC. If less than all of the Bonds within an issue are being redeemed, DTC’s practice is to determine by lot the amount of the interest of each Direct Participant in such issue to be redeemed.

Neither DTC nor Cede & Co. (nor any other DTC nominee) will consent or vote with respect to the Bonds unless authorized by a Direct Participant in accordance with DTC’s MMI Procedures. Under its usual procedures, DTC mails an Omnibus Proxy to the Issuer as soon as possible after the record date. The Omnibus Proxy assigns Cede & Co.’s consenting or voting rights to those Direct Participants to whose accounts the Bonds are credited on the record date (identified in a listing attached to the Omnibus Proxy).

Redemption proceeds, distributions, and debt service payments on the Bonds will be made to Cede & Co., or such other nominee as may be requested by an authorized representative of DTC. DTC’s practice is to credit Direct Participants’ accounts upon DTC’s receipt of funds and corresponding detail information from the Issuer or the Trustee, on the payable date in accordance with their respective holdings shown on DTC’s records. Payments by Participants to book entry interest owners will be governed by standing instructions and customary practices, as is



the case with securities held for the accounts of customers in bearer form or registered in “street name,” and will be the responsibility of such Participant and not of DTC, the Trustee, or the Issuer, subject to any statutory or regulatory requirements as may be in effect from time to time. Payment of redemption proceeds, distributions, and debt service payments to Cede & Co. (or such other nominee as may be requested by an authorized representative of DTC) is the responsibility of the Issuer or the Trustee, disbursement of such payments to Direct Participants will be the responsibility of DTC, and disbursement of such payments to the book entry interest owners will be the responsibility of Direct and Indirect Participants.

DTC may discontinue providing its services as securities depository with respect to the Bonds at any time by giving reasonable notice to the Issuer or the Trustee. The Issuer may decide to discontinue use of the book entry system if DTC (or a successor securities depository) determines not to continue to act as securities depository for the Bonds. See “DESCRIPTION OF THE BONDS – Transfers Outside Book Entry System” above.

With respect to Bonds registered in the Bond Register in the name of the Nominee, the Issuer and the Trustee shall have no responsibility or obligation to any Participant or to any person on behalf of which such a Participant holds a beneficial interest in the Bonds. Without limiting the immediately preceding sentence, the Issuer and the Trustee shall have no responsibility or obligation with respect to (a) the accuracy of the records of the Depository, the Nominee or any Participant with respect to any beneficial ownership interest in the Bonds, (b) the delivery to any Participant, Beneficial Owner or any other person, other than the Depository, of any notice with respect to the Bonds, including any redemption notice with respect to the Bonds, including any redemption notice following a failure to purchase the Pass-Through Certificate, (c) the selection by the Depository and the Participants of the beneficial interests in the Bonds to be redeemed in part, or (d) the payment to any Participant, Beneficial Owner or any other person, other than the Depository, of any amount with respect to principal of, premium, if any, or interest on the Bonds. The Issuer and the Trustee may treat and consider the person in whose name each Bond is registered in the Bond Register as the holder and absolute owner of such Bond for the purpose of payment of principal of, premium, if any, and interest on such Bond, for the purpose of giving redemption notices pursuant to the provisions described under the caption “Notice of Redemption” above and other notices with respect to such Bond, and for all other purposes whatsoever, including, without limitation, registering transfers with respect to the Bonds.

### **ANTICIPATED APPLICATION OF FUNDS**

The proceeds of the Bonds will be used, pursuant to the Financing Agreement, to finance a portion of the cost of the acquisition, rehabilitation and equipping of the Project and to pay certain additional costs related thereto. The Bonds will be secured initially by the proceeds received from the assignment by the Issuer to the Lender of the Mortgage Loan (from funds other than the proceeds of the Bonds, but in an amount equal to the original principal amount of the Bonds), on deposit in the Collateral Security Fund as described herein (see “SUMMARY OF THE BONDS – The Bonds, the Mortgage Loan and the Pass-Through Certificate”). Such proceeds received from the assignment by the Issuer to the Lender held by the Trustee are anticipated, together with Bond proceeds deposited in the Collateral Security Interest Account of the Collateral Security Fund, to be applied by the Trustee to purchase the Pass-Through Certificate, if the conditions to issuance of the Pass-Through Certificate by Fannie Mae and the acquisition of the Pass-Through Certificate by the Trustee described herein are satisfied.

### **SECURITY FOR THE BONDS**

#### **General**

All right, title and interest of the Issuer in and to amounts on deposit in the Collateral Security Fund to be funded at closing in an amount equal to the principal amount of the Bonds and premium, if any; the Pass-Through Certificate, if issued by Fannie Mae and acquired by the Trustee in exchange for amounts on deposit in the Collateral Security Fund; all right, title and interest of the Issuer owned as of or acquired after the date of the Indenture in, to and under the Financing Agreement (except Reserved Rights, as defined in the Indenture) and the Regulatory Agreement; all Revenues; and all other property which by the express provisions of the Indenture is required to be subject to the lien of the Indenture, and any additional property that, from time to time, by delivery or by writing of any kind, may be subjected to the lien of the Indenture, by the Issuer or by anyone on its behalf, and the Trustee is authorized by the Indenture to receive the same at any time as additional security under the Indenture.

THE BONDS, TOGETHER WITH INTEREST THEREON, ARE SPECIAL AND LIMITED OBLIGATIONS OF THE ISSUER PAYABLE SOLELY FROM THE REVENUES, RECEIPTS AND SECURITY PLEDGED THEREFOR UNDER THE INDENTURE. NONE OF THE UNITED STATES OF AMERICA, THE STATE, THE ISSUER, OR ANY OTHER POLITICAL SUBDIVISION OR BODY CORPORATE AND POLITIC OF THE STATE OR ANY AGENCY OF THE UNITED STATES OF AMERICA OR ANY ISSUER THEREOF, WILL IN ANY EVENT BE LIABLE FOR THE PAYMENT OF THE PRINCIPAL OF, PREMIUM, IF ANY, OR INTEREST ON THE BONDS OR FOR THE PERFORMANCE OF ANY PLEDGE, OBLIGATION OR AGREEMENT OF ANY KIND WHATSOEVER OF THE ISSUER, AND NONE OF THE BONDS OR ANY OF THE ISSUER'S AGREEMENTS OR OBLIGATIONS WILL BE CONSTRUED TO CONSTITUTE AN INDEBTEDNESS OF THE UNITED STATES OF AMERICA, THE STATE, THE ISSUER, OR ANY OTHER POLITICAL SUBDIVISION OR BODY CORPORATE AND POLITIC OF THE STATE, WITHIN THE MEANING OF ANY CONSTITUTIONAL OR STATUTORY PROVISION WHATSOEVER. THE BONDS ARE NOT AN OBLIGATION, DEBT OR LIABILITY OF THE STATE, AND DO NOT CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE.

### **The Pass-Through Certificate**

The Bonds are being issued by the Issuer to finance a portion of the cost of the acquisition, rehabilitation and equipping of the Project, and pay certain additional costs related thereto. The Bonds will initially be secured by the deposit of the proceeds received from the assignment by the Issuer to the Lender of the Mortgage Loan, including interest, in an amount sufficient to pay the principal of the Bonds plus interest thereon to but not including the Mandatory Redemption Date, into certain funds and accounts under the Indenture, as further described herein. Upon the satisfaction of certain conditions set forth in the Indenture, the Trustee will transfer the proceeds of the Assigned Loan plus Bond proceeds on deposit in the Collateral Security Interest Account to acquire the Pass-Through Certificate, backed by the Mortgage Loan on the Project, and to be issued, upon satisfaction of the conditions set forth in the Indenture, by Fannie Mae.

It is expected that the Pass-Through Certificate will be acquired by the Trustee prior to the First Payment Date, and in any event prior to the Mandatory Redemption Date, unless such Mandatory Redemption Date is extended as provided in the Indenture. Principal and interest will initially be paid from funds (including accrued interest, if any) on deposit in the Collateral Security Fund until the month following the Purchase Date, at which time payments in an amount equal to the principal and interest paid on the Pass-Through Certificate will be passed through to Bondholders on each Payment Date.

If the Pass-Through Certificate is not acquired by the Trustee prior to the Mandatory Redemption Date (as such date may be extended pursuant to the Indenture), the Bonds will be redeemed at the Original Issue Price, plus accrued interest on the Bonds to but not including the Mandatory Redemption Date (as such redemption date may be extended under the Indenture) from proceeds of the Bonds and other Preference Proof Moneys on deposit under the Indenture. See "SUMMARY OF THE BONDS" above.

See "APPENDIX H – TERM SHEET" below for a description of the terms expected to be borne by the Pass-Through Certificate if issued by Fannie Mae and acquired by the Trustee. This description does not purport to be complete. Reference is made to the Fannie Mae MBS Prospectus summarized at APPENDIX G – "FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM" and to the form of proposed Additional Disclosure Addendum attached hereto as APPENDIX I for the complete terms of the Pass-Through Certificate and the rights, duties and obligations of Fannie Mae thereunder.

IF THE PASS-THROUGH CERTIFICATE IS ISSUED BY FANNIE MAE AND ACQUIRED BY THE TRUSTEE AS COLLATERAL FOR THE BONDS, FANNIE MAE'S OBLIGATIONS WILL BE SOLELY AS PROVIDED IN THE PASS-THROUGH CERTIFICATE AND IN THE FANNIE MAE MBS PROSPECTUS SUMMARIZED AT APPENDIX G – "FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM" AND IN THE FORM OF PROPOSED ADDITIONAL DISCLOSURE ADDENDUM ATTACHED HERETO AS APPENDIX I. THE OBLIGATIONS OF FANNIE MAE UNDER THE PASS-THROUGH CERTIFICATE WILL BE OBLIGATIONS SOLELY OF FANNIE MAE, A FEDERALLY CHARTERED CORPORATION, AND WILL NOT BE BACKED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES OF AMERICA. THE BONDS ARE NOT AND WILL NOT BE A DEBT OF THE UNITED STATES OF AMERICA OR ANY OTHER

AGENCY OR INSTRUMENTALITY OF THE UNITED STATES OF AMERICA OR OF FANNIE MAE. THE BONDS ARE NOT AND WILL NOT BE GUARANTEED BY THE FULL FAITH AND CREDIT OF FANNIE MAE OR THE UNITED STATES OF AMERICA.

### **Bonds Not a Debt of the State**

The Bonds and interest thereon do not constitute an indebtedness, a liability, a general or moral obligation or a pledge of the faith or loan of credit of the Issuer, the State or any political subdivision thereof within the meaning of any constitutional or statutory provisions. Neither the Issuer, the State nor any political subdivision thereof shall be obligated to pay the principal of or interest on the Bonds or other costs incident thereto except from the revenues and assets pledged with respect thereto. Neither the faith and credit nor the taxing power of the United States of America, the Issuer, the State or any political subdivision thereof is pledged to the payment of the principal of or interest on the Bonds or other costs incident thereto. The Bonds are not a debt of the United States of America or any agency thereof and are not guaranteed by the United States of America or any agency thereof.

### **CERTAIN BONDHOLDERS' RISKS**

*The purchase of the Bonds will involve a number of risks. In addition to factors set forth elsewhere in this Official Statement, purchasers of Bonds should carefully consider the following risk factors in connection with investment in the Bonds. The following summary does not purport to be comprehensive or definitive, but rather is intended as a brief summary of some of such risk factors.*

### **Bonds are Pass-Through Bonds; Interest Payment Lag**

As described elsewhere herein, except under certain circumstances described under the caption “DESCRIPTION OF THE BONDS – Redemption of Bonds – Mandatory Redemption upon Failure to Purchase the Pass-Through Certificate,” and except as otherwise described herein with respect to certain payments prior to the First Payment Date (see subparagraph (e) of “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Collateral Security Fund”), the Bonds are pass-through securities designed to pass through to registered owners of the Bonds principal and interest payments on the Pass-Through Certificate one Business Day after their receipt by the Trustee. Interest payments on the Bonds will equal either accrued interest on the Bonds, or interest payments received by the Trustee on each Distribution Date for the Pass-Through Certificate, which will be the 25th day of each month, or the next Business Day if the 25th is not a Business Day. The first Distribution Date is expected to be July 25, 2019\*. Although interest accrues on the Pass-Through Certificate during a calendar month, Fannie Mae will not distribute interest to the Trustee as certificateholder until the Distribution Date in the following calendar month. The Bonds mature on July 1, 2036\*; however, the final principal payment on the Pass-Through Certificate will occur on July 25, 2036\*, and such payment will be passed through to Bondholders on July 28, 2036\*. Because of these delays, the effective yield on the Bonds will be lower than the Pass-Through Rate on the Pass-Through Certificate and the stated interest rate on the Bonds.

### **Pass-Through Certificate**

If the Pass-Through Certificate is issued by Fannie Mae and acquired by the Trustee as collateral for the Bonds, Fannie Mae’s obligations will be solely as provided in the Pass-Through Certificate and in the Fannie Mae MBS Prospectus summarized at APPENDIX G – “FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM” and in the form of proposed Additional Disclosure Addendum attached hereto as APPENDIX I. The obligations of Fannie Mae under the Pass-Through Certificate will be obligations solely of Fannie Mae, a federally chartered corporation, and will not be backed by the full faith and credit of the United States of America. The Bonds are not and will not be a debt of the United States of America or any other agency or instrumentality of the United States of America or of Fannie Mae. The Bonds are not and will not be guaranteed by the full faith and credit of Fannie Mae or the United States of America.

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\* Preliminary; subject to change.

It is possible, in the event of the insolvency of Fannie Mae, or the occurrence of some other event precluding Fannie Mae from honoring its obligations to make payments as stated in the Pass-Through Certificate, if issued, that the financial resources of the Borrower will be the only source of payment on the Bonds. There can be no assurance that the financial resources of the Borrower will be sufficient to pay the principal of, premium if any, and interest on the Bonds in the event the Trustee is forced to seek recourse against the Borrower. See “SECURITY FOR THE BONDS” herein.

### **No Acceleration or Early Redemption Upon Loss of Tax Exemption on the Bonds**

The Borrower has covenanted and agreed, pursuant to, among other documents, the Regulatory Agreement and the Tax Exemption Agreement, to comply with the provisions of the Code relating to the exclusion from gross income for federal income tax purposes of the interest payable on the Bonds. The financing documents contain provisions and procedures designed to assure compliance with such covenant. See “TAX MATTERS” herein. However, the Borrower’s covenant to comply with the requirements of the Code is nonrecourse to the Borrower, and the Borrower’s liability is limited to the revenues and assets comprising the Project. Furthermore, the Borrower’s failure to comply with such provisions will not constitute an automatic default under the Mortgage Loan. Furthermore, in the event that Fannie Mae calls a default under the Mortgage Loan because of the Borrower’s failure to comply with such provisions, it may not give rise to a redemption or acceleration of the Bonds (see “Default May Result in Redemption of the Bonds”) and is not the basis for an increase in the rate of interest payable on the Bonds, nor will the Borrower’s failure to comply with the Regulatory Agreement give rise to a prepayment or acceleration of amounts due under the Pass-Through Certificate, unless directed by Fannie Mae in its sole discretion. Consequently, interest on the Bonds may become includable in gross income for purposes of federal income taxation retroactive to the date of issuance of the Bonds by reason of the Borrower’s failure to comply with the requirements of federal tax law, and there is no assurance that either the Issuer, the Trustee or the Bondholders will have remedies available to them to mitigate the adverse economic effects to the Bondholders of such inclusion by reason of the Borrower’s noncompliance.

### **Performance of the Project**

No assurance can be given as to the future performance of the Project. See “THE MORTGAGE LOAN” and “THE BORROWER, THE PROJECT AND THE PRIVATE PARTICIPANTS – Risk Factors” above. The economic feasibility of the Project depends in large part upon the ability of the Borrower to maintain substantial occupancy throughout the term of the Bonds at sufficient rents. Occupancy of the Project may be affected by competition from existing housing facilities or from housing facilities which may be constructed in the areas served by the Project. Restrictions imposed under the Code on tenant income and the rent that can be charged could have an adverse effect on the Borrower’s ability to satisfy its obligations under the Financing Agreement, especially if operating expenses should increase beyond what was anticipated.

### **Default May Result in Redemption of the Bonds**

A default by the Borrower under the Mortgage Loan may – upon compliance with the terms of the Pass-Through Certificate and the Indenture – result in a mandatory redemption of the Bonds. If Fannie Mae accelerates the Mortgage Loan as a result of any event of default under the Mortgage Loan, the Mortgage Loan will be paid in full, and the stated principal balance of the Pass-Through Certificates will be passed through to the holder of the Pass-Through Certificates. In this case, no yield maintenance or other prepayment premiums will be payable to the Trustee as holder of the Pass-Through Certificate.

### **Estimated Rental Revenue/Vacancies**

The economic feasibility of the Project depends in large part upon its being substantially occupied at rentals adequate to cover all operating expenses of the Project and debt service on the Mortgage Loan as well as continued funding of the HAP Contract by the United States Department of Housing and Urban Development. Although representatives of the Borrower believe, based on surveys of the area where the Project is located, that a substantial number of persons currently need housing facilities such as the Project, occupancy of the Project may be affected by competition from existing housing facilities or from housing facilities which may be constructed in the area served by the Project. While the Borrower believes the Project is needed, there may be difficulties in keeping it

substantially occupied. Furthermore, no assurance can be given that the low-income tenants are able to afford the rental rates of the Project, notwithstanding the HAP Contract and albeit at below market rental rates. The rent and affordability restrictions may adversely affect the revenues of the Project.

### **Estimated Project Expenses; Management**

The success of the Project depends upon economic conditions, successful management of the Project and other factors. Furthermore, should management of the Project prove to be inefficient, increases in operating expenses might exceed increases in rents which are permitted under the financing and regulatory programs, including the HAP Contract or can be supported by market conditions. The economic feasibility of the Project also depends to a large extent on operating expenses. No assurances can be given that moneys available to the Borrower from operation of the Project will be sufficient to make the required payments on the Financing Agreement and the Mortgage Note.

### **CONTINUING DISCLOSURE**

The Borrower has undertaken all responsibilities for any continuing disclosure to owners of the Bonds as described below, and the Issuer shall have no liability to the owners or any other person with respect to such disclosures. The Borrower has covenanted for the benefit of owners and Beneficial Owners of the Bonds to provide its audited financial statements and certain financial information and operating data relating to the Borrower by not later than one hundred eighty (180) days after the end of each fiscal year (which fiscal year currently ends on December 31), commencing with the report for the fiscal year ending December 31, 2019 (the “Annual Report”), and to provide notices of the occurrence of certain enumerated events, if material. The Annual Report is required to be filed by the Borrower with the Municipal Securities Rulemaking Board (the “MSRB”). All notices of material events are required to be filed by the Borrower with the MSRB. The specific nature of the information to be contained in the Annual Report and the notices of material events is described in APPENDIX F – “FORM OF CONTINUING DISCLOSURE AGREEMENT.” These covenants have been made in order to assist the Underwriter in complying with SEC Rule 15c2-12(b)(5).

The Borrower has not previously been subject to the continuing disclosure requirements of Rule 15c2-12.

### **FINANCIAL ADVISOR**

George K. Baum & Company (the “Financial Advisor”) has served as financial advisor to the Issuer for purposes of assisting the Issuer with the development and implementation of the bond program in connection with the Bonds. The Financial Advisor has not been engaged by the Issuer to compile, create or interpret any information in this Official Statement relating to the Issuer, including (without limitation) any of the Issuer’s financial and operating data, whether historical or projected. Any information contained in this Official Statement concerning the Issuer, any of its affiliates or contractors and any outside parties has not been independently verified by the Financial Advisor, and inclusion of such information is not and should not be construed as a representation by the Financial Advisor as to its accuracy or completeness or otherwise. The Financial Advisor is not a public accounting firm and has not been engaged by the Issuer to review or audit any information in this Official Statement in accordance with accounting standards.

The Financial Advisor does not assume any responsibility for the covenants and representations contained in any of the legal documents with respect to the federal income tax status of the Bonds, or the possible impact of any present, pending or future actions taken by any legislative or judicial bodies.

### **TAX MATTERS**

*The following discussion of certain federal income tax considerations is for general information only and is not tax advice. Each prospective purchaser of the Bonds should consult its own tax advisor as to the tax consequences of the acquisition, ownership and disposition of the Bonds.*

## **Tax Exemption**

### *In General*

In the opinion of Bond Counsel, assuming compliance with certain covenants and based on certain representations, under existing law (i) interest on the Bonds is excludable from gross income for federal income tax purposes, except with respect to interest on any Bond for any period during which it is held by a “substantial user” of the Project or a “related person” of such a “substantial user” within the meaning of Section 147(a) of the Internal Revenue Code, as amended (the “Code”) and (ii) interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of calculating the alternative minimum tax on individuals.

The Code imposes a number of requirements that must be satisfied for interest on state or local obligations, such as the Bonds, to be excludable from gross income for federal income tax purposes. These requirements include, among other things, limitations on the use of the bond-financed project, limitations on the use of bond proceeds, limitations on the investment of bond proceeds prior to expenditure, a requirement that excess arbitrage earned on the investment of bond proceeds be paid periodically to the United States, and a requirement that the Issuer file an information report with the Internal Revenue Service (the “Service”). The Issuer and the Borrower have covenanted in the Indenture, Financing Agreement, Tax Exemption Agreement and Regulatory Agreement that they will comply with these requirements.

Bond Counsel’s opinion will assume continuing compliance with the covenants of the Indenture, Financing Agreement, Tax Exemption Agreement and Regulatory Agreement pertaining to those sections of the Code that affect the excludability of interest on the Bonds from gross income for federal income tax purposes and, in addition, will rely on representations by the Issuer, the Borrower and the Underwriter with respect to matters solely within the knowledge of the Issuer, the Borrower and the Underwriter, respectively, which Bond Counsel has not independently verified. If the Issuer or the Borrower should fail to comply with the covenants in the Indenture, Financing Agreement, Tax Exemption Agreement and Regulatory Agreement or if the foregoing representations should be determined to be inaccurate or incomplete, interest on the Bonds could become includable in gross income for federal income from the date of original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

Interest on the Bonds is not treated as an “item of tax preference” to be included in the computation of “alternative minimum taxable income” for an individual.

Except as stated above, Bond Counsel will express no opinion as to any federal, state or local tax consequences resulting from the receipt or accrual of interest on, or the acquisition, ownership or disposition of, the Bonds.

Bond Counsel’s opinions are based on existing law, which is subject to change. Such opinions are further based on Bond Counsel’s knowledge of facts as of the date thereof. Bond Counsel assumes no duty to update or supplement its opinions to reflect any facts or circumstances that may thereafter come to Bond Counsel’s attention or to reflect any changes in any law that may thereafter occur or become effective. Moreover, Bond Counsel’s opinions are not a guarantee of result and are not binding on the Service; rather, such opinions represent Bond Counsel’s legal judgment based upon its review of existing law and in reliance upon the representations and covenants referenced above that it deems relevant to such opinions. The Service has an ongoing audit program to determine compliance with rules that relate to whether interest on state or local obligations is includable in gross income for federal income tax purposes. No assurance can be given whether or not the Service will commence an audit of the Bonds. If an audit is commenced, in accordance with its current published procedures the Service is likely to treat the Issuer as the taxpayer and the Owners may not have a right to participate in such audit. Public awareness of any future audit of the Bonds could adversely affect the value and liquidity of the Bonds during the pendency of the audit regardless of the ultimate outcome of the audit.

## *Operation of the Project*

In the case of bonds used to provide residential rental housing, such as the Bonds, section 142 of the Code requires that such bonds also satisfy the tenant eligibility requirements applicable to “qualified residential rental projects” under section 142(d) of the Code. Section 142(d) of the Code requires that at all times during the “qualified project period” a certain percentage of the available units in the Project be occupied by individuals with income below certain levels pursuant to the Issuer’s election made under section 142(d)(1) of the Code. The “qualified project period” for the Project will commence on the delivery date of the Bonds and will end on the latest of the following: (1) the date that is 15 years after the date of delivery of the Bonds; (2) the first day on which no tax-exempt private activity bond (as defined in section 141 of the Code) issued with respect to the Project remains outstanding for federal income tax purposes; or (3) the date on which any assistance provided with respect to the Project under Section 8 of the United States Housing Act of 1937, as amended, terminates. Treasury Regulations (the “Regulations”) setting forth requirements for compliance with a comparable provision of the predecessor of section 142 of the Code require, among other things, that (1) the low-income set aside requirement must be met on a continuous basis during the “qualified project period”, and (2) all of the units in the Project must be rented or available for rental to the general public on a continuous basis during such period. Under the Regulations, the failure to satisfy the foregoing requirements on a continuous basis or the failure to satisfy any of the other requirements of the Regulations, unless corrected within a reasonable period of not more than 60 days after such non-compliance is first discovered or would have been discovered by the exercise of reasonable diligence, will cause interest on the Bonds to be includable in gross income for federal income tax purposes as of the date of their original issue, irrespective of the date such non-compliance actually occurred.

The Issuer has established requirements, procedures and safeguards that it believes to be sufficient to ensure compliance with the requirements of the Code and the Regulations with respect to the Project. Such requirements, procedures and safeguards are incorporated into the Regulatory Agreement, the Financing Agreement, the Tax Exemption Agreement and the Indenture. In addition, the Issuer and the Trustee have each covenanted in the Tax Exemption Agreement to follow and enforce such procedures to ensure compliance with such requirements. However, no assurance can be given that in the event of a breach of any of the provisions or covenants described above, the remedies available to the Issuer and the Trustee can be judicially enforced in such manner as to assure compliance with the Code and therefore to prevent the loss of the excludability of the interest on the Bonds from gross income for federal income tax purposes. Furthermore, if the Borrower fails to comply with the Regulatory Agreement, the Tax Exemption Agreement or the Financing Agreement, the enforcement remedies available to the Issuer, the Trustee and the Owners are severely limited and may be inadequate to prevent the loss of the excludability of interest on the Bonds from gross income for federal income tax purposes retroactive to the date of issuance of the Bonds. In such event, there is no provision for acceleration or redemption of the Bonds, and the holders of the Bonds may be required to hold the Bonds until maturity bearing interest that is includable in gross income for federal income tax purposes.

Bond Counsel’s opinions assume continuous compliance with all covenants and requirements set forth in the Regulatory Agreement and the Tax Exemption Agreement pertaining to those sections of the Code that affect the excludability of interest on the Bonds from gross income for federal income tax purposes. Prospective purchasers should be aware that the Federal National Mortgage Association (“Fannie Mae”) has required the inclusion of a section in the Regulatory Agreement (the “Fannie Mae Requirements”) that provides that any action taken under the Regulatory Agreement may not conflict with applicable Fannie Mae requirements. Bond Counsel expresses no opinion as to whether any of the covenants and requirements set forth in the Regulatory Agreement conflict with such Fannie Mae requirements. Furthermore, Bond Counsel expresses no opinion as to whether the interest on the Bonds will be excludable from gross income for federal income tax purposes in the event that the Fannie Mae Requirements preclude compliance with any other of the covenants or requirements of the Regulatory Agreement.

### **Additional Federal Income Tax Considerations**

Prospective purchasers of the Bonds should be aware that the ownership of tax-exempt obligations may result in collateral federal income tax consequences to financial institutions, property and casualty insurance companies, certain S corporations with Subchapter C earnings and profits, individual recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, low and middle taxpayers otherwise qualifying for the health insurance premium

assistance credit and individuals otherwise qualifying for the earned income tax credit. In addition, certain foreign corporations doing business in the United States may be subject to the “branch profits tax” on their effectively-connected earnings and profits, including tax-exempt interest such as interest on the Bonds. These categories of prospective purchasers should consult their own tax advisors as to the applicability of these consequences. Under the Code, taxpayers are required to report on their returns the amount of tax-exempt interest, such as interest on Bonds, received or accrued during the year.

### **Tax Legislative Changes**

Current law may change so as to directly or indirectly reduce or eliminate the benefit of the excludability of interest on the Bonds from gross income for federal income tax purposes. Any proposed legislation, whether or not enacted, could also affect the value and liquidity of the Bonds. Prospective purchasers of the Bonds should consult with their own tax advisors with respect to any proposed, pending or future legislation.

## **NO LITIGATION**

### **The Issuer**

At the time of delivery and payment for the Bonds, the Issuer will deliver, or cause to be delivered, a certificate of the Issuer substantially to the effect that there is no action, suit, proceeding, inquiry or investigation against the Issuer, at law or in equity, by or before any court, public board or body, pending, or to the best knowledge of the Issuer threatened in writing, affecting the existence of the Issuer or the titles of its officials to their respective offices, or seeking to prohibit, restrain or enjoin the sale, issuance or delivery of the Bonds or the pledge of revenues or assets of the Issuer pledged or to be pledged to pay the principal of and interest on the Bonds, or in any way materially adversely affecting or questioning (i) the use of this Official Statement or the use of the proceeds of the Bonds to make the Mortgage Loan, (ii) the validity or enforceability of the Bonds, any proceedings of the Issuer taken with respect to the Bonds or any of the Indenture, the Financing Agreement, the Regulatory Agreement, or the Bond Purchase Agreement (collectively, the “Issuer Documents”), (iii) the tax-exempt status of the interest on the Bonds or the accuracy or completeness of this Official Statement, (iv) the execution and delivery of the Issuer Documents or the Bonds, or (v) the power of the Issuer to carry out the transactions contemplated by the Bonds, this Official Statement or any of the Issuer Documents.

### **The Borrower**

At the time of delivery and payment for the Bonds, the Borrower will deliver, or cause to be delivered, a certificate of the Borrower substantially to the effect that there is no action, suit, proceeding, inquiry or investigation, at law or in equity, before or by any judicial or administrative court or governmental agency or body, state, federal or other, pending or, to the best knowledge of the Borrower, threatened against the Borrower, affecting the existence of the Borrower, involving the Project in any material respect or seeking to restrain or enjoin the issuance, sale, execution or delivery of the Bonds or the financing of the Mortgage Loan or the financing of the Project, or in any way contesting or affecting as to the Borrower, the validity or enforceability of the Financing Agreement, the Mortgage Note, the Regulatory Agreement, the Continuing Disclosure Agreement, the Bond Purchase Agreement, or any other document executed by the Borrower relating to the Bonds (the “Borrower Documents”), the Act, the Bonds, or the execution and delivery or adoption by the Borrower of any Borrower Document, or any proceedings of the Borrower taken with respect to the sale, execution or delivery thereof, or the application of any moneys or security provided for the payment of the Bonds, or in any way contesting or challenging the completeness or accuracy of this Official Statement or any supplement or amendment hereto, or the powers of the Borrower or its authority with respect to the Borrower Documents or the consummation of the transactions contemplated hereby or thereby, or challenging the exclusion of interest on the Bonds from gross income for Federal income tax purposes; nor, to the knowledge of the Borrower, is there any basis for any such action, suit, proceeding, inquiry or investigation, wherein an unfavorable decision, ruling or finding would materially adversely affect the Borrower’s financial condition or operations or the validity of the authorization, execution, delivery or performance by the Borrower of any Borrower Document.



## **CERTAIN LEGAL MATTERS**

Legal matters incident to the authorization, issuance, sale and delivery of the Bonds by the Issuer are subject to the approval of Bracewell LLP, Austin, Texas, Bond Counsel to the Issuer. Certain legal matters will be passed upon for the Issuer by McCall, Parkhurst & Horton L.L.P., Dallas, Texas and Mahomes Bolden PC, Dallas, Texas. Certain legal matters will be passed upon for Fannie Mae by its Office of General Counsel and by its Special Counsel, DLA Piper LLP (US). Certain legal matters will be passed upon for the Borrower by its Counsel, Locke Lord LLP, Austin, Texas, and Levitt & Boccio, LLP, New York, New York. Certain legal matters will be passed upon for the Underwriter by its Counsel, Norris George & Ostrow PLLC, Washington, D.C.

### **LEGALITY OF BONDS FOR INVESTMENT AND DEPOSIT**

The Act provides that bonds issued thereunder are legal and authorized investments for banks, savings banks, trust companies, building and loan associations, insurance companies, fiduciaries, trustees, guardians and for all public funds of the State or other political corporations or subdivisions of the State. Such bonds are eligible to secure the deposit of public funds of the State, localities, school districts or other political corporations or subdivisions of the State, and shall be security for such deposits to the extent of their value.

### **UNDERWRITING**

RBC Capital Markets, LLC (the “Underwriter”) has agreed, subject to certain conditions, to purchase the Bonds from the Issuer at an aggregate purchase price of \$\_\_\_\_\_ and to make a public offering of the Bonds at prices that are not in excess of the public offering prices stated on the cover page of this Official Statement. The Underwriter will be obligated to purchase all such Bonds if any are purchased. The Bonds may be offered and sold to certain dealers (including the Underwriter) at prices lower than such public offering prices, and such public offering prices may be changed, from time to time, by the Underwriter. The Underwriter will receive an underwriting fee for its services in the amount of \$\_\_\_\_\_ (which amount does not include the fees and expenses of its counsel).

The Underwriter and its affiliates are full service financial institutions engaged in various activities, that may include securities trading, commercial and investment banking, municipal advisory, brokerage and asset management. In the ordinary course of business, the Underwriter and its affiliates may actively trade debt and if applicable equity securities (or related derivative securities) and provide financial instruments (which may include bank loans, credit support or interest rate swaps) and the Underwriter and its affiliates may engage in transactions for its own accounts involving the securities and instruments made the subject of this securities offering or other offerings of the Issuer and/or Borrower. The Underwriter and its affiliates may also communicate independent investment recommendations, market color or trading ideas and publish independent research views in respect of this securities offering or other offerings of the Issuer and/or Borrower. The Underwriter does not make a market in credit default swaps with respect to municipal securities at this time but may do so in the future.

The Underwriter does not guarantee a secondary market for the Bonds and is not obligated to make any such market in the Bonds. No assurance can be made that such a market will develop or continue. Consequently, investors may not be able to resell Bonds should they need or wish to do so for emergency or other purposes.

### **RELATIONSHIPS AMONG THE PARTIES**

In connection with the issuance of the Bonds, the Issuer, the Borrower and the Underwriter are being represented by the attorneys or law firms identified above under the heading “CERTAIN LEGAL MATTERS.” In other transactions not related to the Bonds, each of these attorneys or law firms may have acted as bond counsel or represented the Issuer, the Borrower or the Underwriter or their affiliates, in capacities different from those described, and there will be no limitations imposed as a result of the issuance of the Bonds on the ability of any of these firms or attorneys to act as bond counsel or represent any of these parties in any future transactions. Potential purchasers of the Bonds should not assume that the Issuer, the Borrower and the Underwriter or their respective counsel or Bond Counsel have not previously engaged in, or will not after the issuance of the Bonds engage in, other transactions with each other or with any affiliates of any of them, and no assurance can be given that there are or

will be no past or future relationships or transactions between or among any of these parties or these attorneys or law firms.

### **THE TRUSTEE**

The Issuer has appointed The Bank of New York Mellon Trust Company, N.A., a national banking association organized under the laws of the United States of America, to serve as Trustee. The Trustee is a national banking association organized and existing under the laws of the United States of America, having all of the powers of a bank, including fiduciary powers, and is a member of the Federal Deposit Insurance Corporation and the Federal Reserve System. The Trustee is to carry out those duties assignable to it under the Indenture. Except for the contents of this section, the Trustee has not reviewed or participated in the preparation of this Official Statement and assumes no responsibility for the nature, contents, accuracy, fairness or completeness of the information set forth in this Official Statement or for the recitals contained in the Indenture or the Bonds, or for the validity, sufficiency, or legal effect of any of such documents.

Furthermore, the Trustee has no oversight responsibility, and is not accountable, for the use or application by the Issuer of any of the Bonds authenticated or delivered pursuant to the Indenture or for the use or application of the proceeds of such Bonds by the Issuer. The Trustee has not evaluated the risks, benefits, or propriety of any investment in the Bonds and makes no representation, and has reached no conclusions, regarding the value or condition of any assets or revenues pledged or assigned as security for the Bonds, or the investment quality of the Bonds, about all of which the Trustee expresses no opinion and expressly disclaims the expertise to evaluate.

### **RATING**

Moody's Investors Service, Inc. (the "Rating Agency") has assigned to the Bonds a rating of "Aaa." Such rating reflects only the view of the Rating Agency and an explanation of the significance of the rating may be obtained from the Rating Agency. There is no assurance that the rating will continue for any given period of time or that it will not be revised or withdrawn entirely by the Rating Agency, if in its judgment, circumstances so warrant. A revision or withdrawal of the rating may have an effect on the market price of the Bonds.

A rating is not a recommendation to buy, sell, or hold the Bonds. There is no assurance that a particular rating will be maintained for any given period of time or that it will not be lowered or withdrawn entirely if, in the judgment of the rating agency originally establishing the rating, circumstances so warrant. The Rating Agency will not undertake responsibility either to bring to the attention of the registered owners of the Bonds any proposed revision or withdrawal of the rating of the Bonds, if issued, or to oppose any such proposed revision or withdrawal. Any such change in or withdrawal of such a rating could have an adverse effect on the market price of the Bonds if a registered owner attempts to sell the same.

The Rating Agency has not assumed any responsibility either to notify the owners of any proposed change in or withdrawal of such rating subsequent to the date of the Official Statement, and the Borrower has such responsibility only in connection with the reporting of events as provided in the Continuing Disclosure Agreement. Neither of them has any responsibility to contest any such revision or withdrawal.

### **FURTHER INFORMATION**

The information contained in this Official Statement is subject to change without notice and no implication should be derived therefrom or from the sale of the Bonds that there has been no change in the affairs of the Issuer from the date hereof. The foregoing references to and summaries or descriptions of provisions of the Bonds, the Indenture, the Financing Agreement, and the Regulatory Agreement, and all references to other materials not stated to be quoted in full are only brief outlines of some of the provisions thereof and do not purport to summarize or describe all of the provisions thereof. After the Closing Date, copies of the Indenture, the Financing Agreement, and the Regulatory Agreement may be obtained from the Trustee at its designated corporate trust office.

Additional information may be obtained from the undersigned at Northgate Preservation, L.P., c/o Related Companies, 60 Columbus Circle, New York, New York 10023.

## MISCELLANEOUS

Any statements in this Official Statement involving matters of opinion, whether or not expressly so stated, are intended as such, and not as representations of fact. This Official Statement is not to be construed as an agreement or contract between the Issuer and the purchasers or owners of any Bonds.

This Official Statement is submitted in connection with the sale of the Bonds and may not be reproduced or used, as a whole or in part, for any other purpose. This Official Statement and the distribution thereof have been duly authorized and approved by the Issuer and this Official Statement has been duly executed and delivered on behalf of the Borrower.

(Remainder of Page Intentionally Left Blank)

(Borrower's Signature Page to Official Statement)

**NORTHGATE PRESERVATION, L.P.**,  
a New York limited partnership

By: Northgate Preservation GP, LLC,  
a New York limited liability company  
its General Partner

By: \_\_\_\_\_  
Matthew Finkle, Vice President

## APPENDIX A

### DEFINITIONS OF CERTAIN TERMS

*The following are definitions of certain terms, or summaries thereof, used in the Indenture or appearing in this Official Statement.*

“Act” means Chapter 2306, Texas Government Code, as amended.

“Actual/360” means a computation of interest accrual on the basis of a three hundred sixty (360) day year and the actual number of calendar days during the applicable month, calculated by multiplying the unpaid principal balance of the Bonds by the Pass-Through Rate, dividing the product by three hundred sixty (360), and multiplying the quotient obtained by the actual number of days elapsed in the applicable month.

“Assigned Loan” means the Mortgage Loan assigned to the Lender by the Issuer on the Closing Date.

“Attesting Officer” means such officer or official of the Issuer who in accordance with the Bond Resolution, the laws of the State, the bylaws or other governing documents of the Issuer or practice or custom, regularly certifies official acts and records of the Issuer, and includes any assistant or deputy officer to the principal officer or officers exercising such responsibilities.

“Authorized Officer” means the Chair or Vice Chair of the Governing Body, the Executive Director or Acting Director of the Issuer, the Director of Administration of the Issuer, the Director of Bond Finance and Chief Investment Officer of the Issuer, the Director of Texas Homeownership of the Issuer, and the Secretary or Assistant Secretary to the Governing Body.

“Bankruptcy Code” means the Federal Bankruptcy Code, Title 11 of the United States Code.

“Beneficial Owner” means the purchaser of a beneficial interest in the Bonds.

“Bonds” means the Multifamily Housing Revenue Bonds (Pass-Through -- Northgate Village), Series 2019, in the principal amount of \$19,000,000\*, including any bond or bonds, as the case may be, authorized under and secured by the Indenture and issued pursuant to the Indenture.

“Bond Counsel” means any counsel nationally recognized as having an expertise in connection with the excludability of interest on obligations of states and local governmental units from gross income for federal income tax purposes, and initially means Bracewell LLP.

“Bond Documents” means the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Indenture, the Subordinate Mortgage and the Bond Purchase Agreement.

“Bond Fund” means the Fund created and so designated in the Indenture.

“Bondholder” or “holder” or “owner” of any Bond or any similar term shall mean the person in whose name any Bond is registered.

“Bond Purchase Agreement” means the Bond Purchase Agreement dated \_\_\_\_\_, 2019, among the Underwriter, the Issuer and the Borrower.

“Bond Register” means the registration books of the Issuer maintained by the Trustee as provided in the Indenture on which registration and transfer of the Bonds is to be recorded.

“Bond Registrar” means the Trustee.

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\* Preliminary; subject to change.

“Bond Resolution” means the resolution of the Issuer adopted on May 23, 2019, authorizing the issuance and sale of the Bonds.

“Book Entry Bonds” means the Bonds for which a Depository or its Nominee is the Bondholder.

“Borrower” means Northgate Preservation, L.P., a New York limited partnership.

“Business Day” means, with respect to the Pass-Through Certificate and the Bonds, any day other than a Saturday or Sunday, a day when the fiscal agent or paying agent is closed, a day when the Federal Reserve Bank of New York is closed, or a day when the Federal Reserve Bank is closed in a district where a certificate account is located if the related withdrawal is being made from that certificate account, and, with respect to the Bonds, any such day that is also a day on which the Trustee is open for business.

“Closing Date” means the date the Bonds are initially issued and delivered to the original purchaser or purchasers thereof.

“Code” means the Internal Revenue Code of 1986, as amended, and, with respect to a specific section thereof, such reference shall be deemed to include (a) the Regulations promulgated under such section, (b) any successor provision of similar import enacted after the date of the Indenture, (c) any corresponding provision of any subsequent Internal Revenue Code and (d) the regulations promulgated under the provisions described in (b) and (c).

“Collateral Security Fund” means the Fund of that name created and so designated in the Indenture.

“Collateral Security Interest Account” means the Account of that name created and so designated in the Indenture.

“Collateral Security Principal Account” means the Account of that name created and so designated in the Indenture.

“Completion Certificate” means the certificate attached as an exhibit to the Financing Agreement.

“Completion Date” means the date the Project is substantially completed and available and suitable for use as multifamily housing, as set forth in the Completion Certificate.

“Comptroller” means the Comptroller of Public Accounts of the State of Texas.

“Continuing Disclosure Agreement” means the Continuing Disclosure Agreement dated as of the date of the Indenture between the Borrower and the Dissemination Agent, as originally executed and as it may be amended from time to time in accordance with the terms of the Indenture, in the form attached hereto as Appendix F.

“Costs of Issuance” means costs to the extent incurred in connection with, and allocable to, the issuance of an issuance of obligations within the meaning of section 147(g) of the Code. For example, Costs of Issuance include the following costs, but only to the extent incurred in connection with, and allocable to, the borrowing: underwriters’ spread; counsel fees; financial advisory fees; fees paid to an organization to evaluate the credit quality of an issue; trustee fees; paying agent fees; bond registrar, certification and authentication fees; accounting fees; printing costs for bonds and offering documents; public approval process costs; engineering and feasibility study costs; guarantee fees, other than qualified guarantees; and similar costs.

“Costs of Issuance Fund” means the Fund created and so designated in the Indenture.

“Counsel’s Opinion” means a written opinion, including opinions supplemental thereto, signed by an attorney or firm of attorneys (who may be counsel for the Issuer, the Borrower or Fannie Mae) acceptable to the Trustee.

“Depository” means, initially, DTC and any replacement securities depository appointed under the Indenture.

“Dissemination Agent” means the Trustee, or any successor, as Dissemination Agent under the Continuing Disclosure Agreement.

“DTC” means The Depository Trust Company, New York, New York.

“Electronic Means” means the following communications methods: e-mail, facsimile transmission, secure electronic transmission containing applicable authorization codes, passwords and/or authentication keys issued by the Trustee, or another method or system specified by the Trustee as available for use in connection with its services under the Indenture and approved in writing by Fannie Mae.

“Event of Default” means any occurrence or event specified as such in the Indenture.

“Extension Deposit” means the deposit of Preference Proof Moneys described in the Indenture.

“Fannie Mae” means Fannie Mae, a corporation organized and existing under the Federal National Mortgage Association Charter Act, 12 U.S.C., § 1716 et seq., and its successors.

“Fannie Mae Trust Indenture” means that certain Trust Indenture of Fannie Mae in its corporate capacity and Fannie Mae in its trustee capacity, dated as of December 1, 2017, (for fully fixed rate mortgage loans) as amended and supplemented, pursuant to which the Pass-Through Certificate is issued.

“Favorable Opinion of Bond Counsel” means, with respect to any action, or omission of an action, the taking or omission of which requires such an opinion, an unqualified written opinion of Bond Counsel to the effect that such action or omission does not adversely affect the Federal Tax Status of the Bonds (subject to the inclusion of any exceptions contained in the opinion of Bond Counsel delivered upon the original issuance of the Bonds or other customary exceptions acceptable to the recipient(s) thereof).

“Federal Tax Status” means, as to the Bonds, the status under existing law of the interest on the Bonds as excludable from gross income for federal income tax purposes (except on any Bond for any period during which it is held by a “substantial user” of the Project or by a “related person” to such a “substantial user,” each within the meaning of Section 147(a) of the Code).

“Final Payment Date” means the Business Day after the receipt of the final payment on the Pass-Through Certificate scheduled for July 25, 2036\*, or the following Business Day if such date is not a Business Day.

“Financing Agreement” means the Financing Agreement dated as of the date of the Indenture among the Issuer, the Borrower, the Lender and the Trustee, as it may be amended from time to time.

“First Payment Date” means July 26, 2019\*.

“Fund” or “Account” means a fund or account created by or pursuant to the Indenture.

“Governing Body” means the members of the governing board of the Issuer, or any governing body that succeeds to the functions of the governing board of the Issuer.

“Government Obligations” means direct obligations of, and obligations on which the full and timely payment of principal and interest is unconditionally guaranteed by, the full faith and credit of the United States of America.

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\* Preliminary; subject to change.

“Indenture” means the Indenture of Trust as it may from time to time be amended, modified or supplemented by Supplemental Indentures.

“Initial Bond” means the initial Bond registered by the Comptroller and subsequently canceled and replaced by a definitive Bond pursuant to the Indenture.

“Issuer” means the Texas Department of Housing and Community Affairs, a public and official agency of the State of Texas.

“Issuer Administration Fee” means the fee payable annually in advance to the Issuer on each [June] 1\*, in the amount of .10% per annum of the expected principal amount of Mortgage Loan at the inception of each payment period based on the original balance of the Mortgage Loan and projected amortization thereof, as set forth in an exhibit to the Indenture. On the Closing Date, the Borrower will pay the Issuer Administration Fee in advance to the Issuer for the period from the Closing Date to [May] 31, 2021\*. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), payable solely from funds provided by the Borrower, all payments of the Issuer Administration Fee due on or after [June] 1, 2021\*. A schedule of the Issuer Administration Fee is attached to the Indenture as an exhibit.

“Issuer Compliance Fee” means the fee payable annually in advance to the Issuer on each [June] 1\*, in the amount of \$25 per low income unit in the Project. The first annual Issuer Compliance Fee shall be paid on the Closing Date. The Trustee will remit to the Issuer (upon receipt of an invoice from the Issuer), solely from funds provided by the Borrower, all payments of the Issuer Compliance Fee due on or after [June] 1, 2022\*. The Issuer Compliance Fee is for bond compliance only, and an additional fee may be charged for tax credit compliance.

“Issuer Fees” means, collectively, the Issuer Administration Fee and the Issuer Compliance Fee. The Issuer Fees shall be payable by the Borrower, and not from funds pledged to the benefit of the Trust Estate.

“Lender” means Regions Bank, an Alabama banking corporation, and its successors and assigns.

“Loan Agreement” means the Multifamily Loan and Security Agreement between Borrower and Issuer, as assigned to Fannie Mae, with respect to the Development and dated the Closing Date, as the same may be supplemented, amended or modified from time to time.

“Mandatory Redemption Date” means August 27, 2019\*, as such date may be extended pursuant to the Indenture.

“Maturity Date” means July 1, 2036\*. The final payment of principal with respect to the Pass-Through Certificate will be made on July 25, 2036\* or the next Business Day and will be passed through to the Bondholders on the Final Payment Date.

“Moody’s” means Moody’s Investors Service, Inc., a Delaware corporation, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, that assigns credit ratings.

“Mortgage” means the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing, dated the Closing Date, together with all riders and exhibits, securing the Mortgage Note, executed by the Borrower with respect to the property described in the Mortgage, as it may be amended, supplemented or restated from time to time, or any security instrument executed in substitution therefor, as such substitute security instrument may be amended, supplemented or restated from time to time.

“Mortgage Loan” or “Loan” means the mortgage loan made from the proceeds of the Bonds to the Borrower by the Issuer with respect to the Project on the Closing Date and assigned to the Lender.

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\* Preliminary; subject to change.



“Mortgage Loan Documents” means, collectively, the Mortgage Note, the Mortgage and all other documents, agreements and instruments evidencing, securing or otherwise relating to the Mortgage Loan, as each such document, agreement or instrument may be amended, supplemented or restated from time to time. None of the Financing Agreement, the Subordinate Mortgage or the Regulatory Agreement is a Mortgage Loan Document and neither document is secured by the Mortgage.

“Mortgage Note” means that certain Multifamily Note from the Borrower payable to the order of the Issuer and endorsed by the Issuer, without recourse, to the order of the Lender, evidencing the Borrower’s obligation to repay the Mortgage Loan.

“Nominee” means the nominee of the Depository, which may be the Depository, as determined from time to time pursuant to the Indenture.

“Officer’s Certificate” means a certificate signed by an Authorized Officer or, if such certificate pertains to official action taken by the Issuer or official records of the Issuer, by an Attesting Officer.

“Operating Fund” means the Fund created and so designated in the Indenture.

“Operating Revenues” means all amounts deposited into the Operating Fund from amounts paid under the Financing Agreement.

“Original Issue Price” means the price of \$19,000,000\* paid upon the issuance of the Bonds.

“Outstanding” means, when used with reference to the Bonds and as of any particular date, all Bonds theretofore and thereupon being delivered except (a) any Bond cancelled by the Trustee or delivered to the Trustee for cancellation; (b) any Bond for the payment or redemption of which either (i) moneys equal to the principal amount or Redemption Price thereof, as the case may be, with interest to the date of maturity or redemption date, or (ii) specified types of Permitted Investments or moneys in the amounts, of the maturities and otherwise as described and required under the provisions of the Indenture, shall have theretofore been deposited with the Trustee in trust (whether upon or prior to maturity or the redemption date of such Bond) and, except in the case of a Bond to be paid at maturity, as to which a redemption notice shall have been given or provided for in accordance with the notice provisions of the Indenture, and (c) any Bond in lieu of or in substitution for which another Bond shall have been delivered pursuant to the Indenture.

“Participant” means a member of, or a participant in, the Depository.

“Pass-Through Certificate” means the Guaranteed Mortgage Pass-Through Certificate with respect to the Mortgage Loan bearing interest at the Pass-Through Rate, to be issued to and registered in the name of the Trustee by Fannie Mae pursuant to the Indenture, not including any portion thereof liquidated or exchanged pursuant to the Indenture, not including any portion thereof liquidated or exchanged pursuant to the Indenture.

“Pass-Through Certificate Purchase Price” means the principal amount outstanding on the Mortgage Loan plus accrued interest on the Pass-Through Certificate at the Pass-Through Rate to but not including the date of purchase. Such amount shall equal the original principal amount of the Mortgage Loan (\$19,000,000\*) less any scheduled principal payments on or any prepayments of the Mortgage Loan prior to the Purchase Date.

“Pass-Through Certificate Revenues” means all payments made under and pursuant to the Pass-Through Certificate.

“Pass-Through Rate” means \_\_\_% per annum.

“Payment Date” means (i) the First Payment Date, (ii) prior to the Purchase Date and prior to the Mandatory Redemption Date, as such date may be extended pursuant to the Indenture, the 26th day of the month (or

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\* Preliminary; subject to change.

the next Business Day if the 26th is not a Business Day), (iii) commencing in the first month immediately following the Purchase Date, one Business Day after each date a principal, interest, or premium, if any, payment is made pursuant to the Pass-Through Certificate (which shall be the 25th day of the month, or the next Business Day if the 25th is not a Business Day, after payment is due on the underlying Mortgage Loan), and (iv) with respect to any redemption in lieu of exchange of the Bonds for the Pass-Through Certificate pursuant to the Indenture, the Business Day on which the Trustee receives funds pursuant to the transfer of the applicable principal amount of the Pass-Through Certificate to or upon the order of the Issuer. The payment of interest on a Payment Date shall relate to the interest accrued during the preceding calendar month. There shall be no further accrual of interest from the Maturity Date to the Final Payment Date.

“Permitted Investments” means, to the extent authorized by law for investment of moneys of the Issuer:

(a) Government Obligations;

(b) Subject to the ratings requirements set forth in this definition, shares in any money market mutual fund (including those of the Trustee or any of its affiliates) registered under the Investment Company Act of 1940, as amended, that have been rated AAAM-G or AAAM by S&P or Aaa by Moody’s so long as the portfolio of such money market mutual fund is limited to Government Obligations and agreements to repurchase Government Obligations. If the Bonds are rated by a Rating Agency, the money market mutual fund must be rated AAAM-G or AAAM by S&P, if S&P is a Rating Agency, or Aaa by Moody’s, if Moody’s is a Rating Agency. If at any time the Bonds are not rated (and, consequently, there is no Rating Agency), then the money market mutual fund must be rated AAAM-G or AAAM by S&P or Aaa by Moody’s; and

(c) Dreyfus Treasury Securities Cash Management.

“Preference Proof Moneys” means (i) moneys drawn on a letter of credit, (ii) proceeds of the Bonds, (iii) proceeds of the Assigned Loan or (iv) moneys in connection with which the Trustee shall have been delivered an opinion of bankruptcy counsel acceptable to it to the effect that the use of such moneys would not be avoidable as a preference under Section 547 of the United States Bankruptcy Code or give rise to a stay under Section 362(a) of the United States Bankruptcy Code.

“Proceeds Fund” means the Fund created and so designated in the Indenture.

“Project” means the multifamily rental housing development, known as Northgate Village Apartments, located in Dallas, Texas, on the site described in the Mortgage.

“Purchase Date” means the date on which funds in the Collateral Security Fund are applied by the Trustee to the purchase of the Pass-Through Certificate.

“Qualified Financial Institution” means any of: (i) bank or trust company organized under the laws of any state of the United States of America, (ii) national banking association, (iii) savings bank, a savings and loan association, or an insurance company or association chartered or organized under the laws of any state of the United States of America, (iv) federal branch or agency pursuant to the International Banking Act of 1978 or any successor provisions of law or a domestic branch or agency of a foreign bank which branch or agency is duly licensed or authorized to do business under the laws of any state or territory of the United States of America, (v) government bond dealer reporting to, trading with, and recognized as a primary dealer by the Federal Reserve Bank of New York, (vi) securities dealer approved in writing by Fannie Mae the liquidation of which is subject to the Securities Investors Protection Corporation or other similar corporation and (vii) any other entity which is acceptable to Fannie Mae.

“Rating Agency” means Moody’s or any other nationally recognized securities rating agency rating the Bonds, or such rating agency’s successors or assigns.

“Rebate Fund” means the Fund created and so designated in the Indenture.

“Record Date” means the close of business on the last Business Day of the month immediately preceding each Payment Date.

“Redemption Price” when used with respect to a Bond or portion thereof redeemed pursuant to mandatory redemption from principal payments or prepayments, means the principal amount of the Pass-Through Certificate or portion prepaid, plus premium, if any, and interest received pursuant to the Pass-Through Certificate as provided in the Indenture, and with respect to a Bond or portion thereof redeemed on the Mandatory Redemption Date pursuant to mandatory redemption upon failure to purchase the Pass-Through Certificate, means the principal amount thereof to be redeemed plus interest thereon as provided in the Indenture to be paid from amounts in the Collateral Security Fund.

“Regulations” means the applicable proposed, temporary or final Treasury Regulations promulgated under the Code or, to the extent applicable to the Code, under the Internal Revenue Code of 1954, as such regulations may be amended or supplemented from time to time.

“Regulatory Agreement” means the Regulatory and Land Use Restriction Agreement relating to the Mortgaged Property, dated as of the date of the Indenture, by and among the Issuer, the Trustee and the Borrower, as it may be amended, supplemented or restated from time to time.

“Rehabilitation Account” means the Account of that name created and so designated within the Proceeds Fund.

“Rehabilitation Agreement” means the provisions relating to rehabilitation of the Project set forth in the Loan Agreement.

“Related Factor” means the applicable factor posted by Fannie Mae with respect to the Pass-Through Certificate from time to time as the Assigned Loan amortizes.

“Representation Letter” has the meaning given to such term in the Indenture.

“Reserved Rights” of the Issuer means (a) all of the Issuer’s right, title and interest in and to all reimbursement, costs, expenses and indemnification; (b) the right of the Issuer to amounts payable to it pursuant to the Financing Agreement, including the Issuer Fees; (c) all rights of the Issuer to receive any Rebate Amount (as defined in the Tax Exemption Agreement) required to be rebated to the United States of America under the Code in connection with the Bonds, as described in the Tax Exemption Agreement; (d) all rights of the Issuer to receive notices, reports or other information, and to make determinations and grant approvals or consent under the Indenture and under the Financing Agreement, the Regulatory Agreement and the Tax Exemption Agreement; (e) all rights of the Issuer of access to the Project and documents related thereto and to specifically enforce the representations, warranties, covenants and agreements of the Borrower set forth in the Financing Agreement, in the Tax Exemption Agreement and in the Regulatory Agreement; (f) any and all rights, remedies and limitations of liability of the Issuer set forth in the Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, or the Subordinate Mortgage, as applicable, regarding (1) the negotiability, registration and transfer of the Bonds, (2) the loss or destruction of the Bonds, (3) the limited liability of the Issuer as provided in the Act, the Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, the Subordinate Mortgage or the Mortgage Note, (4) no liability of the Issuer to third parties, and (5) no warranties of suitability or merchantability by the Issuer; (g) all rights of the Issuer in connection with any amendment to or modification of the Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement, the Mortgage, Subordinate Mortgage and the Mortgage Note; (h) any and all limitations of the Issuer’s liability and the Issuer’s disclaimers of warranties set forth in the Indenture, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement or the Financing Agreement, and the Issuer’s right to inspect and audit the books, records and permits of the Borrower and the Project; and (i) any and all rights under the Financing Agreement and the Regulatory Agreement required for the Issuer to enforce or to comply with Section 2306.186 of the Texas Government Code.

“Responsible Officer” means any Vice President or Assistant Vice President of the Trustee having regular responsibility for corporate trust matters and direct responsibility for the administration of the Indenture.

“Revenues” means the Pass-Through Certificate Revenues and the Operating Revenues.

“S&P” means S&P Global Ratings, and its successors and assigns, or if it is dissolved or no longer assigns credit ratings, then any other nationally recognized statistical rating agency, designated by Fannie Mae, as assigns credit ratings.

“State” means the State of Texas.

“Subordinate Mortgage” means the Subordinate Multifamily Deed of Trust, Security Agreement and Fixture Filing dated as of \_\_\_\_\_, 2019 from the Borrower for the benefit of the Trustee and the Issuer as security for the Borrower’s obligations under the Financing Agreement other than repayment of principal and interest on the Mortgage Note.

“Subordination Agreement” means Subordination Agreement (Affordable) dated the Closing Date, by and among the Trustee, Issuer, Lender and Borrower, relating to the subordination of the Subordinate Mortgage to the Mortgage Loan Documents.

“Substitute Depository” means a securities depository appointed as successor to DTC under the Indenture.

“Supplemental Indenture” means any indenture duly authorized and entered into after the date of the Indenture between the Issuer and the Trustee amending or supplementing the Indenture in accordance with the provisions of the Indenture.

“Tax Credit Investor” means, collectively, RAH Investor 226 LLC, a Mississippi limited liability company, and Sterling Corporate Services LLC, a New York limited liability company, and their permitted successors and assigns.

“Tax Exemption Agreement” means that certain Tax Exemption Certificate and Agreement dated as of the date of the Indenture, by and among the Issuer, the Trustee and the Borrower, as in effect on the Closing Date and as it may thereafter be amended or supplemented or restated in accordance with its terms.

“Term Sheet” means the Term Sheet relating to the terms of the Mortgage Loan, the Assigned Loan and, when and if issued, the Pass-Through Certificate, dated the Closing Date and attached hereto as APPENDIX H.

“Trust Estate” means all the property, rights, moneys, securities and other amounts pledged and assigned to the Trustee pursuant to the Granting Clauses in the Indenture.

“Trustee” means The Bank of New York Mellon Trust Company, N.A. and its successors and any successor trustee under the Indenture.

“Underwriter” means RBC Capital Markets, LLC.

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## APPENDIX B

### SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE

*The following summary of certain provisions of the Indenture does not purport to be complete, and is qualified in its entirety by reference to the specific terms of the Indenture, copies of which are on file with the Trustee.*

THE BONDS, TOGETHER WITH INTEREST THEREON, AND REDEMPTION PREMIUM, IF ANY, ARE NOT GENERAL OBLIGATIONS OF THE ISSUER, BUT ARE SPECIAL, LIMITED OBLIGATIONS OF THE ISSUER SECURED BY THE TRUST ESTATE, ARE AND WILL ALWAYS BE PAYABLE SOLELY FROM THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE (EXCEPT TO THE EXTENT PAID OUT OF MONEYS ATTRIBUTABLE TO PROCEEDS OF THE BONDS OR THE INCOME FROM THE TEMPORARY INVESTMENT THEREOF), AND ARE AND WILL ALWAYS BE A VALID CLAIM OF THE OWNER THEREOF ONLY AGAINST THE REVENUES AND INCOME DERIVED FROM THE TRUST ESTATE, WHICH REVENUES AND INCOME MAY BE USED FOR NO OTHER PURPOSE THAN TO PAY THE PRINCIPAL INSTALLMENTS OF, REDEMPTION PREMIUM, IF ANY, AND INTEREST ON THE BONDS, EXCEPT AS MAY BE EXPRESSLY AUTHORIZED OTHERWISE IN THE INDENTURE AND IN THE FINANCING AGREEMENT. THE BONDS AND THE OBLIGATION TO PAY INTEREST THEREON AND REDEMPTION PREMIUM, IF ANY, DO NOT NOW AND WILL NEVER CONSTITUTE A DEBT OR AN OBLIGATION OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF AND NEITHER THE STATE NOR ANY POLITICAL SUBDIVISION THEREOF WILL BE LIABLE THEREFOR. THE BONDS ARE NOT AND DO NOT CREATE OR CONSTITUTE IN ANY WAY AN OBLIGATION, A DEBT OR A LIABILITY OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF, OR CREATE OR CONSTITUTE A PLEDGE, GIVING OR LENDING OF THE FAITH, CREDIT, OR TAXING POWER OF THE STATE OR ANY POLITICAL SUBDIVISION THEREOF. THE ISSUER HAS NO TAXING POWER. THE BONDS ARE NOT A DEBT OF THE UNITED STATES OF AMERICA, THE UNITED STATES DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT OR ANY OTHER FEDERAL GOVERNMENTAL AGENCY AND ARE NOT GUARANTEED BY THE FULL FAITH AND CREDIT OF THE UNITED STATES.

#### **Establishment of Funds**

In addition to the Proceeds Fund established under the Indenture, the Trustee shall establish, maintain and hold in trust the following funds, each of which shall be disbursed and applied only as authorized in the Indenture:

- (a) Bond Fund;
- (b) Operating Fund;
- (c) Costs of Issuance Fund;
- (d) Collateral Security Fund; and
- (e) Rebate Fund.

#### **Application of Revenues**

All Pass-Through Certificate Revenues shall be deposited by the Trustee, promptly upon receipt thereof, to the Bond Fund.

#### **Application of Operating Fund**

All Operating Revenues shall be deposited into the Operating Fund. Amounts in the Operating Fund shall be withdrawn by the Trustee and used solely to pay first, any amount required to be deposited in the Rebate Fund in

accordance with the provisions of the Tax Exemption Agreement to the extent sufficient funds are not otherwise made available to the Trustee for such purposes; second, the Issuer Administration Fee on the dates specified in the definition of such term in the Indenture; third, the Issuer Compliance Fee on the dates specified in the definition of such term in the Indenture; fourth, on each Payment Date the fees and expenses of the Trustee; and fifth, the fees and expenses incurred in connection with the determination of rebatable arbitrage in accordance with the provisions of the Tax Exemption Agreement. In the event the amounts in the Operating Fund are not equal to the amounts payable from the Operating Fund on any date on which such amounts are due and payable to fund such deficiency, the Trustee shall give notice to the Borrower of such deficiency and of the amount of such deficiency and request payment within five Business Days to the Trustee of the amount of such deficiency. No amount shall be charged against the Operating Fund except as expressly described under this caption.

### **Application of Bond Fund**

The Trustee shall disburse from the Bond Fund, on each Payment Date an amount equal to the amount of the principal, including prepayments, interest and premium, if any, received on the Pass-Through Certificate on or immediately prior to such Payment Date.

### **Investment of Funds**

The moneys held by the Trustee shall constitute trust funds for the purposes of the Indenture, which moneys shall be managed, invested, disbursed and administered as provided in the Indenture and in the Tax Exemption Agreement. Any moneys attributable to each of the Funds under the Indenture shall be invested by the Trustee at the written direction of the Borrower in Permitted Investments which mature or are redeemable at par on the date on which such funds are expected to be needed for the purposes for which they are held, subject in all cases to the restrictions of the Tax Exemption Agreement. Notwithstanding anything in the Indenture to the contrary, (i) all amounts in the Bond Fund shall be invested in Permitted Investments, (ii) the Proceeds Fund shall be held uninvested, and (iii) all amounts in the Collateral Security Fund shall be invested solely in Permitted Investments. If the Trustee does not receive written direction from the Borrower regarding the investment of funds, the Trustee shall invest in the investment described in subparagraph (c) of the definition of Permitted Investments, or, if such investment is not available or no longer qualifies as a Permitted Investment, solely in Permitted Investments described in subparagraph (b) of the definition of Permitted Investments, which shall mature or be redeemable at par at the times set forth in the preceding sentence. [The Trustee may conclusively rely upon the Borrower's written instructions as to both the suitability and legality of the directed investments. In no event shall the Trustee be liable for the selection of investments or for investment losses incurred thereon. The Trustee shall have no liability in respect of losses incurred as a result of the liquidation of any investment prior to its stated maturity or the failure of the Borrower to provide timely written investment direction. Ratings of permitted investments shall be determined at the time of purchase of such permitted investments and without regard to ratings subcategories. The Trustee may make any and all such investments through its own investment department or that of its affiliates or subsidiaries, and may charge its ordinary and customary fees for such trades, including account maintenance fees]. Notwithstanding any provision of the Indenture to the contrary, at no time shall the Borrower direct that any funds constituting Gross Proceeds of the Bonds (as defined in the Tax Exemption Agreement) be used in any manner as would constitute failure of compliance with Section 148 of the Code. Notwithstanding the foregoing, in no event shall the Trustee be released from liability for its own negligence or willful misconduct.

Permitted Investments representing an investment of moneys attributable to any Fund shall be deemed at all times to be a part of such Fund. Such investments shall be sold at the best price obtainable whenever it shall be necessary to do so in order to provide moneys to make any transfer, withdrawal, payment or disbursement from such Fund. In the case of any required transfer of moneys to another such Fund, such investments may be transferred to that Fund in lieu of the required moneys if permitted by the Indenture as an investment of moneys in that Fund.

All Permitted Investments acquired by the Trustee pursuant to the Indenture shall be purchased in the name of the Trustee and shall be held for the benefit of the holders of the Bonds pursuant to the terms of the Indenture. The Trustee shall take such actions as shall be necessary to assure that such Permitted Investments are held pursuant to the terms of the Indenture and are subject to the trust and security interest created in the Indenture.

The Trustee shall not be liable or responsible for any loss resulting from any investment made in accordance with the Indenture. The Trustee or its affiliates may act as sponsor, principal or agent in the acquisition or disposition of investments. The Trustee may commingle investments made under the Funds and Accounts established in the Indenture, but shall account for each separately.

In computing for any purpose in the Indenture the amount in any Fund on any date, obligations so purchased shall be valued at the lower of cost or par exclusive of accrued interest, and may be so valued as of any time within four days prior to such date.

The Issuer acknowledges that regulations of the Comptroller of the Currency grant the Borrower the right to receive brokerage confirmations of the security transactions as they occur. The Borrower has specifically waived such notification to the extent permitted by law and will receive periodic cash transaction statements that will detail all investment transactions.

### **Rebate Fund**

The Rebate Fund is for the sole benefit of the United States of America and shall not be subject to the claim of any other person, including without limitation, the Issuer. The Rebate Fund is established for the purpose of complying with Section 148 of the Code. The money deposited in the Rebate Fund, together with all investments thereof and income from investments therefrom, is held in trust and applied solely as provided in the Tax Exemption Agreement. Moneys and securities held by the Trustee in the Rebate Fund are not pledged or otherwise subject to any security interest in favor of the Trustee to secure the Bonds or any other payments required to be made under the Indenture or any other document executed and delivered in connection with the issuance of the Bonds. The Trustee will make deposits to and disbursements from the Rebate Fund, as well as investments of the amounts therein, in accordance with the written directions received from the Borrower, all in accordance with the provisions of the Tax Exemption Agreement. Notwithstanding the foregoing, the Trustee with respect to the Rebate Fund is afforded all the rights, protections and immunities otherwise accorded to it under the Indenture.

### **Costs of Issuance Fund**

On or before the Closing Date the Borrower shall deliver to the Trustee for deposit in the Costs of Issuance Fund, amounts to pay Costs of Issuance. The Trustee shall use amounts in the Costs of Issuance Fund to pay the Costs of Issuance on the Closing Date or as soon as practicable thereafter in accordance with written instructions to be given to the Trustee by the Issuer, upon delivery to the Trustee of appropriate invoices for such expenses. Any unexpended amounts attributable to deposits made by the Borrower remaining on deposit in the Costs of Issuance Fund three months after the Closing Date shall be returned to the Borrower.

### **Collateral Security Fund**

(a) There shall be established within the Collateral Security Fund two Accounts: (i) a Collateral Security Principal Account, and (ii) a Collateral Security Interest Account.

(b) On the Closing Date, (i) the payment received by the Trustee from the Lender for the Assigned Loan in an amount equal to the principal amount of the Bonds shall be deposited to the Collateral Security Principal Account, (ii) the amount received under the Bond Purchase Agreement representing accrued interest on the Bonds from June 1, 2019\* to but not including the Closing Date shall be deposited to the Collateral Security Interest Account, and (iii) Bond proceeds in an amount equal to the interest on the Bonds from the Closing Date to but not including the initial Mandatory Redemption Date shall be deposited to the Collateral Security Interest Account (for a total deposit to the Collateral Security Interest Account equal to 87\* days' interest on the Bonds).

(c) Moneys on deposit in the Collateral Security Fund (derived from the amount on deposit in the Collateral Security Principal Account and an amount on deposit in the Collateral Security Interest Account equal to

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\* Preliminary; subject to change.

the accrued interest on the Pass-Through Certificate) shall be applied by the Trustee to purchase the Pass-Through Certificate on the Purchase Date.

(d) If the Purchase Date occurs in the same month as the Closing Date (i.e., June 2019\*) or in a subsequent month following the Payment Date for such month then following the Purchase Date the Trustee shall, in the case of Bond proceeds, transfer the remaining balance in the Collateral Security Interest Account to the Rehabilitation Account of the Proceeds Fund, or otherwise disburse such funds to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(e) If the Purchase Date (i) occurs in a month following the Closing Date (e.g., July 2019\*) and (ii) on or prior to the Payment Date for such month, then the Trustee shall retain the amount on deposit in the Collateral Security Interest Account and apply moneys from such Account to pay the interest on the Bonds on the next Payment Date. So long as payment has already been made or provided for with respect to the Payment Date in the month in which the Purchase Date occurs, any balance in the Collateral Security Interest Account following such Payment Date shall be, in the case of Bond proceeds, transferred to the Rehabilitation Account of the Proceeds Fund, or otherwise disbursed to the Borrower (after application of moneys therein to pay the accrued interest on the Pass-Through Certificate).

(f) The Borrower or the Tax Credit Investor may at any time (not later than the last day for which notice of redemption must be given pursuant to the Indenture) extend the Mandatory Redemption Date by depositing Preference Proof Moneys (excluding proceeds of the Assigned Loan, which shall remain on deposit in the Collateral Security Fund) to the credit of the Collateral Security Interest Account in an amount sufficient to pay the interest on the Bonds from the last Payment Date to the extended Mandatory Redemption Date (an "Extension Deposit").

(g) Extension Deposits shall continue to be made by the Borrower or the Tax Credit Investor until the Purchase Date occurs or the Borrower or the Tax Credit Investor declines to make an Extension Deposit resulting in the mandatory prepayment of the Bonds upon failure to purchase the Pass-Through Certificate.

(h) If a Purchase Date has not yet occurred and the Borrower or the Tax Credit Investor has extended the Mandatory Redemption Date by making an Extension Deposit, the Trustee shall apply amounts on deposit in the Collateral Security Interest Account to pay the preceding month's accrual of interest on the Bonds on the next Payment Date. Whether or not the Mandatory Redemption Date has been extended, on any Payment Date, the Trustee shall also apply amounts on deposit in the Collateral Security Principal Account equal to the amount set forth in the Mortgage Loan amortization schedule on the first day of the month in which such Payment Date occurs as included in the Term Sheet to redeem principal of the Bonds on such Payment Date; such redemption shall be in an amount equal to the preceding month's principal amortization on the Mortgage Loan as set forth in the Mortgage Loan amortization schedule included in the Term Sheet. Notwithstanding the foregoing in the event of any unscheduled principal prepayment prior to or on the Purchase Date, the Trustee shall redeem the Bonds in an amount equal to such unscheduled principal prepayment.

(i) After the Purchase Date, and after making the transfers described in paragraphs (d) and (e) above, the Trustee shall remit to the Borrower any moneys on deposit in the Bond Fund deriving from the Mortgage Loan that are not needed to pay debt service on or the Redemption Price of the Bonds due to the operation of the Collateral Security Interest Account.

(j) Moneys on deposit in the Collateral Security Fund shall be invested as described under the caption "Investment of Funds" above and as provided in the Tax Exemption Agreement.

## **Defeasance**

(a) If all Bonds shall be paid and discharged as described under this caption, then all obligations of the Trustee and the Issuer under the Indenture with respect to all Bonds shall cease and terminate, except only (i) the obligation of the Trustee to pay or cause to be paid to the owners thereof all sums due with respect to the Bonds and

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\* Preliminary; subject to change.



to register, transfer and exchange Bonds pursuant to the Indenture, (ii) the obligation of the Issuer to pay the amounts owing to the Trustee under the Indenture from the Trust Estate, and (iii) the obligation of the Issuer to comply with the Indenture and the Tax Exemption Agreement. Any funds held by the Trustee at the time of such termination which are not required for payment to Bondholders or for payment to be made by the Issuer, shall be paid as provided in the Indenture.

Any Bond or portion thereof in an authorized denomination shall be deemed no longer Outstanding under the Indenture if paid or discharged in any one or more of the following ways:

(i) by well and truly paying or causing to be paid the principal of and interest on such Bond which have become due and payable; or

(ii) by depositing with the Trustee, in trust, cash which, together with the amounts then on deposit in the Bond Fund and dedicated to this purpose, is fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof; or

(iii) by depositing with the Trustee, in trust, any investments listed in subparagraph (a) under the definition of Permitted Investments in such amount as in the written opinion of a certified public accountant will, together with the interest to accrue on such Permitted Investments without the need for reinvestment, be fully sufficient to pay when due all principal of, and premium, if any, and interest on such Bond to the maturity or earlier redemption date thereof, notwithstanding that such Bond shall not have been surrendered for payment.

(b) Notwithstanding the foregoing, no deposit under clauses (ii) and (iii) of paragraph (a) above shall be deemed a payment of such Bond until the earlier to occur of:

(i) if such Bond is by its terms subject to redemption within 45 days, proper notice of redemption of such Bond shall have been previously given in accordance with the Indenture to the holder thereof or, in the event such Bond is not by its terms subject to redemption within 45 days of making the deposit under clauses (ii) and (iii) of paragraph (a) above, the Issuer shall have given the Trustee irrevocable written instructions to mail by first-class mail, postage prepaid, notice to the holder of such Bond as soon as practicable stating that the deposit required by clauses (ii) or (iii) of paragraph (a) above, as applicable, has been made with the Trustee and that such Bond is deemed to have been paid and further stating such redemption date or dates upon which money will be available for the payment of the principal and accrued interest thereon; or

(ii) the maturity of such Bond.

(c) The Trustee shall be entitled to receive a report from a nationally recognized accounting firm to provide for the payment of all Bonds to be defeased pursuant to the provisions described under this caption.

#### **No Release of Pass-Through Certificate**

Except as described under this caption and in “Transfer of Pass-Through Certificate” below, the Trustee shall not release and discharge the Pass-Through Certificate from the lien of the Indenture until the principal of, premium, if any, and interest on the Bonds shall have been paid or duly provided for under the Indenture. The Trustee shall not release or assign its beneficial interest in the Pass-Through Certificate other than as provided in the Indenture to any person other than a successor Trustee so long as Fannie Mae shall not be in default thereunder. See “DESCRIPTION OF THE BONDS - Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds” in this Official Statement.

#### **Transfer of Pass-Through Certificate**

The Trustee shall maintain the Pass-Through Certificate in book entry form, in the book entry system maintained by the United States Federal Reserve Banks, in the name of the Trustee and may not sell, assign, transfer

or otherwise dispose of its beneficial interest in the Pass-Through Certificate except as provided in the Indenture. See “DESCRIPTION OF THE BONDS - Optional Exchange for Pass-Through Certificate or Mandatory Redemption of Bonds” in this Official Statement.

### **Modification of Mortgage Terms**

To the extent allowed by applicable State law, the Issuer shall consent to the modification of, or modify, the amount of time or payment of any installment of principal or interest on the Mortgage Loan or the security for or any terms or provisions of the Mortgage Loan or Mortgage or the security for the same or the rate or rates of interest on the Mortgage Loan, solely to the extent required by federal or State law or regulations.

### **Events of Default**

Each of the following shall constitute an Event of Default under the Indenture:

- (a) Failure by Fannie Mae to pay principal, interest or premium, if any, due under the Pass-Through Certificate;
- (b) Failure to pay the principal, interest or premium, if any, on the Bonds when the same shall become due; or
- (c) Default in the observance or performance of any other covenant, agreement or condition on the part of the Issuer in the Indenture or the Tax Exemption Agreement and the continuation of such default for a period of 90 days after written notice to the Issuer from the Trustee or the registered owners of at least 75% in aggregate principal amount of the Bonds Outstanding at such time specifying such default and requiring the same to be remedied.

The Trustee, upon any failure by Fannie Mae to distribute to the Trustee any payment required to be made under the terms of the Pass-Through Certificate, shall notify Fannie Mae not later than the next Business Day (all such notices to be promptly confirmed in writing) requiring the failure to be remedied.

The Trustee will immediately notify the Issuer, the Bondholders, the Lender and Fannie Mae after a Responsible Officer obtains knowledge or receives notice of the occurrence of an Event of Default or an event which would become an Event of Default with the passage of time or the giving of notice, or both.

### **Acceleration; Rescission of Acceleration**

Upon the occurrence of an Event of Default as described in paragraph (a) under the caption “Events of Default” above, the Trustee may, and upon the written request of the holders of not less than 75% in aggregate principal amount of the Bonds then Outstanding, which written request shall acknowledge that the amounts due on the Pass-Through Certificate cannot be accelerated solely by virtue of acceleration of the Bonds, and upon receipt of indemnity satisfactory to it, shall, by notice in writing delivered to the Issuer, declare the principal of all Bonds then Outstanding and the interest accrued thereon immediately due and payable, and such principal and interest shall thereupon become and be immediately due and payable. Subject to the provisions described under the caption “No Interference or Impairment of Pass-Through Certificate” below, upon the occurrence of an Event of Default as described in paragraph (b) under the caption “Events of Default” above, no action shall be taken by the Trustee, unless an Event of Default as described in paragraph (a) under the caption “Events of Default” above has occurred, in which event the Trustee shall proceed as provided above. An Event of Default as described in paragraph (c) under the caption “Events of Default” above shall not give rise to an acceleration pursuant to the provisions described under this caption, provided, however, that following such an Event of Default, the holders of 100% of the Bonds then Outstanding may direct the Trustee in writing to transfer the Pass-Through Certificate to it or its designee, in which case, the Trustee shall cancel the Bonds upon such release and transfer of the Pass-Through Certificate, and upon such transfer, the Bonds will no longer be Outstanding. In the event any payments are received by the Trustee after the transfer of the Pass-Through Certificate and cancellation of the Bonds, all such payments shall belong to and be transferred to the owner of the Pass-Through Certificate.

The acceleration of the Bonds will not constitute a default under, or by itself cause the acceleration of, the Pass-Through Certificate.

If at any time after the Bonds 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 Issuer, the Borrower or Fannie Mae, as applicable, shall pay to or deposit with the Trustee a sum sufficient to pay all principal of the Bonds then due (other than solely by reason of such declaration) and all unpaid installments of interest (if any) on all the Bonds then due with interest at the rate borne by the Bonds on such overdue principal and (to the extent legally enforceable) on such overdue installments of interest, and the reasonable expenses of the Trustee shall have been made good or cured or adequate provisions shall have been made therefor, and all other defaults under the Indenture have been made good or cured or waived in writing by the holders of a majority in principal amount of the Bonds then Outstanding, then and in every case, the Trustee on behalf of the holders of all the Bonds shall rescind and annul such declaration and its consequences; but no such rescission and annulment shall extend to or shall affect any subsequent Event of Default, nor shall it impair or exhaust any right or power consequent thereon.

### **Other Remedies; Rights of Bondholders**

Subject to the provisions described under the caption “No Interference or Impairment of Pass-Through Certificate” below, upon the happening and continuance of an Event of Default the Trustee in its own name and as trustee of an express trust, on behalf and for the benefit and protection of the holders of all Bonds, may also proceed to protect and enforce any rights of the Trustee and, to the full extent that the holders of such Bonds themselves might do, the rights of such Bondholders under the laws of the State or under the Indenture by such of the following remedies as the Trustee shall deem most effectual to protect and enforce such rights:

- (a) By pursuing any available remedies under the Financing Agreement, the Regulatory Agreement or the Pass-Through Certificate, and prior to the Purchase Date, the Mortgage;
- (b) Upon an Event of Default as described in paragraph (a) under the caption “Events of Default” above only, by realizing or causing to be realized through sale or otherwise upon the security pledged under the Indenture (including the sale or disposition of the Pass-Through Certificate); and
- (c) By action or suit in equity, to enjoin any acts or things which may be unlawful or in violation of the rights of the holders of the Bonds and to 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 Trustee in order to have the respective claims of the Bondholders against the Issuer allowed in any bankruptcy or other proceeding.

If an Event of Default shall have occurred, and if requested by the holders of not less than 75% in aggregate principal amount of the Bonds then Outstanding, and upon being indemnified to its satisfaction, the Trustee shall be obligated to exercise one or more of the rights and powers conferred by the Indenture as the Trustee, being advised by counsel, shall deem to be in the best interests of the Bondholders subject to the limitations set forth above and in the Indenture.

No right or remedy by the terms of the Indenture conferred upon or reserved to the Trustee (or to the Bondholders) is intended to be exclusive of any other right or remedy, but each and every such right and remedy shall be cumulative and shall be in addition to any other right or remedy given to the Trustee or to the Bondholders under the Indenture, the Financing Agreement, the Regulatory Agreement or the Pass-Through Certificate existing as of or after the date of the Indenture at law or in equity.

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

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

### **Application of Moneys After Default**

All moneys collected by the Trustee at any time pursuant to the Indenture after an Event of Default shall, except to the extent, if any, otherwise directed by a court of competent jurisdiction, be credited by the Trustee to the Bond Fund. Such moneys so credited to the Bond Fund and all other moneys from time to time credited to the Bond Fund shall at all times be held, transferred, withdrawn and applied as prescribed by the provisions of the Indenture.

Subject in all instances to the provisions of the Indenture, in the event that at any time the moneys credited to the Bond Fund, or any other funds held by the Issuer or the Trustee available for the payment of interest or principal then due with respect to the Bonds, shall be insufficient for such payment, such moneys and funds (other than funds held for the payment or redemption of particular Bonds as provided in the Indenture) shall be applied as follows:

(a) Only in the event that there has been an Event of Default under the Indenture described in paragraph (a) under the caption "Events of Default" above as a result of a failure by Fannie Mae to make payments under the Pass-Through Certificate, for payment of all amounts due to the Trustee incurred in performance of its duties under the Indenture and the other documents executed in connection therewith, including, without limitation, the payment of all reasonable fees and expenses of the Trustee incurred in exercising any remedies under the Indenture and the other documents executed in connection with the Indenture;

(b) Unless the principal of all of the Bonds shall have become or have been declared due and payable:

*First:* To the payment to the persons entitled thereto of all installments of interest then due in the order of the maturity of such installments, and, if the amount available is not sufficient to pay in full any installment, then to the payment thereof ratably, according to the amounts due on such installment, to the persons entitled thereto, without any discrimination or preference; and

*Second:* To the payment to the persons entitled thereto of the unpaid principal of and premium, if any, on any Bonds which shall have become due, whether at maturity or by call for redemption, in the order in which they became due and payable, and, if the amount available is not sufficient to pay in full all the principal of and premium, if any, on the Bonds so due on any date, then to the payment of principal ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference and then to the payment of any premium due on the Bonds, ratably, according to the amounts due on such date, to the persons entitled thereto, without any discrimination or preference; and

(c) If the principal of all of the Bonds shall have become or have been declared due and payable, to the payment of the principal of, premium, if any, and interest then due and unpaid upon the Bonds without preference or priority of principal over interest or of interest over principal, or of any installment of interest over any other installment of interest, or of any Bond over any other Bond, ratably, according to the amounts due respectively for principal and interest, to the persons entitled thereto without any discrimination or preference except as to any difference in the respective rates of interest specified in the Bonds.

### **Control of Proceedings**

In the case of an Event of Default as described in paragraph (a) under the caption "Events of Default" above, the holders of 75% in aggregate principal amount of the Bonds then Outstanding shall have the right, subject to the provisions of the Indenture, by an instrument in writing executed and delivered to the Trustee, to direct the

time, method and place of conducting any proceeding for any remedy available to the Trustee, or exercising any trust or power conferred upon the Trustee; provided, however, that the Trustee shall have the right to decline to follow any such direction if the Trustee shall be advised by counsel that the action or proceeding so directed may not be taken lawfully, or if the Trustee in good faith shall determine that the action or proceeding so directed would involve the Trustee in personal liability or otherwise adversely affect the Trustee or be unjustly prejudicial to Bondholders not parties to such direction.

### **No Interference or Impairment of Pass-Through Certificate**

Notwithstanding any other provision of the Indenture to the contrary, so long as the Pass-Through Certificate remains outstanding and Fannie Mae is not in default in its payment obligations thereunder, neither the Issuer, the Trustee nor any person under their control shall, without the prior written consent of Fannie Mae, exercise any remedies or direct any proceedings under the Indenture other than to (a) enforce rights under the Pass-Through Certificate, (b) enforce the tax covenants in the Indenture, the Tax Exemption Agreement and the Financing Agreement, or (c) enforce rights of specific performance under the Regulatory Agreement; provided, however, that any enforcement under (b) or (c) above shall not include seeking monetary damages other than actions for Issuer Fees or the Trustee's fees and expenses.

Nothing contained in the Indenture shall affect or impair the right of any Bondholder to enforce the payment of the principal of, the premium, if any, and interest on any Bond at the maturity thereof or the obligation of the Trustee to pay the principal of, premium, if any, and interest on the Bonds issued under the Indenture to the respective holders thereof, at the time, in the place, from the sources and in the manner expressed in the Indenture and in said Bonds.

### **Supplemental Indentures Effective Upon Acceptance**

For any one or more of the following purposes and at any time or from time to time, the Issuer and the Trustee may enter into a Supplemental Indenture which, upon the execution and delivery thereof by an Authorized Officer and by the Trustee, and with the prior written consent of Fannie Mae, but without the necessity of consent of the Bondholders, shall be fully effective in accordance with its terms:

- (a) To add to the covenants or agreements of the Issuer contained in the Indenture other covenants or agreements to be observed by the Issuer or to otherwise revise or amend the Indenture in a manner which are/is not materially adverse to the interests of the Bondholders;
- (b) To add to the limitations or restrictions contained in the Indenture other limitations or restrictions to be observed by the Issuer which are not contrary to or inconsistent with the provisions of the Indenture as theretofore in effect;
- (c) To surrender any right, power or privilege reserved to or conferred upon the Issuer in the Indenture, provided that the surrender of such right, power or privilege is not contrary to or inconsistent with the covenants and agreements of the Issuer contained in the Indenture and is not materially adverse to the interests of the Bondholders;
- (d) To confirm, as further assurance, any pledge of the Trust Estate under the Indenture and the subjection to any lien on or pledge of the Trust Estate created or to be created by the Indenture;
- (e) To appoint a co-trustee or successor Trustee or successor co-trustee;
- (f) To cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Indenture;
- (g) To insert such provisions clarifying matters or questions arising under the Indenture as are necessary or desirable and are not materially adverse to the interests of the Bondholders; and

(h) To make such changes and modifications that are necessary or desirable to provide for all interest, principal and premium paid with respect to the Bonds are in the exact respective amounts of the payments of interest, principal and premium paid under and pursuant to the Pass-Through Certificate.

### **Supplemental Indentures Requiring Consent of Bondholders**

In addition to those amendments to the Indenture which are authorized by the provisions described under the caption "Supplemental Indentures Effective Upon Acceptance" above, any modification or amendment of the Indenture may be made by a Supplemental Indenture with the written consent, given as provided in the Indenture, of Fannie Mae and the holders of at least two thirds in aggregate principal amount of the Bonds Outstanding at the time such consent is given; provided, however, that no such modification or amendment shall (a) permit a change in the terms of redemption or maturity of the principal amount of any Outstanding Bond or an extension of the date for payment of any installment of interest thereon or a reduction in the principal amount of, premium, if any, or the rate of interest on any Outstanding Bond without the consent of the holder of such Bond, (b) reduce the proportion of Bonds the consent of the holders of which is required to effect any such modification or amendment or to effectuate an acceleration of the Bonds prior to maturity, (c) permit the creation of a lien on the Trust Estate pledged under the Indenture prior to or on a parity with the lien of the Indenture, (d) deprive the holders of the Bonds of the lien created by the Indenture upon the Trust Estate (except as expressly provided in the Indenture), without (with respect to (b) through (d)) the consent of the holders of all Bonds then Outstanding, or (e) change or modify any of the rights or obligations of the Trustee without the written consent thereto of the Trustee.

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## APPENDIX C

### SUMMARY OF CERTAIN PROVISIONS OF THE FINANCING AGREEMENT

*The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Financing Agreement, copies of which are on file with the Trustee.*

#### **Amount and Source of Mortgage Loan**

Upon the issuance and delivery of the Bonds, pursuant to the Indenture the Issuer will make the Mortgage Loan to the Borrower and the Borrower will apply the proceeds of the Bonds as provided in the Indenture to pay Project costs. The Trustee shall apply the proceeds of the Assigned Loan as described in “APPENDIX B – SUMMARY OF CERTAIN PROVISIONS OF THE INDENTURE – Collateral Security Fund” to secure the Bonds until the Purchase Date and then to purchase the Pass-Through Certificate. The Borrower will accept the Mortgage Loan from the Issuer, upon the terms and conditions set forth in the Financing Agreement, in the Mortgage Loan Documents and in the Indenture, and subject to the terms and conditions of the Tax Exemption Agreement and the Regulatory Agreement. The Issuer will cause the proceeds of the Assigned Loan to be provided to the Trustee for deposit to the Collateral Security Principal Account of the Collateral Security Fund. The Borrower has acknowledged its obligation to pay all amounts necessary to pay principal and interest on the Bonds. The Borrower has made arrangements for the delivery to the Trustee of the Pass-Through Certificate and of certain other Preference Proof Moneys as contemplated in the Financing Agreement and in the Indenture. Payments on the Pass-Through Certificate received by the Trustee shall be credited to amounts due from the Borrower for payment of principal and interest on the Bonds.

#### **Payment of Fees and Expenses**

In addition to all fees, costs, expenses and other amounts required to be paid by the Borrower under the Mortgage Loan Documents, the Borrower shall pay, without duplication, the following fees and expenses:

- (a) All amounts required to (i) pay the fees of the Trustee for its duties and services as Trustee in connection with the Bonds (as such duties and services are set out in the Indenture), and (ii) reimburse the Trustee for all out-of-pocket expenses, fees, costs and other charges, including reasonable counsel fees and taxes (excluding income, value added and similar business taxes), reasonably and necessarily incurred by the Trustee in performing its duties as Trustee under the Indenture and the Tax Exemption Agreement. All payments for fees and expenses shall be made by the Borrower not later than ten (10) days after receipt of invoices or other statements rendered to the Borrower by the Trustee.
- (b) The Issuer Fees, and the reasonable fees and expenses of the Issuer or any agents, attorneys, accountants, consultants selected by the Issuer to act on its behalf in connection with the Bond Documents, the Mortgage Loan Documents or the Bonds, including, without limitation, any and all reasonable expenses incurred in connection with the authorization, issuance, sale and delivery of the Bonds or in connection with any litigation which may at any time be instituted involving the Bond Documents, the Mortgage Loan Documents or the Bonds or any of the other documents contemplated thereby, or in connection with the reasonable supervision or inspection of the Borrower, its properties, assets or operations or otherwise in connection with the administration of the foregoing.
- (c) Reserved.
- (d) The fees of the Rebate Analyst (as defined in the Tax Exemption Agreement) and any other consultant as required by the Tax Exemption Agreement and, upon receipt of an appropriately completed invoice, all out-of-pocket expenses of the Rebate Analyst and any other consultant.
- (e) The annual rating maintenance fee, if any, of any Rating Agency then rating the Bonds.

(f) All Costs of Issuance of the Bonds, including, but not limited to, Rating Agency fees, printing expenses, attorneys' fees and underwriters' fees, and all expenses of originating the Mortgage Loan by the Lender and assigning and delivering the Mortgage Loan to Fannie Mae, the Borrower acknowledging that all such fees, costs and expenses (excluding the portions of the ongoing trust administration fees of the Trustee, the Issuer Fees and the Rebate Analyst's fee to the extent included in the Mortgage Note Rate, as such term is defined in the Financing Agreement) must be paid by the Borrower separate and apart from payments due under the Mortgage Loan and will not be included in the Mortgage Note Rate.

(g) The Costs of Issuance deposit to be made to the Costs of Issuance Fund on the Closing Date pursuant to the Indenture.

The Borrower shall either pay the foregoing items directly or, to the extent such items are to be paid by the Trustee under the Indenture, shall pay as Operating Revenue to the Trustee for deposit to Operating Fund under the Indenture amounts sufficient to enable the Trustee to pay the foregoing items in a timely manner.

The Borrower shall pay through the Lender all fees and expenses not included within the Mortgage Note Rate. All fees and expenses not included in the Mortgage Note Rate shall not be secured by the Mortgage, and shall be subordinate to the Borrower's obligations under the Mortgage Loan in all respects and shall be secured by the Subordinate Mortgage subject to the provisions of the Subordination Agreement. No such fees or expenses payable to the Issuer or the Trustee shall be paid from the proceeds of the Pass-Through Certificate, except with respect to the Trustee to the extent set forth in the Indenture.

#### **Notification of Prepayment of Mortgage Note**

The Lender shall notify the Trustee promptly of the receipt of any prepayment of the Mortgage Note, whether upon acceleration, by reason of application of insurance or condemnation proceeds, optional prepayment or otherwise, unless the Lender has received written evidence that the Borrower has notified the Trustee of such prepayment. If such prepayment results in revisions to the amortization schedule included in the Term Sheet, Lender shall provide the revised amortization schedule to the Trustee and the Issuer.

#### **Term Sheet**

The Lender will deliver on the Closing Date the Term Sheet in the form attached as APPENDIX H hereto and will certify by its execution of the Financing Agreement that the information set forth therein is accurate as of the Closing Date. The Lender has agreed that it will promptly advise the Issuer, the Trustee and the Underwriter in writing of any changes which occur in the information set forth in the Term Sheet after the Closing Date and before the date on which the Pass-Through Certificate is acquired by the Trustee pursuant to the provisions of the Indenture; provided, however, that such changes may only be made to cure any ambiguity, supply any omission or cure or correct any defect or inconsistent provision in the Term Sheet.

#### **Indemnification**

To the fullest extent permitted by applicable law, the Borrower has covenanted and agreed as follows: to protect, indemnify and save the Issuer and its governing board members, directors, officers, agents and employees harmless from and against all liability, losses, damages, costs, expenses (including reasonable attorneys' fees), taxes, causes of action, suits, claims, demands and judgments of any nature or form, by or on behalf of any person arising in any manner from the transaction of which the Financing Agreement is a part or arising in any manner in connection with the Project or the financing of the Project including, without limiting the generality of the foregoing, arising from (i) the work done on the Project or the operation of the Project during the term of the Financing Agreement or (ii) any breach or default on the part of the Borrower in the performance of any of its obligations under the Financing Agreement, or (iii) the Project or any part thereof, or (iv) any violation of contract, agreement or restriction relating to the Project excluding the payment of the principal, premium, if any, and interest on the Bonds, or (v) any liability, violation of law, ordinance or regulation affecting the Project or any part thereof or the ownership or occupancy or use thereof. Upon notice from the Issuer or any of its respective governing board



members, directors, officers, agents or employees, the Borrower shall defend the Issuer or any of its respective governing board members, directors, officers, agents or employees in any action or proceeding brought in connection with any of the above; provided, however, that the Issuer shall have the right to employ separate counsel in any action described in the preceding sentence at the expense of the Borrower.

It is the intention of the parties to the Financing Agreement that the Issuer and its respective governing board members, directors, officers, agents and employees shall not incur pecuniary liability by reason of the terms of the Financing Agreement or by reason of the undertakings required of the Issuer and its respective governing board members, directors, officers, agents and employees in connection with the issuance of the Bonds, including but not limited to the execution and delivery of the Indenture, the Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement, and all other instruments and documents required to close the transaction; the performance of any act required of the Issuer and its respective governing board members, directors, officers, agents and employees by the Financing Agreement; or the performance of any act requested of the Issuer and its respective governing board members, directors, officers, agents and employees by the Borrower or in any way arising from the transaction of which the Financing Agreement is a part or arising in any manner in connection with the Project or the financing of the Project, including but not limited to the execution and delivery of the Indenture, the Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement and all other instruments and documents required to close the transaction; nevertheless, if the Issuer or its respective governing board members, directors, officers, agents and employees should incur any such pecuniary liability with respect to events occurring after the date of the Financing Agreement, then in such event the Borrower shall indemnify and hold the Issuer and its respective governing board members, directors, officers, agents and employees harmless against all claims by or on behalf of any person, arising out of the same, and all costs and expenses incurred in connection with any such claim or in connection with any action or proceeding brought thereon, and upon timely notice from the Issuer the Borrower shall defend the Issuer and its respective governing board members, directors, officers, agents and employees in any such action or proceeding, and provide competent counsel satisfactory to the Issuer and the Borrower shall pay the Issuer expenses including payment of the counsel used by the Issuer; provided however, that the Issuer shall have the right to employ separate counsel in any action described in the preceding sentence at the expense of the Borrower.

Notwithstanding any provision of the Financing Agreement to the contrary, the Issuer shall be indemnified by the Borrower with respect to liabilities arising from the Issuer's own gross negligence, negligence or breach of contractual duty, but not for any liabilities arising from the Issuer's own bad faith, fraud or willful misconduct.

Notwithstanding any provision of the Financing Agreement to the contrary the Borrower's obligations with respect to indemnification will not be secured by the Project and shall be personal obligations of the Borrower and any successor owner of the Project by foreclosure, deed in lieu of foreclosure or otherwise shall not be responsible for or incur any liability with respect to any indemnification obligations described in the Financing Agreement.

The Borrower has covenanted and agreed to indemnify, hold harmless and defend the Trustee, and its respective officers, members, directors, officials, agents and employees and each of them (each an "indemnified party") from and against, (a) any and all claims, joint or several, by or on behalf of any person arising from any cause whatsoever in connection with transactions contemplated by the Financing Agreement or otherwise in connection with the Project, the Bonds or the execution or amendment of any document relating thereto; (b) any and all claims, joint or several, arising from any cause whatsoever in connection with the approval of financing for the Project or the making of the Mortgage Loan, its assignment to the Lender or the execution or amendment of any document related thereto, including, but not limited to, the Mortgage Loan Documents; (c) any and all claims, joint or several, arising from any act or omission of the Borrower or any of its agents, servants, employees or licensees, in connection with the Mortgage Loan or the Project including but not limited to, the Mortgage Loan Documents; (d) all reasonable costs, counsel fees, expenses or liabilities incurred in connection with any such claim, or proceeding brought thereon; (e) any and all claims arising in connection with the issuance and sale, resale or remarketing of any Bonds or any certifications or representations made by any Person other than the Issuer or the party seeking indemnification in connection therewith and the carrying out by the Borrower of any of the transactions contemplated by the Bonds, the Indenture, the Tax Exemption Agreement, the Regulatory Agreement and the Financing Agreement; (f) any and all claims arising in connection with the operation of the Project, or the conditions thereof, environmental or otherwise, occupancy, use, possession, conduct or management of work done in or about, or from the planning, design, acquisition, installation or construction of, the Project or any part thereof; and (g) any

and all losses, claims, damages, liabilities or expenses, joint or several, arising out of or connected with the Trustee's acceptance or administration of the trusts created by the Indenture and the exercise of its powers or duties thereunder or under the Financing Agreement, the Tax Exemption Agreement, the Regulatory Agreement or any other agreements in connection therewith to which it is a party; except in the case of the foregoing indemnification of the Trustee or any of its respective officers, members, directors, officials and employees, to the extent such damages are caused by the negligence or willful misconduct of such Person. In the event that any action or proceeding is brought against any indemnified party with respect to which indemnity may be sought under the Financing Agreement, the Borrower, upon written notice from the indemnified party, shall assume the investigation and defense thereof, including the employment of counsel selected by the Borrower, subject to the approval of the indemnified party in such party's sole but reasonable discretion, and shall assume the payment of all expenses related thereto, with full power to litigate, compromise or settle the same in its sole discretion; provided that the Trustee 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 participate in the investigation and defense thereof, and the Borrower shall pay the reasonable fees and expenses of such separate counsel; provided, however, that unless such separate counsel is employed with the approval of the Borrower, which approval shall not be unreasonably withheld, the Borrower shall not be required to pay the fees and expenses of such separate counsel.

Notwithstanding any transfer of the Project to another owner in accordance with the provisions of the Regulatory Agreement, the Borrower shall remain obligated to indemnify each indemnified party pursuant to the provisions described under this caption if such subsequent owner fails to indemnify any party entitled to be indemnified under the Financing Agreement, unless such indemnified party has consented to such transfer and to the assignment of the rights and obligations of the Borrower under the Financing Agreement.

During any period that Fannie Mae owns the Project and that the provisions described under this caption are applicable to Fannie Mae, Fannie Mae's obligations under this caption shall be limited to acts and omissions of Fannie Mae occurring during the period of Fannie Mae's ownership of the Project.

Nothing described under this caption shall in any way be construed to limit the indemnification rights of the Issuer contained in the Regulatory Agreement. With respect to the Issuer, the Regulatory Agreement shall control in any conflicts between the provisions described under this caption and the Regulatory Agreement.

## **Events of Default**

(a) Each of the following shall constitute an event of default under the Financing Agreement, and the term "Event of Default" shall mean, whenever used in the Financing Agreement, any one or more of the following events:

(i) Failure by the Borrower to pay any amounts due under the Financing Agreement at the times and in the amounts required thereby; or

(ii) Failure by the Borrower to observe or perform any covenants, agreements or obligations in the Financing Agreement on its part to be observed or performed (other than as provided in clause (i) above) for a period of thirty (30) days after receipt of written notice specifying such failure and requesting that it be remedied, given to the Borrower by any party to the Financing Agreement; provided, however, that if said failure shall be such that it cannot be corrected within such period, it shall not constitute an Event of Default if the failure is correctable without material adverse effect on the Bonds and if corrective action is instituted by the Borrower within such period and diligently pursued until the failure is corrected, and provided further that any such failure shall have been cured within ninety (90) days of receipt of notice of such failure; or

(iii) Breach of any of the covenants, agreements or obligations of the Borrower under or the occurrence of a default which is continuing under the Tax Exemption Agreement or the Regulatory Agreement, including any exhibits, which continues beyond all applicable notice, grace, and cure periods; or

(iv) The occurrence of an Event of Default caused by the Borrower under and as defined in the Indenture or under any of the other Bond Documents, which continues beyond all applicable notice, grace, and cure periods.

Nothing contained in the provisions of the Financing Agreement described under this caption is intended to amend or modify any of the provisions of the Mortgage Loan Documents nor to bind the Borrower, the Lender or Fannie Mae to any notice and cure periods other than as expressly set forth in the Mortgage Loan Documents. Issuer, Trustee, Lender and Fannie Mae agree that (i) Tax Credit Investor shall have the right, but not the obligation, to cure any default on behalf of the Borrower on the same terms provided to the Borrower in the Financing Agreement; and (ii) any cure of any Event of Default under the Financing Agreement made or tendered by the Tax Credit Investor shall be deemed to be a cure by the Borrower, and shall be accepted or rejected under the Financing Agreement on the same basis as if made or tendered by the Borrower.

### **Remedies Upon an Event of Default**

(a) Subject to the provisions described in paragraph (d) below, whenever any Event of Default shall have occurred and be continuing, the Issuer or the Trustee may take any one or more of the following remedial steps:

(i) By any suit, action or proceeding, pursue all remedies existing as of or after the date of the Financing Agreement at law or in equity to collect all amounts then due and thereafter to become due under the Financing Agreement, to enforce the performance of any covenant, obligation or agreement of the Borrower under the Financing Agreement (subject to the nonrecourse provisions of the Financing Agreement and the Regulatory Agreement) or, to enjoin acts or things which may be unlawful or in violation of the rights of the Issuer or the Trustee.

(ii) Take whatever other action at law or in equity may appear necessary or desirable to enforce any monetary obligation of the Borrower under the Financing Agreement or to enforce any other covenant, obligation or agreement of the Borrower under (1) the Financing Agreement, (2) the Tax Exemption Agreement, or (3) the Regulatory Agreement.

(iii) Have access to and inspect, examine, audit and make copies of the books and records and any and all accounts, data and income tax and other tax returns of the Borrower.

(b) The provisions of the Financing Agreement described in paragraph (a) above are subject to the condition that if, after any Event of Default, except a default under the Regulatory Agreement, (i) all amounts which would then be payable under the Financing Agreement by the Borrower if such Event of Default had not occurred and was not continuing shall have been paid by or on behalf of the Borrower, and (ii) the Borrower shall have also performed all other obligations in respect of which it is then in default under the Financing Agreement and shall have paid the reasonable charges and expenses of the Issuer and the Trustee, including reasonable attorney fees and expenses paid or incurred in connection with such default, then and in every such case, such Event of Default may be waived and annulled by the Trustee, but no such waiver or annulment shall extend to or affect any subsequent Event of Default or impair any right or remedy consequent thereon.

(c) Subject to the limitations of the Regulatory Agreement and the Financing Agreement, the Issuer, without the consent of the Trustee, but only after written notice to the Trustee, the Borrower, the Lender and Fannie Mae, may take whatever action at law or in equity may appear necessary or desirable to enforce performance and observance of any Reserved Right of the Issuer; provided that, the Issuer may not (i) terminate the Financing Agreement or cause the Mortgage Loan to become due and payable, (ii) cause the Trustee to declare the principal of all Bonds then Outstanding and the interest accrued thereon to be immediately due and payable, or cause the Trustee to accelerate, foreclose or take any other action or seek other remedies under the Bond Documents, the Mortgage Loan Documents or any other documents contemplated thereby to obtain such performance or observance, (iii) cause the acceleration, foreclosure or taking of any other action or the seeking of any remedies under the Mortgage Loan Documents, (iv) 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, interest and other amounts due under the Mortgage Loan, or (v)

interfere with or attempt to influence the exercise by Fannie Mae of any of its rights under the Bond Documents or the Mortgage Loan Documents.

(d) Except as required to be deposited in the Rebate Fund pursuant to the Tax Exemption Agreement any amounts collected pursuant to action taken as described under this caption shall, after the payment of the costs and expenses of the proceedings resulting in the collection of such moneys and of the expenses, liabilities and advances incurred or made by the Trustee, the Issuer, the Lender or Fannie Mae and their respective counsel, be applied in accordance with the provisions of the Indenture. No such action taken as described under this caption shall relieve the Borrower from the Borrower's obligations pursuant to the provisions described under "Indemnification" above.

(e) No remedy in the Financing Agreement conferred upon or reserved to the Issuer or the Trustee is intended to be exclusive of any other available remedy or remedies, but each and every such remedy shall be cumulative and shall be in addition to every other remedy existing as of or after the date of the Financing Agreement pursuant to any other agreement at law or in equity or by statute.

(f) Notwithstanding any other provision of the Financing Agreement to the contrary, after the Purchase Date, so long as Fannie Mae is not in default under the Pass-Through Certificate, none of the Issuer, the Trustee or any Person under their control shall exercise any remedies or direct any proceedings under the Financing Agreement or the Mortgage Loan Documents, other than to (i) enforce rights under the Pass-Through Certificate, (ii) enforce the tax covenants in the Indenture, the Financing Agreement and the Tax Exemption Agreement, or (iii) enforce rights of specific performance under the Regulatory Agreement; provided, however, that any enforcement under (ii) or (iii) above shall not include seeking monetary damages other than the Issuer Fees and the Trustee's fees and expenses.

#### **Default Under Regulatory Agreement**

(a) If the Borrower fails, at any time for any reason, to comply with the requirements of the Regulatory Agreement, then within thirty (30) days after the earlier of the date the violation is discovered by the Issuer or the Trustee or the date the Issuer or the Trustee received notice thereof, the Issuer (if necessary to preserve the exclusion of interest on the Bonds from gross income for federal income tax purposes) or the Trustee, on behalf of and at the request of the Issuer, shall institute an action for specific performance to correct the violation. The Borrower has acknowledged and agreed that were money damages a remedy under the Regulatory Agreement, money damages alone would not be an adequate remedy at law for a default by the Borrower arising from a failure to comply with the Regulatory Agreement, and therefore the Borrower has agreed that the remedy of specific performance (subject to the provisions described in paragraph (c) under the caption "Remedies Upon an Event of Default" above) shall be available to the Issuer and/or the Trustee in any such case.

(b) Notwithstanding the availability of the remedy of specific performance described in paragraph (a) above, promptly upon determining that a violation of the Regulatory Agreement has occurred, the Issuer shall, by notice in writing to the Lender and the Borrower, inform the Lender and the Borrower that a violation of the Regulatory Agreement has occurred; notwithstanding the occurrence of such violation, neither the Issuer nor the Trustee shall have, and each of them has acknowledged that they shall not have, any right to cause or direct acceleration of the Mortgage Loan, to enforce the Mortgage Note or to foreclose on the Mortgage.

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## APPENDIX D

### SUMMARY OF CERTAIN PROVISIONS OF THE REGULATORY AGREEMENT

*The summary does not purport to be complete or definitive and is qualified in its entirety by reference to the Regulatory Agreement, copies of which are on file with the Trustee.*

Certain capitalized terms used in this Appendix D are defined below. In addition, capitalized terms used herein but not defined shall have the meanings given to them in Appendix A and in the Regulatory Agreement and the Indenture.

“Annual Income” means the anticipated annual income of a person (together with the anticipated annual income of all persons that intend to reside with such person in one Unit) calculated pursuant to Section 8 of the Housing Act, as required by Section 142(d) of the Code.

“Available Unit” means a Unit (except for any Unit reserved for any resident manager, security personnel or maintenance personnel that is reasonably required for the Project) that has been leased at least once after becoming available for occupancy; provided that (a) a residential unit that is unoccupied on the later of (i) the date the Project is acquired by the Borrower or (ii) the Closing Date 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 (b) 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.

“Eligible Tenants” means (a) individuals and families of low, very low and extremely low income, (b) families of moderate income (in each case in the foregoing clauses (a) and (b) as such terms are defined by the Issuer under the Act), and (c) Persons with Special Needs, in each case, with an Annual Income not in excess of 140% of the area median income; provided that all Low-Income Tenants are Eligible Tenants.

“Housing Act” means the United States Housing Act of 1937, as amended, or a successor thereto.

“Loan Documents” means the Security Instrument, the Mortgage Note, the Financing Agreement, the Regulatory Agreement, the Tax Exemption Agreement and any and all other instruments and other documents evidencing, securing, or otherwise relating to the Mortgage Loan.

“Low-Income Tenant” means a tenant whose Annual Income is 60% or less of the Multifamily Tax Subsidy Program Income Limit, as determined under Sections 142(d)(2)(B) and (E) of the Code and in accordance with the Regulatory Agreement. If all the occupants of a Unit are students (as defined for the purposes of Section 152(f)(2) of the Code) no one of whom is entitled to file a joint return under Section 6013 of the Code, such occupants will not qualify as Low-Income Tenants unless such students meet the qualifications under Section 42(i)(3)(D) of the Code.

“Low Income Unit” means a Unit that is included as a Unit satisfying the requirements of the Set Aside.

“Multifamily Tax Subsidy Program Income Limit” (or successor term) means the income limits provided by HUD pursuant to Section 142(d) of the Code.

“Organizational Documents” means the Amended and Restated Agreement of Limited Partnership of the Borrower dated as of the Closing Date, as the same may be amended, modified, supplemented or restated from time to time.

“Persons with Special Needs” means persons who (a) are considered to be individuals having a disability under State or federal law, (b) are elderly, meaning 62 years of age or more or of an age specified by the applicable federal program, (c) are designated by the governing board of the Issuer as experiencing a unique need for decent, safe housing that is not being met adequately by private enterprise, or (d) are legally responsible for caring for an

individual described by clauses (a), (b) or (c) above and meet the income guidelines established by the governing board of the Issuer.

“Project” means the Project Facilities and the Project Site.

“Project Facilities” means the multifamily housing structure and related buildings and other improvements on the Project Site as more fully set forth in the Regulatory Agreement, and all fixtures and other property owned by the Borrower and located on, or used in connection with, such buildings, structures and other improvements constituting the Project.

“Project Site” means the parcel or parcels of real property described in an exhibit to the Regulatory Agreement, and all rights and appurtenances appertaining thereunto.

“Qualified Project Period” means, with respect to the Project, the period beginning on the first day on which 10 percent of the Units are occupied (which date may be the Closing Date) and ending on the latest of (a) the date that is 15 years after the date on which 50% of the Units are occupied (which date may be the Closing Date), (b) the first day on which no tax-exempt private activity bond (as that phrase is used in Section 142(d)(2) of the Code) issued with respect to the Project is outstanding for federal income tax purposes, or (c) the date on which any assistance provided with respect to the Project under Section 8 of the Housing Act terminates.

“Related Person” has the meaning set forth in Section 144(a)(3) of the Code. A person is a “Related Person” to another person if the relationship between such persons would result in a disallowance of losses under Sections 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” is substituted for “at least 80 percent” each place it appears therein).

“Security Instrument” means the Multifamily Deed of Trust, Assignment of Leases and Rents, Security Agreement and Fixture Filing from the Borrower, as the grantor, in favor of Issuer, as the beneficiary, as the same may be supplemented, amended or modified, and as the same is assigned to Lender and Fannie Mae, as their interests may appear.

“Set Aside” means the requirement that at least 40% of the Available Units be occupied or held vacant for occupancy at all times by Low-Income Tenants.

“State Conversion Date” means the date of the first amortization payment on the note relating to the Mortgage Loan.

“State Reserve Period” means, with respect to the Project, the period beginning on the State Conversion Date and ending on the earliest of the following dates: (a) the date of any involuntary change in ownership of the Project; (b) the date on which the Borrower suffers a total casualty loss with respect to the Project or the date on which the Project becomes functionally obsolete, if the Project cannot be or is not restored; (c) the date on which the Project is demolished; (d) the date on which the Project ceases to be used as multifamily rental property; or (e) the end of the State Restrictive Period.

“State Restrictive Period” means, with respect to the Project, the period beginning on the first day on which the Borrower takes legal possession of the Project and ending on the latest of (a) the date that is 30 years after the first day of the State Restrictive Period, (b) the first date on which no tax-exempt private activity bond issued with respect to the Project is outstanding for federal income tax purposes, and (c) the date on which any assistance provided with respect to the Project from the federal government terminates.

“Tenant Income Certification” means a certification form available on the Issuer’s website at the time of submission used to certify income and other matters executed by the household members of each Unit in the Project.

“Unit” means a residential accommodation containing separate and complete facilities for living, sleeping, eating, cooking and sanitation located within the Project; provided that, a unit will not fail to be treated as a Unit merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code).

### **Tax-Exempt Status of the Bonds**

The Borrower will not take any action or omit to take any action which, if taken or omitted, respectively, would adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes (subject to any exceptions contained in the opinion delivered upon the original issuance of the Bonds). With the intent not to limit the generality of the foregoing, the Borrower has covenanted and agreed that prior to the final maturity of the Bonds, unless it has received and filed with the Issuer and Trustee a Favorable Opinion of Bond Counsel:

(a) That the Project will be owned, managed and operated as a “qualified residential rental project” within the meaning of Section 142(d) of the Code, on a continuous basis during the Qualified Project Period. In particular, the Borrower has covenanted and agreed, continuously during the Qualified Project Period, as follows:

(i) that the Project will be comprised of residential Units and facilities functionally related and subordinate thereto;

(ii) that each Unit will contain complete facilities for living, sleeping, eating, cooking and sanitation, e.g., 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 other Units; provided that, a Unit will not fail to meet these requirements merely because it is a single-room occupancy unit (within the meaning of Section 42 of the Code);

(iii) that the land and the facilities that are part of the Project will be functionally related and subordinate to the Units comprising the Project and will be of a character and size that is commensurate with the character and size of the Project;

(iv) that at no time during the Qualified Project Period will any of the Units be utilized (A) on a transient basis by being leased or rented for a period of less than thirty days or (B) as a hotel, motel, dormitory, fraternity house, sorority house, rooming house, hospital, sanitarium, nursing home, rest home, or trailer park or court used on a transient basis;

(v) that the Project will consist of one or more proximate buildings or structures, together with any functionally related and subordinate facilities containing one or more similarly constructed Units, all of which (A) will be located on a single tract of land or two or more parcels of land that are contiguous except for the interposition of a road, street, stream or similar property or their boundaries meet at one or more points, (B) will be owned by the same person for federal income tax purposes, and (C) will be financed pursuant to a common plan;

(vi) that substantially all of the Project will consist of similarly constructed Units together with functionally related and subordinate facilities for use by Project tenants at no additional charge, such as swimming pools, other recreational facilities, parking areas, and other facilities that are reasonably required for the Project, such as heating and cooling equipment, trash disposal equipment, and Units for resident managers, security personnel or maintenance personnel;

(vii) that at no time during the Qualified Project Period will any Unit in any building or structure in the Project that contains fewer than five Units be occupied by the Borrower;

(viii) that each Unit will be rented or available for rental on a continuous basis to Eligible Tenants (subject to the limitations and exceptions contained in the Regulatory Agreement,

the Tax Exemption Agreement and the Financing Agreement) at all times during the longer of (A) the term of the Bonds or (B) the Qualified Project Period, that the Borrower will not give preference in renting Units to any particular class or group of persons, other than Persons with Special Needs, Low-Income Tenants and other Eligible Tenants as provided in the Regulatory Agreement, and that at no time will any portion of the Project be exclusively reserved for use by a limited number of nonexempt persons in their trades or businesses;

(ix) that except, if applicable, during the 12-month “transition period” beginning on the Closing Date, as provided under Revenue Procedures 2004-39, 2004-2 C.B. 49, the Project will meet the Set Aside. For the purposes of this clause (a)(ix), a vacant Unit that was most recently occupied by a Low-Income Tenant is treated as rented and occupied by a Low-Income Tenant until reoccupied, at which time the character of such Unit must be redetermined. No tenant qualifying as a Low-Income Tenant will be denied continued occupancy of a Unit because, after the most recent Tenant Income Certification, such tenant’s Annual Income increases to exceed the qualifying limit for Low-Income Tenants; provided, however, that, should a Low-Income Tenant’s Annual Income, as of the most recent determination thereof, exceed 140% of the then applicable income limit for a Low-Income Tenant of the same family size and such Low-Income Tenant constitutes a portion of the Set Aside, then such tenant will only continue to qualify for so long as no Unit of comparable or smaller size in the same building (within the meaning of Section 42 of the Code) is rented to a tenant that does not qualify as a Low-Income Tenant;

(x) that the Borrower will obtain, complete and maintain on file (A) Tenant Income Certifications and supporting documentation from each Low-Income Tenant dated immediately prior to the initial occupancy of such Low-Income Tenant in the Project and (B) thereafter, annual certification regarding, at a minimum, information regarding household composition and student status in the form available on the Issuer’s website; provided that, if any Units in the Project are ever made available to tenants who are not Low-Income Tenants, then the Borrower will obtain, complete and maintain annual Tenant Income Certifications in accordance with Section 142(d)(3)(A) of the Code. The Borrower will obtain such additional information as may be required in the future by Section 142(d) of the Code, as the same may be amended from time to time, or in such other form and manner as may be required by applicable rules, rulings, policies, procedures, Regulations or other official statements promulgated, proposed or made by the Department of the Treasury or the Internal Revenue Service as of or after the date of the Regulatory Agreement with respect to obligations that are tax-exempt private activity bonds described in Section 142(d) of the Code. The Borrower will make a diligent and good-faith effort to determine that the income information provided by an applicant in any certification is accurate by taking steps required under Section 142(d) of the Code pursuant to provisions of the Housing Act. As part of the verification, the Borrower will document income and assets in accordance with HUD Handbook 4350.3 and the Issuer’s Compliance Monitoring Rules;

(xi) that, on or before each March 31, the Borrower will submit to the Secretary of the Treasury, with a copy provided to the Issuer, the completed Internal Revenue Service Form 8703 or such other annual certification required by the Code to be submitted to the Secretary of the Treasury as to whether the Project continues to meet the requirements of Section 142(d) of the Code; and

(xii) that the Borrower will prepare and submit the Unit Status Report in the form available on the Issuer’s website at the time of such submission to the Issuer (via the electronic filing system available on the Issuer’s website) in accordance with the provisions described in paragraph (e) under the caption “Housing Development During the State Restrictive Period” below. The Borrower will retain all documentation described in this clause (a)(xii) until the date that is three years after the end of the Qualified Project Period.

(b) That the Borrower will maintain complete and accurate records pertaining to the Low Income Units and will permit, at all reasonable times during normal business hours and upon reasonable notice, and subject to the rights of tenants in lawful possession, any duly authorized representative of the



Issuer, the Trustee, the Department of the Treasury or the Internal Revenue Service to enter upon the Project Site to examine and inspect the Project and to inspect and photocopy the books and records of the Borrower pertaining to the Project, including those records pertaining to the occupancy of the Low Income Units. The Borrower will retain all records maintained in accordance with the provisions described under this caption until the date that is three years after the end of the Qualified Project Period.

(c) That, as of the Closing Date, at least 50% of the Units are occupied.

(d) That the Borrower will prepare and submit to the Issuer and the Trustee, within 60 days prior to the last day of the Qualified Project Period, a certificate setting forth the date on which the Qualified Project Period will end, which certificate must be in recordable form; however, failure to deliver such certificate shall not extend the Qualified Project Period.

Anything in the Regulatory Agreement to the contrary notwithstanding, it is expressly understood and agreed by the parties thereto that the Issuer and the Trustee may rely conclusively on the truth and accuracy of any certificate, opinion, notice, representation or instrument made or provided by the Borrower in order to establish the existence of any fact or statement of affairs solely within the knowledge of the Borrower, and which is required to be noticed, represented or certified by the Borrower under the Regulatory Agreement or in connection with any filings, representations or certifications required to be made by the Borrower in connection with the issuance and delivery of the Bonds.

#### **Housing Development During the State Restrictive Period**

The Issuer and the Borrower have recognized and declared their understanding and intent that the Project is to be owned, managed and operated as a "housing development," as such term is defined in Section 2306.004(13) of the Act, and in compliance with applicable restrictions and limitations as provided in the Act and the rules of the Issuer until the expiration of the State Restrictive Period.

To the same end, the Borrower has represented, covenanted and agreed as follows during the State Restrictive Period:

(a) except for Units occupied or reserved for a resident manager, security personnel and maintenance personnel that are reasonably required for the Project, to assure that 100% of the Units are reserved for Eligible Tenants;

(b) to assure that the provisions described in clauses (a)(viii) and (a)(ix) under the caption "Tax-Exempt Status of the Bonds" above continue in full force and effect until the end of the State Restrictive Period;

(c) to obtain a Tenant Income Certification from each tenant in the Project (other than resident managers, security personnel and maintenance personnel) not later than the date of such tenant's initial occupancy of a Unit in the Project, and, if required as described in clause (a)(x) under the caption "Tax-Exempt Status of the Bonds" above, at least annually thereafter in the manner as described in such clause, and to maintain a file of all such Tenant Income Certifications, together with all supporting documentation, for a period of not less than three years after the end of the State Restrictive Period;

(d) to obtain from each tenant in the Project (other than resident managers, security personnel and maintenance personnel), at the time of execution of the lease pertaining to the Unit occupied by such tenant, a written certification, acknowledgment and acceptance in such form provided by the Issuer to the Borrower from time to time that (i) such lease is subordinate to the Security Instrument and the Regulatory Agreement, (ii) all statements made in the Tenant Income Certification submitted by such tenant are accurate, (iii) the family income and eligibility requirements of the Regulatory Agreement and the Financing Agreement are substantial and material obligations of tenancy in the Project, (iv) such tenant will comply promptly with all requests for information with respect to such requirements from the Borrower, the Trustee and the Issuer, and (v) failure to provide accurate information in the Tenant Income

Certification or refusal to comply with a request for information with respect thereto will constitute a violation of a substantial obligation of the tenancy of such tenant in the Project;

(e) to cause to be prepared and submitted to the Issuer (via the electronic filing system available on the Issuer's website) by the tenth calendar day of each January, April, July and October or other schedule as determined by the Issuer with written notice to the Borrower, a certified quarterly Unit Status Report in a form available on the Issuer's website at the time of submission or in such other form as the Issuer may reasonably prescribe in writing to the Borrower with the first quarterly report due on the first quarterly reporting date after leasing activity commences;

(f) to the extent legally permissible and upon reasonable notice to permit any duly authorized representative of the Issuer or the Trustee to inspect the books and records of the Borrower pertaining to the Project or the incomes of Project tenants, including but not limited to tenant files, during regular business hours and to make copies therefrom if so desired and file such reports as are necessary to meet the Issuer's requirements;

(g) that the Borrower is qualified to be a "housing sponsor" as defined in the Act and will comply with all applicable requirements of the Act, including submitting (via the electronic filing system available on the Issuer's website) the Annual Borrower's Compliance Report to the Issuer in the form available on the Issuer's website at the time of submission by April 30 of each year, commencing April 30, 2021;

(h) to provide social services which must meet the minimum point requirement and be chosen from the list of Tenant Supportive Services attached to the Regulatory Agreement as an exhibit and agreed to in writing by the Issuer. The Borrower must maintain documentation satisfactory to the Issuer of social services provided and such documentation will be reviewed during onsite visits beginning with the second onsite review and must be submitted to the Issuer upon request. The Borrower must provide the social services throughout the State Restrictive Period;

(i) to comply with Title 10, Part 1, Chapter 10, Subchapter F of the Texas Administrative Code, regarding tenant and manager selection, as such requirements may be amended from time to time;

(j) to maintain the property in compliance with HUD's Uniform Physical Condition Standards and to provide regular maintenance to keep the Project sanitary, safe and decent and to comply with the requirements of Section 2306.186 of the Texas Government Code; provided, however, that the Issuer must first provide notice of any default or breach to the Borrower and the Lender, and the Borrower will have 30 days to cure such default or breach;

(k) to renew any available rental subsidies which are sufficient to maintain the economic viability of the Project pursuant to Section 2306.185(c) of the Texas Government Code;

(l) the Borrower is not a party to and will not enter into a contract for the Project with, a housing developer that (i) is on the Issuer's debarred list, including any parts of that list that are derived from the debarred list of HUD; (ii) breached a contract with a public agency; or (iii) misrepresented to a subcontractor the extent to which the Borrower has benefited from contracts or financial assistance that has been awarded by a public agency, including the scope of the Borrower's participation in contracts with the agency and the amount of financial assistance awarded to the Borrower by the agency;

(m) to cooperate fully with the Issuer with respect to its compliance and oversight requirements and to cause the manager of the Project to so comply;

(n) to ensure that Units intended to satisfy the Set Aside in clause (a)(ix) under the caption "Tax-Exempt Status of the Bonds" above will be distributed evenly throughout the Project and will include a reasonably proportionate amount of each type of Unit available in the Project; and

- (o) to ensure that the Project conforms to the federal Fair Housing Act.

### **Persons with Special Needs**

The Borrower has represented, covenanted and warranted that during the State Restrictive Period, it will make at least 5% of the Units within the Project available for occupancy by Persons with Special Needs.

### **Term**

The Regulatory Agreement and all and each of the provisions thereof will become effective upon its execution and delivery, will remain in full force and effect for the periods provided in the Regulatory Agreement and, except as otherwise described under this caption, will terminate in its entirety at the end of the State Restrictive Period, it being expressly agreed and understood that the provisions of the Regulatory Agreement are intended to survive the retirement of the Bonds, discharge of the Mortgage Loan, termination of the Financing Agreement and defeasance or termination of the Indenture; provided, however, that the provisions related to the Qualified Project Period that are not incorporated into the State Restrictive Period will terminate in their entirety at the end of the Qualified Project Period.

The terms of the Regulatory Agreement to the contrary notwithstanding, the requirements set forth in the Regulatory Agreement will terminate, without the requirement of any consent by the Issuer or the Trustee, and be of no further force and effect in the event of involuntary noncompliance with the provisions of the Regulatory Agreement caused by fire, seizure, requisition, change in a federal or State law or an action of a federal agency after the Closing Date which prevents the Issuer or the Trustee from enforcing the provisions of the Regulatory Agreement, or foreclosure or transfer of title by deed in lieu of foreclosure or other similar involuntary transfer, condemnation or a similar event, but only if, within a reasonable period thereafter, either the Bonds are retired in full or amounts received as a consequence of such event are used to provide a “qualified residential rental project” that meets the requirements of the Code and State law including, but not limited to, certain provisions set forth in the Regulatory Agreement. The provisions of the preceding sentence will cease to apply and the requirements referred to therein will be reinstated if, at any time during the Qualified Project Period, after the termination of such requirements as a result of involuntary noncompliance due to foreclosure, transfer of title by deed in lieu of foreclosure or similar event, the Borrower or any Related Person obtains an ownership interest in the Project for federal income tax purposes or for the purposes of State law.

Notwithstanding any other provision of the Regulatory Agreement, the Regulatory Agreement may be terminated upon agreement by the Issuer, the Trustee and the Borrower upon receipt of a Favorable Opinion of Bond Counsel.

Upon the termination of the terms of the Regulatory Agreement, the parties thereto have agreed to execute, deliver and record appropriate instruments of release and discharge of the terms of the Regulatory Agreement; provided, however, that the execution and delivery of such instruments are not necessary or a prerequisite to the termination of the Regulatory Agreement in accordance with its terms. All costs, including fees and expenses, of the Issuer and the Trustee incurred in connection with the termination of the Regulatory Agreement will be paid by the Borrower and its successors in interest.

### **Covenants to Run With the Land**

The Borrower has subjected the Project (including the Project Site) to the covenants, reservations and restrictions set forth in the Regulatory Agreement. The Issuer, the Trustee and the Borrower have declared that the covenants, reservations and restrictions set forth in the Regulatory Agreement are covenants running with the land and will pass to and be binding upon the Borrower’s successors in title to the Project; provided, however, that upon the termination of the Regulatory Agreement said covenants, reservations and restrictions will expire. Each and every contract, deed or other instrument executed after the date of the Regulatory Agreement covering or conveying the Project or any portion thereof prior to the termination of the Regulatory Agreement will 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 instrument.

No breach of any of the provisions of the Regulatory Agreement will impair, defeat or render invalid the lien of any mortgage, deed of trust or like encumbrance made in good faith and for value encumbering the Project or any portion thereof.

**Fannie Mae Rider**

In the event of a conflict between any provision in the Regulatory Agreement and any provision of the Fannie Mae rider, the provisions of the Fannie Mae rider will supersede the conflicting provisions of the Regulatory Agreement.

Notwithstanding anything contained in the Regulatory Agreement to the contrary:

(a) The occurrence of an event of default under the Regulatory Agreement shall not impair, defeat or render invalid the lien of the Security Instrument.

(b) The occurrence of an event of default under the Regulatory Agreement shall not be or be deemed to be a default under the Loan Documents, except as may be otherwise specified in the Loan Documents.

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## APPENDIX E

### PROPOSED FORM OF OPINION OF BOND COUNSEL

\_\_\_\_\_, 2019

Texas Department of Housing and  
Community Affairs  
Austin, Texas

The Bank of New York Mellon Trust Company,  
N.A.,  
as Trustee  
Dallas, Texas

RBC Capital Markets, LLC  
St. Petersburg, Florida

Fannie Mae  
Washington, DC

Ladies and Gentlemen:

We have represented the Texas Department of Housing and Community Affairs (the “Issuer”) in connection with the issuance by the Issuer of its \$19,000,000\* Multifamily Housing Revenue Bonds (Pass Through – Northgate Village), Series 2019 (the “Bonds”) pursuant to a resolution adopted by the Governing Board of the Issuer on May 23, 2019 (the “Bond Resolution”) and an Indenture of Trust dated as of June 1, 2019 (the “Indenture”), by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”). The Bonds bear interest, mature on the date, and are subject to redemption prior to maturity as provided in the Indenture. Capitalized terms used herein and not otherwise defined are used with the meanings assigned to such terms in the Indenture, in the Financing Agreement dated as of June 1, 2019 (the “Financing Agreement”) among the Issuer, the Trustee, Northgate Preservation, L.P., a New York limited partnership (the “Borrower”), and Regions Bank, as lender (the “Lender”) or in the Regulatory and Land Use Restriction Agreement dated as of June 1, 2019 (the “Regulatory Agreement”), among the Issuer, the Trustee, and the Borrower.

The Bonds are being issued for the purpose of obtaining funds to make a mortgage loan to the Borrower to finance the acquisition, equipping and rehabilitation of a multifamily residential rental development located within Dallas County, Texas (the “Development”), to be occupied by individuals and families of low, very low and extremely low income and families of moderate income, as determined by the Issuer, and persons with special needs, all as required by the Act, and to be occupied at least partially (at least forty percent of the Units) by Low-Income Tenants.

We have assumed with your permission and without independent verification (i) the genuineness of certificates, records and other documents (collectively, “documents”) submitted to us and the accuracy and completeness of the statements contained therein; (ii) the due authorization, execution and delivery of the Indenture by the parties thereto, and the validity and binding effect of the Indenture on such parties; (iii) that all documents submitted to us as originals are accurate and complete; (iv) that all documents submitted to us as copies are true and correct copies of the originals thereof; and (v) that all information submitted to us and on which we have relied was accurate and complete.

The scope of our representation extends solely to an examination of the facts and law incident to rendering an opinion with respect to the legality and validity of the Bonds and the security therefor and with respect to the excludability of interest on the Bonds from gross income for federal income tax purposes. We have not been engaged or undertaken to review the accuracy, completeness or sufficiency of the Official Statement or other offering material relating to the Bonds and we express no opinion relating thereto (excepting only the matters set forth as our supplemental opinion of Bond Counsel of even date herewith). We have not assumed any responsibility with respect to the financial condition or capability of the Issuer or the Borrower, or the disclosure thereof. We have participated in the preparation of and have examined a transcript of certain materials pertaining to the Bonds, including certain certified proceedings of the Issuer, the State of Texas, the Trustee and the Borrower, and customary certificates, opinions, affidavits and other documents executed by officers, agents and representatives of the Issuer, the State of Texas, the Trustee, the Borrower and others. We have also examined such applicable

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\* Preliminary; subject to change.

provisions of the Internal Revenue Code of 1986, as amended (the “Code”), court decisions, Treasury Regulations and published rulings of the Internal Revenue Service (the “Service”) as we have deemed relevant. We have also examined the fully-executed Bond numbered I-1.

Based on said examination, and subject to the assumptions, qualifications and limitations set forth herein, it is our opinion that, under existing law:

1. The Issuer has duly authorized the issuance, execution and delivery of the Bonds. The Bonds constitute legal, valid and binding special limited obligations of the Issuer and are entitled to the benefit and security of the Indenture.
2. Interest on the Bonds is excludable from gross income for federal income tax purposes, except with respect to the interest on any Bond for any period during which such Bond is held by a “substantial user” of the Development or a “related person” of such a “substantial user,” as those terms are defined for purposes of Section 147(a) of the Code.
3. Interest on the Bonds is not an item of tax preference includable in alternative minimum taxable income for purposes of determining a taxpayer’s alternative minimum tax liability.

In providing the opinions set forth in paragraphs 2 and 3 above, we have relied on, and assumed the accuracy and completeness of, representations made as of the date hereof by, among others, the Issuer, the Borrower and RBC Capital Markets, LLC, as underwriter, with respect to matters solely within the respective knowledge of such parties, which matters we have not independently verified. Furthermore, in providing the opinions set forth in paragraphs 2 and 3 above, we have also assumed that there will be continuing compliance with the procedures, safeguards and covenants in the Indenture, the Financing Agreement, the Regulatory Agreement and the Tax Exemption Agreement pertaining to those sections of the Code that affect the excludability of interest on the Bonds from gross income for federal income tax purposes. In the event that such representations are determined to be inaccurate or incomplete or the Issuer or the Borrower fails to comply with the foregoing procedures, safeguards and covenants, interest on the Bonds could become includable in gross income for federal income tax purposes from the date of original delivery of the Bonds, regardless of the date on which the event causing such inclusion occurs.

Certain actions may be taken or omitted subject to the terms and conditions set forth in the Indenture and related documents, upon the advice or with an approving opinion of Bond Counsel. We hereby express no opinion with respect to our ability to render an opinion that such actions, if taken or omitted, will not adversely affect the excludability of interest on the Bonds from gross income for federal income tax purposes.

Except as stated above, we express no opinion as to any federal, state or local tax consequences resulting from the ownership of, receipt of interest on, or disposition of, the Bonds.

We express no opinion as to the priority or perfection of the security interest granted by the Issuer in the Trust Estate.

The enforceability of certain provisions of the Bonds may be limited by bankruptcy, insolvency, reorganization, moratorium and other laws for the relief of debtors. Furthermore, availability of equitable remedies under the Bonds may be limited by general principles of equity that permit the exercise of judicial discretion.

Owners of the Bonds should be aware that the ownership of tax-exempt obligations may result in collateral federal income tax consequences to financial institutions, life insurance and property and casualty insurance companies, certain S corporations with Subchapter C earnings and profits, individual recipients of Social Security or Railroad Retirement benefits, taxpayers who may be deemed to have incurred or continued indebtedness to purchase or carry tax-exempt obligations, low and middle income taxpayers otherwise qualifying for the health insurance premium assistance credit and individuals otherwise qualifying for the earned income tax credit. In addition, certain foreign corporations doing business in the United States may be subject to the “branch profits” tax on their effectively connected earnings and profits, including tax-exempt interest such as interest on the Bonds.

The opinions set forth above speak only as of their date and only in connection with the Bonds and may not be applied to any other transaction. Such opinions are specifically limited to the laws of the State of Texas and, to the extent applicable, the laws of the United States of America.

Our opinions are based on existing law, which is subject to change. Such opinions are further based on our knowledge of facts as of the date hereof. We assume no duty to update or supplement these opinions to reflect any facts or circumstances that may hereafter come to our attention or to reflect any changes in any law that may hereafter occur or become effective. Moreover, our opinions are not a guarantee of result and are not binding on the Service; rather, such opinions represent our legal judgment based upon our review of existing law and in reliance upon the representations and covenants referenced above that we deem relevant to such opinions. The Service has an ongoing audit program to determine compliance with rules that relate to whether interest on state or local obligations is includable in gross income for federal income tax purposes. No assurance can be given whether or not the Service will commence an audit of the Bonds. If an audit is commenced, in accordance with its current published procedures the Service is likely to treat the Issuer as the taxpayer. We observe that the Issuer and the Borrower have each covenanted in the Indenture, the Financing Agreement and the Tax Exemption Agreement not to take any action, or omit to take any action within its control, that if taken or omitted, respectively, may result in the treatment of interest on the Bonds as includable in gross income for federal income tax purposes.

Very truly yours,

## APPENDIX F

### FORM OF CONTINUING DISCLOSURE AGREEMENT

This Continuing Disclosure Agreement (the “Disclosure Agreement”) is dated as of June 1, 2019 and is executed and delivered by Northgate Preservation, L.P. (the “Borrower”), and The Bank of New York Mellon Trust Company, N.A. (the “Dissemination Agent”) in connection with the issuance of \$19,000,000\* Multifamily Housing Revenue Bonds, (Pass-Through – Northgate Village), Series 2019 (the “Bonds”). The Bonds are being issued pursuant to an Indenture of Trust, dated as of June 1, 2019 (the “Indenture”), between the Texas Department of Housing and Community Affairs (the “Issuer”) and The Bank of New York Mellon Trust Company, N.A., as Trustee (the “Trustee”). The proceeds of the Bonds are being loaned by the Issuer to the Borrower pursuant to a Financing Agreement, dated as of June 1, 2019, among the Issuer, the Trustee, the Borrower and Regions Bank (the “Lender”) (the “Financing Agreement”). For valuable consideration, the receipt of which is acknowledged, the Dissemination Agent and the Borrower covenant and agree as follows:

**SECTION 1. Purpose of the Disclosure Agreement.** This Disclosure Agreement is being executed and delivered by the Borrower and the Dissemination Agent for the benefit of the Bondholders (defined below) and the beneficial owners of the Bonds, and in order to assist the Participating Underwriters (defined below) in complying with the Rule (defined below). The Borrower and the Dissemination Agent acknowledge that the Issuer has undertaken no responsibility with respect to any reports, notices or disclosures provided or required under this Disclosure Agreement, and has no liability to any person, including any Holder of the Bonds, with respect to any such reports, notices or disclosures.

**SECTION 2. Definitions.** In addition to the definitions set forth in the Indenture and in the Financing Agreement, which apply to any capitalized term used in this Disclosure Agreement unless otherwise defined in this Section or in the first paragraph of this Disclosure Agreement, the following capitalized terms shall have the following meanings:

“Annual Report” shall mean any Annual Report provided by the Borrower pursuant to, and as described in, Sections 3 and 4 of this Disclosure Agreement.

“Bondholder” or the term “Holder”, when used with reference to a Bond or Bonds, shall mean any person who shall be the registered owner of any Bond and any beneficial owner thereof.

“Disclosure Representative” shall mean any person designated by the Borrower or his or her designee, in writing to the Dissemination Agent from time to time.

“Dissemination Agent” shall mean the initial Dissemination Agent hereunder, which is The Bank of New York Mellon Trust Company, N.A., or any successor Dissemination Agent designated in writing by the Borrower and acceptable to the Issuer and which has filed with the Borrower a written acceptance of such designation.

“EMMA” shall mean the Electronic Municipal Market Access system maintained by the MSRB for purposes of the Rule.

“Financial Obligation” means a (i) debt obligation; (ii) derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; or (iii) guarantee of a debt obligation or derivative instrument entered into in connection with, or pledged as security or a source of payment for, an existing or planned debt obligation; provided, however, the term “financial obligation” excludes municipal securities for which a final official statement has been provided to the MSRB consistent with the Rule.

“Listed Events” shall mean any of the events listed in Section 5(a) of this Disclosure Agreement.

“MSRB” shall mean the Municipal Securities Rulemaking Board established pursuant to Section 15B(b)(1) of the Securities Exchange Act of 1934, or any successor thereto or to the functions of the MSRB contemplated by this Disclosure Agreement.

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\* Preliminary; subject to change.



“Participating Underwriters” shall mean any or all of the original broker, dealer or municipal securities dealer acting as underwriters of the Bonds required to comply with the Rule in connection with offering of the Bonds.

“Rule” shall mean Rule 15c2-12(b)(5) adopted by the Securities and Exchange Commission under the Securities Exchange Act of 1934, as the same may be amended from time to time.

“Tax-exempt” shall mean that interest on the Bonds is excluded from gross income for federal income tax purposes, whether or not such interest is includable as an item of tax preference or otherwise includable directly or indirectly for purposes of calculating any other tax liability, including any alternative minimum tax or environmental tax.

### SECTION 3. Provision of Annual Reports.

(a) The Borrower shall, or shall cause the Dissemination Agent to, not later than 180 days after the end of each fiscal year of the Borrower, commencing with the Borrower’s fiscal year ending December 31, 2019, provide to the MSRB an Annual Report which is consistent with the requirements of Section 4 of this Disclosure Agreement. On or prior to said date (except that in the event the Borrower elects to have the Dissemination Agent file such report, five (5) Business Days prior to such date) such Annual Report shall be provided by the Borrower to the Dissemination Agent together with either (i) a letter authorizing the Dissemination Agent to file the Annual Report with the MSRB, or (ii) a certificate stating that the Borrower has provided the Annual Report to the MSRB and the date on which such Annual Report was provided. In each case, the Annual Report may be submitted as a single document or as separate documents comprising a package, and may cross-reference other information as provided in Section 4 of this Disclosure Agreement; provided that the audited financial statements of the Borrower may be submitted separately from the balance of the Annual Report; and provided further that if the Borrower’s audited financial statements are not available by the deadline for filing the Annual Report, they shall be submitted as soon as practicable after they become available and unaudited financial statements shall be included in the Annual Report. The Borrower shall promptly notify the Dissemination Agent of any change in the Borrower’s fiscal year. Unless otherwise provided by law, any continuing disclosure information filed pursuant to this Disclosure Agreement shall be provided to the MSRB in an electronic format as shall be prescribed by MSRB Rule G-32, and shall be accompanied by such identifying information as shall be prescribed by MSRB Rule G-32. As of the date hereof, EMMA is the electronic format prescribed by the MSRB.

(b) If by 15 days prior to the date specified in subsection (a) for providing the Annual Report to the MSRB, the Dissemination Agent has not received a copy of the Annual Report, the Dissemination Agent shall contact the Borrower to request a report regarding compliance with the provisions governing the Annual Report.

(c) If the Dissemination Agent is unable to verify that an Annual Report has been provided to the MSRB by the date required in subsection (a), the Dissemination Agent shall send a reminder notice to the Borrower and the Issuer and shall send a notice to the MSRB in substantially the form attached as Exhibit A hereto.

(d) The Dissemination Agent shall file a report with the Borrower, the Issuer and the Trustee (if the Dissemination Agent is not the Trustee) certifying that the Borrower has filed a report (directly or through the Dissemination Agent) purporting to be an Annual Report pursuant to this Disclosure Agreement, and stating the date it was provided (if such report was provided).

### SECTION 4. Content of Annual Reports.

(a) The Borrower’s Annual Report shall contain its audited financial statements for the prior fiscal year, prepared in accordance with generally accepted accounting principles.

(b) Any or all of the items listed above may be incorporated by reference from other documents, including financial statements provided under (a) above, the original Official Statement for the Bonds, or other official statements of debt issues with respect to which the Borrower is an “obligated person” (as defined by the Rule), which have been (i) made available to the public on the MSRB’s Electronic Municipal Markets Access (EMMA) System, the current internet web address of which is [www.emma.msrb.org](http://www.emma.msrb.org), or (ii) filed with the Securities and Exchange Commission. If the document incorporated by reference is a final official statement, it must be

available from the MSRB. The Borrower shall clearly identify each such other document so incorporated by reference.

SECTION 5. Reporting of Listed Events.

(a) The Borrower shall, or shall cause the Dissemination Agent to, give notice of the occurrence of any of the following Listed Events relating to the Bonds to the MSRB in a timely manner not later than ten (10) Business Days after the occurrence of any such Listed Event;

- (1) principal and interest payment delinquencies;
- (2) non-payment related defaults, if material;
- (3) unscheduled draws on debt service reserves reflecting financial difficulties;
- (4) unscheduled draws on credit enhancements reflecting financial difficulties;
- (5) substitution of credit or liquidity providers or their failure to perform;
- (6) adverse tax opinions, the issuance by the Internal Revenue Service of proposed or final determinations of taxability, Notices of Proposed Issue (IRS Form 5701-TEB) or other material notices of determinations with respect to the tax status of the Bonds, or other material events affecting the tax status of the Bonds;
- (7) modifications to the rights of holders of the Bonds, if material;
- (8) Bond calls, if material, and tender offers;
- (9) defeasances;
- (10) release, substitution, or sale of property securing repayment of the Bonds, if material;
- (11) rating changes;
- (12) bankruptcy, insolvency, receivership or similar event of the Borrower;

Note to clause (12): For the purposes of the event identified in clause (12) above, the event is considered to occur when any of the following occur: the appointment of a receiver, fiscal agent or similar officer for the Borrower in a proceeding under the U.S. Bankruptcy Code or in any other proceeding under state or federal law in which a court or government authority has assumed jurisdiction over substantially all of the assets or business of the Borrower, or if such jurisdiction has been assumed by leaving the existing governing body and officials or officers in possession but subject to the supervision and orders of a court or governmental authority, or the entry of an order confirming a plan of reorganization, arrangement or liquidation by a court or governmental authority having supervision or jurisdiction over substantially all of the assets or business of the Borrower;

(13) the consummation of a merger, consolidation, or acquisition involving the Borrower or the sale of all or substantially all of the assets of the Borrower, other than in the ordinary course of business, the entry into a definitive agreement to undertake such an action or the termination of a definitive agreement relating to any such actions, other than pursuant to its terms, if material;

(14) appointment of a successor or additional trustee or the change of the name of the trustee, if material;

(15) incurrence of a Financial Obligation of the Borrower, if material, or agreement to covenants, events of default, remedies, priority rights, or other similar terms of a Financial Obligation of the Borrower, any of which affect security holders, if material; and

(16) default, event of acceleration, termination event, modification of terms, or other similar events under the terms of a Financial Obligation of the Borrower, any of which reflect financial difficulties.

(b) The Dissemination Agent shall, promptly after obtaining actual knowledge of the occurrence of any of the Listed Events set forth in subsection (a) above, contact the Disclosure Representative and inform such person of the event. “Actual knowledge” for purposes of this subsection (b) shall mean actual knowledge of an officer of the Corporate Trust Administration of the Dissemination Agent.

(c) Whenever the Borrower obtains knowledge of the occurrence of a Listed Event set forth in clauses (2), (7), (8) (relating to Bond calls only), (10), (13) or (14) of subsection (a) above, whether because of a notice from the Dissemination Agent pursuant to subsection (b) or otherwise, the Borrower shall as soon as possible determine if such event would constitute material information for Bondholders, and if such event is determined by the Borrower to be material, the Borrower shall, or shall cause the Dissemination Agent to, give notice of such event to the MSRB not later than ten (10) Business Days after the occurrence of such event.

(d) If the Borrower elects to have the Dissemination Agent file notice of any Listed Event, the Borrower will provide the notice to the Dissemination Agent within 5 Business Days after the occurrence of the Listed Event, along with an instruction to file the notice with the MSRB.

#### SECTION 6. Termination of Reporting Obligation.

This Disclosure Agreement may be terminated by either party to this Disclosure Agreement upon thirty days’ written notice of termination delivered to the other party to this Disclosure Agreement; provided the termination of this Disclosure Agreement is not effective until (i) the Borrower, or its successor, enters into a new continuing disclosure agreement with a dissemination agent who agrees to continue to provide, to the MSRB and the Holders of the Bonds, all information required to be communicated pursuant to the rules promulgated by the Securities and Exchange Commission or the MSRB, (ii) a nationally recognized bond counsel or counsel expert in federal securities laws provides an opinion that the new continuing disclosure agreement is in compliance with all applicable state and federal securities laws, and (iii) notice of the termination of this Disclosure Agreement is provided to the MSRB.

The Dissemination Agent shall be fully discharged at the time any such termination is effective. Notwithstanding the foregoing, this Disclosure Agreement shall terminate (i) automatically upon payment or provisions for payment of the Bonds or (ii) when all of the Bonds are or are deemed to be no longer outstanding by reason of redemption or legal defeasance or at final maturity.

#### SECTION 7. Dissemination Agent.

(a) The Borrower may, from time to time, appoint or engage a Dissemination Agent to assist it in carrying out its obligations under this Disclosure Agreement, and may discharge any such Dissemination Agent, with or without appointing a successor Dissemination Agent. If at any time there is not any other designated Dissemination Agent, the Trustee shall be the Dissemination Agent.

(b) The Dissemination Agent, or any successor thereof, may at any time resign and be discharged of its duties and obligations hereunder by giving not less than thirty (30) days written notice to the Issuer, the Borrower and the registered owners of the Bonds, specifying the date when such resignation shall take effect. Such resignation shall take effect upon the date a successor shall have been appointed by the Borrower or by a court upon the application of the Dissemination Agent.

(c) In case the Dissemination Agent, or any successor thereof, shall resign or shall be removed or shall become incapable of acting, or shall be adjudged a bankrupt or insolvent, or if a receiver, liquidator or conservator of the Dissemination Agent or of its property shall be appointed, or if any public officer shall take charge of control of the Dissemination Agent, or of its property or affairs, the Borrower shall forthwith appoint a Dissemination Agent to act. The Borrower shall give or cause to be given written notice of any such appointment to the Bondholders, the Trustee (if the Trustee is not the Dissemination Agent), and the Issuer.

(d) Any company into which the Dissemination Agent may be merged or with which it may be consolidated or any company resulting from any merger or consolidation to which it shall be a party or any company

to which such Dissemination Agent may sell or transfer all or substantially all of its corporate trust business, shall be the successor to such Dissemination Agent, without any further act or deed.

SECTION 8. Amendment; Waiver. Notwithstanding any other provision of this Disclosure Agreement, the Borrower and the Dissemination Agent may amend this Disclosure Agreement (and the Dissemination Agent shall agree to any amendment not modifying or otherwise affecting its duties, obligations or liabilities in such a way as they are expanded or increased) and any provision of this Disclosure Agreement may be waived, if all of the following conditions are satisfied: (1) such amendment is made in connection with a change in circumstances that arises from a change in legal (including regulatory) requirements, a change in law (including rules or regulations) or in interpretations thereof, or a change in the identity, nature or status of the Borrower or the type of business conducted thereby, (2) this Disclosure Agreement as so amended would have complied with the requirements of the Rule as of the date of this Disclosure Agreement, after taking into account any amendments or interpretations of the Rule, as well as any change in circumstances, (3) the Borrower shall have delivered an opinion of counsel, addressed to the Issuer, the Borrower, the Dissemination Agent and the Trustee, to the same effect as set forth in clause (2) above, (4) either (i) the Borrower shall have delivered to the Issuer, the Trustee and the Dissemination Agent an opinion of counsel, or a determination by a person, in each case unaffiliated with the Borrower (such as bond counsel) and acceptable to the Borrower, to the effect that the amendment does not materially impair the interests of the Holders of the Bonds or (ii) the Holders of the Bonds consent to the amendment to this Disclosure Agreement pursuant to the same procedures as are required for amendments to the Indenture with consent of the Holders of the Bonds pursuant to the Indenture as in effect on the date of this Disclosure Agreement, and (5) the Borrower shall have delivered copies of such opinion(s) and amendment to the MSRB. The Dissemination Agent may rely and act upon such opinions.

SECTION 9. Additional Information. Nothing in this Disclosure Agreement shall be deemed to prevent the Borrower from disseminating any other information, using the means of dissemination set forth in this Disclosure Agreement or any other means of communication, or including any other information in any Annual Report or notice of the occurrence of a Listed Event, in addition to that which is required by this Disclosure Agreement. If the Borrower chooses to include any information in any Annual Report or notice of the occurrence of a Listed Event, in addition to that which is specifically required by this Disclosure Agreement, the Borrower shall have no obligation under this Disclosure Agreement to update such information or include it in any future Annual Report or notice of the occurrence of a Listed Event. Nothing in this Disclosure Agreement shall be deemed to prevent the Dissemination Agent from providing a notice or disclosure as it may deem appropriate pursuant to any other capacity it may be acting in related to the Bonds.

SECTION 10. Default. In the event of a failure of the Borrower or the Dissemination Agent to comply with any provision of this Disclosure Agreement, the Dissemination Agent may (and, at the request of any of the Holders of at least 25% of the aggregate principal amount of Outstanding Bonds who have provided security and indemnity deemed acceptable to the Dissemination Agent, shall), or any party who can establish beneficial ownership of any of the Bonds, or any Bondholder may, after providing fifteen (15) days written notice to the Borrower to give the Borrower opportunity to comply within such fifteen-day period, take such actions as may be necessary and appropriate to compel performance, including seeking mandamus or specific performance by court order, in order to cause the Borrower to comply with its obligations under this Disclosure Agreement. A default under this Disclosure Agreement shall not be deemed an Event of Default under the Indenture or under the Financing Agreement, and the sole remedy available to the Dissemination Agent, any beneficial owners of the Bonds or the Bondholders under this Disclosure Agreement in the event of any failure of the Borrower or the Dissemination Agent to comply with this Disclosure Agreement shall be an action to compel performance.

SECTION 11. Duties, Immunities and Liabilities of Dissemination Agent.

The Dissemination Agent shall have only such duties as are specifically set forth in this Disclosure Agreement. To the extent that the Dissemination Agent is required under the terms of this Disclosure Agreement to report any information, it is only required to report information that it receives from the Borrower in the form in which it is received, and the Dissemination Agent shall be under no responsibility or duty with respect to the accuracy and content of the information which it receives from the Borrower. The Borrower agrees to indemnify and save the Dissemination Agent, its officers, directors, employees and agents harmless against any loss, expense and liabilities which it may incur arising out of or in the exercise or performance of its powers and duties hereunder, including the costs and expenses (including reasonable attorneys' fees and expenses) of defending against any claim of liability, but excluding liabilities due to the Dissemination Agent's negligence or misconduct. The obligations of

the Borrower under this Section shall survive resignation or removal of the Dissemination Agent and payment of the Bonds.

Unless otherwise provided by contract with the Dissemination Agent, the Borrower shall pay or cause to be paid to the Dissemination Agent after reasonable notice to the Borrower in light of the reimbursement sought to be received, reasonable reimbursement for its reasonable expenses, charges, counsel fees and expenses and other disbursements and those of its attorneys, agents, and employees, incurred in and about the performance of its powers and duties hereunder. The Borrower shall indemnify and save the Dissemination Agent harmless against any expenses and liabilities which it may incur in the exercise and performance of its powers and duties hereunder which are not due to its negligence or default. None of the provisions contained in this Disclosure Agreement shall require the Dissemination Agent to expend or risk its own funds or otherwise incur financial liability in the performance of any of its duties or in the exercise of any of its rights or powers. The obligations of the Borrower under this Section to compensate the Dissemination Agent, to pay or reimburse the Dissemination Agent for expenses, disbursements, charges and counsel fees and to indemnify and hold harmless the Dissemination Agent shall survive the termination of this Disclosure Agreement.

In no event shall the Dissemination Agent be liable for incidental, indirect, special, consequential or punitive damages (including, but not limited to, lost profits), even if the Dissemination Agent has been advised of the likelihood of such loss or damage and regardless of the form of action.

SECTION 12. Transmission of Notices, Documents and Information. Unless otherwise required by the MSRB, all notices, documents and information provided to the MSRB pursuant to this Disclosure Agreement shall be provided to the MSRB's Electronic Municipal Markets Access (EMMA) system, the current internet web address of which is [www.emma.msrb.org](http://www.emma.msrb.org).

All notices, documents and information provided to the MSRB shall be provided in an electronic format as prescribed by the MSRB and shall be accompanied by identifying information as prescribed by the MSRB.

SECTION 13. Beneficiaries. This Disclosure Agreement shall inure solely to the benefit of the Issuer, the Borrower, the Trustee, the Dissemination Agent, the Participating Underwriters, parties who can establish beneficial ownership of the Bonds and the Holders from time to time of the Bonds, and shall create no rights in any other person or entity.

SECTION 14. Counterparts. This Disclosure 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 15. Notices. The parties hereto may be given notices required hereunder at the addresses set forth for them in the Financing Agreement or the Indenture.

SECTION 16. Applicable Law. This Disclosure Agreement shall be governed by the laws of the State of Texas, and by applicable federal laws.

(Remainder of Page Intentionally Left Blank)

(SIGNATURE PAGE TO CONTINUING DISCLOSURE AGREEMENT)

BORROWER:

**NORTHGATE PRESERVATION, L.P.**,  
a New York limited partnership

By: Northgate Preservation GP, LLC,  
a New York limited liability company  
its General Partner

By: \_\_\_\_\_  
Matthew Finkle, Vice President

DISSEMINATION AGENT:

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

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

**EXHIBIT A  
TO CONTINUING DISCLOSURE AGREEMENT**

**NOTICE TO MSRB OF FAILURE TO FILE ANNUAL REPORT**

Name of Issuer: Texas Department of Housing and Community Affairs (the "Issuer").

Name of Bond Issue: \$19,000,000\* Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village),  
Series 2019.

Name of Borrower: Northgate Preservation, L.P., a New York limited partnership

Date of Issuance: \_\_\_\_\_, 2019.

NOTICE IS HEREBY GIVEN that the Borrower has not yet provided an Annual Report with respect to the above-named Bonds as required by the Continuing Disclosure Agreement by and between Northgate Preservation, L.P. (the "Borrower"), and The Bank of New York Mellon Trust Company, N.A. (the "Dissemination Agent") dated as of June 1, 2019. The Borrower has informed the Dissemination Agent that the Annual Report will be filed with the Dissemination Agent by \_\_\_\_\_.

Dated: \_\_\_\_\_

DISSEMINATION AGENT:

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

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

cc: Borrower  
Issuer

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\* Preliminary; subject to change.

## APPENDIX G

### FANNIE MAE MORTGAGE-BACKED SECURITIES PROGRAM

*This summary of the Fannie Mae Mortgage Backed Securities Program, the Fannie Mae Certificates and the documents referred to herein has not been provided or approved by Fannie Mae, does not purport to be comprehensive and is qualified in its entirety by reference to the Fannie Mae MBS Prospectus (Multifamily Fixed-Rate Yield Maintenance) for Guaranteed Mortgage Pass-Through Certificates (the “Fannie Mae MBS Prospectus”) which will be available if and when the Pass-Through Certificate is issued. The template for the Fannie Mae MBS Prospectus, as of the date of this Official Statement, can be found at <http://www.fanniemae.com/resources/file/mbs/pdf/fixed-rate-yield-maintenance-050119.pdf>. The Fannie Mae MBS Prospectus, if and when available, will consist of the template for Fannie Mae MBS Prospectus applicable at the time of the issuance of the Pass-Through Certificate with the cover page completed with the Pass-Through Certificate specific information, an Additional Disclosure Addendum substantially in the form attached as APPENDIX I hereto, and an Annex A containing information substantially consistent with the Term Sheet attached hereto as APPENDIX H.*

This summary highlights information contained in the Fannie Mae MBS Prospectus which will be available if and when the Pass-Through Certificate is issued. As a summary, it speaks in general terms without giving details or discussing any exceptions. Before buying the Pass-Through Certificates, an investor should have the information necessary to make a fully informed investment decision. For that, an investor must read the Fannie Mae MBS Prospectus in its entirety (and any documents to which Fannie Mae refers an investor in the Fannie Mae MBS Prospectus).

Pass-Through Certificate..... Guaranteed Mortgage MBS Certificates (Multifamily Residential Mortgage Loans).

Pass-Through Certificate Issuer and Guarantor..... Fannie Mae, a government-sponsored enterprise that was chartered by the U.S. Congress in 1938 under the name “Federal National Mortgage Association” to support liquidity and stability in the secondary mortgage market, where existing mortgage loans are purchased and sold.

Fannie Mae has been under conservatorship since September 6, 2008. The conservator, the Federal Housing Finance Agency, succeeded to all rights, titles, powers and privileges of Fannie Mae and of any shareholder, officer or director of the company with respect to the company and its assets. For additional information on the conservatorship, see “**FANNIE MAE — Regulation and Conservatorship**” in the Fannie Mae MBS Prospectus.

Fannie Mae’s regulators include the Federal Housing Finance Agency, the U.S. Department of Housing and Urban Development, the Securities and Exchange Commission, and the U.S. Department of the Treasury. The Office of Federal Housing Enterprise Oversight, the predecessor of the Federal Housing Finance Agency, was Fannie Mae’s safety and soundness regulator prior to enactment of the Federal Housing Finance Regulatory Reform Act of 2008.

On September 7, 2008, Fannie Mae entered into a senior preferred stock purchase agreement with the U.S. Department of the Treasury pursuant to which Fannie Mae issued to it one million shares of senior preferred stock and a warrant to purchase, for a nominal price, shares of common stock equal to 79.9% of the outstanding common stock of Fannie Mae. **Nevertheless, Fannie Mae alone is responsible for making payments under its guaranty. The Pass-Through Certificate if issued by Fannie Mae and acquired by the Trustee and payments of principal and interest on the Pass-Through Certificate will not be guaranteed by the United States and do not constitute a debt or obligation of the United States or any of its agencies or instrumentalities other than Fannie Mae.**



Sponsor and Depositor.....	Fannie Mae is the sponsor of the Pass-Through Certificate and the depositor of the Mortgage Loan into the trust.
Description of Pass-Through Certificate....	The Pass-Through Certificate if issued by Fannie Mae and acquired by the Trustee will represent a pro rata undivided beneficial ownership interest in the Mortgage Loan. Fannie Mae will issue the Pass-Through Certificate in book-entry form on the book-entry system of the U.S. Federal Reserve Banks. The book-entry Pass-Through Certificates will not be convertible into physical certificates.
Minimum Denomination.....	Fannie Mae will issue the Pass-Through Certificates in minimum denominations of \$1,000, with additional increments of \$1.
Issue Date.....	The date specified on the front cover page of the Fannie Mae MBS Prospectus, which is the first day of the month in which the Pass-Through Certificates are issued.
Settlement Date.....	The date specified on the front cover page of the Fannie Mae MBS Prospectus, which is a date no later than the last business day of the month in which the issue date occurs.
Distribution Date.....	The 25th day of each month is the date designated for payments to the Trustee as holder of the Pass-Through Certificate, if issued, as specified on the front cover page of the Fannie Mae MBS Prospectus. If that day is not a Business Day, payments will be made on the next Business Day. The first Distribution Date for the Pass-Through Certificate will occur in the month following the month in which the Pass-Through Certificate is issued. For example, if the issue date is March 1, the first distribution date is April 25 or, if April 25 is not a Business Day, the first Business Day following April 25.
Maturity Date.....	The date specified on the front cover page of the Fannie Mae MBS Prospectus, which is the date that the final payment is due on the Mortgage Loan.
Use of Proceeds.....	The Pass-Through Certificates are backed by the Mortgage Loan that Fannie Mae recently acquired or already owned. Fannie Mae is issuing the Pass-Through Certificates either in exchange for the recently acquired Mortgage Loan or for cash proceeds that are generally used for purchasing other mortgage loans or for general corporate purposes.
Interest.....	<p>On each Distribution Date, Fannie Mae will pass through on the Pass-Through Certificate, if issued, one month's interest at the Pass-Through Rate specified on the front cover page of the Fannie Mae MBS Prospectus.</p> <p>Because Fannie Mae's guaranty requires it to supplement amounts received by the trust as required to permit timely payment of interest, the amount of interest distributed to certificateholders on a Distribution Date will <b>not</b> be affected by any loss mitigation measure taken with respect to, or other loan modification made to, the Mortgage Loan while it remains in the trust.</p>
Principal.....	Fannie Mae will receive collections on the Mortgage Loan on a monthly basis. The period Fannie Mae uses to differentiate between collections in one month and collections in another month is called the due period. The due period is the period from and including the second calendar day of the preceding month to and including the first calendar day of the month in which the Distribution Date occurs.

On each Distribution Date, Fannie Mae will pass through principal of the Pass-Through Certificate, if issued, as follows:

- the aggregate amount of the scheduled principal due on the Mortgage Loan in the pool during the related due period; and
- the aggregate amount of all unscheduled principal payments received as specified below:
  - the stated principal balance of the Mortgage Loan as to which prepayment in full was received during the calendar month immediately preceding the month in which that Distribution Date occurs;
  - the stated principal balance of the Mortgage Loan if it was purchased from the pool during the calendar month immediately preceding the month in which that Distribution Date occurs; and
  - the amount of any partial prepayments on the Mortgage Loan that were received during the calendar month immediately preceding the month in which that Distribution Date occurs.

Because Fannie Mae's guaranty requires it to supplement amounts received by the trust as required to permit timely payment of the principal amounts specified above, the amount of principal distributed to certificateholders on a Distribution Date will **not** be affected by any loss mitigation measure taken with respect to, or other loan modification made to, the Mortgage Loan while it remains in the trust.

Fannie Mae may treat a prepayment in full received on the first Business Day of a month as if the prepayment were received on the last Business Day of the preceding month. If Fannie Mae does so, Fannie Mae passes through these prepayments on the Distribution Date in the same month in which the prepayment actually was received. For example, if a prepayment on the Mortgage Loan in full is actually received on the first Business Day of April, it would be treated as if it had been received on the last business day of March and, therefore, would be passed through on April 25 (or the next Business Day, if April 25 is not a Business Day).

The Mortgage Loan permits the reamortization of principal after a permitted voluntary partial prepayment or an involuntary partial prepayment caused by the receipt of proceeds from insurance or condemnation. A reamortization of the Mortgage Loan will cause a change in the amount of principal that is passed through to holders of the Pass-Through Certificate.

Monthly Pool Factors.....

Fannie Mae publishes the monthly pool factor for each issuance of its certificates on or about the fourth Business Day of each month. If an investor multiplies the monthly pool factor by the original principal balance of the Pass-Through Certificate, the investor will obtain the current principal balance of the Pass-Through Certificate, after giving effect to the monthly principal payment to be passed through on the Distribution Date in that month. The most current pool factor is generally available through Fannie Mae's PoolTalk application on Fannie Mae's website and can be accessed through DUS Disclose.

Guaranty.....	<p>Fannie Mae guarantees to the trust that on each Distribution Date it will supplement amounts received by the trust as required to permit payments on the related Pass-Through Certificate in an amount equal to:</p> <ul style="list-style-type: none"> <li>• one month’s interest on the Pass-Through Certificates, as described in “—Interest” above; and</li> <li>• the aggregate amounts of scheduled and unscheduled principal payments described in “—Principal” above.</li> </ul> <p>In addition, Fannie Mae guarantees to the trust that it will supplement amounts received by the trust as required to make the full and final payment of the unpaid principal balance of the certificates on the Distribution Date in the month of the maturity date specified on the front cover page of the Fannie Mae MBS Prospectus.</p> <p>Certificateholders have limited rights to bring proceedings against the U.S. Department of the Treasury if Fannie Mae fails to pay under its guaranty. The total amount that may be recovered from Treasury is subject to limits imposed in the senior preferred stock purchase agreement. For a description of certificateholders’ rights to proceed against Fannie Mae and Treasury, see “<b>FANNIE MAE—Certificateholders’ Rights under the Senior Preferred Stock Purchase Agreement</b>” in the Fannie Mae MBS Prospectus.</p>
Optional Prepayment Premium...	<p>The Mortgage Loan permits voluntary prepayment in full at any time upon payment of a prepayment premium. A portion of the prepayment premium, if collected, may be shared with certificateholders under the circumstances described in “<b>YIELD, MATURITY AND PREPAYMENT CONSIDERATIONS—Maturity and Prepayment Considerations—Prepayment of a Mortgage Loan</b>” in the Fannie Mae MBS Prospectus. Fannie Mae does not guarantee to the trust the payment of any prepayment premiums.</p>
Master Servicing/Servicing.....	<p>Fannie Mae is responsible as master servicer for certain duties. Fannie Mae has contracted with the mortgage servicer identified on Annex A to perform servicing functions for Fannie Mae subject to Fannie Mae’s supervision. Fannie Mae refers to this servicer or any successor servicer as Fannie Mae’s primary servicer. In certain limited circumstances, Fannie Mae may act as primary servicer. For a description of Fannie Mae’s duties as master servicer and the responsibilities of Fannie Mae’s primary servicer, see “<b>THE TRUST DOCUMENTS—Collections and Other Servicing Practices</b>” and “<b>FANNIE MAE PURCHASE PROGRAM—Servicing Arrangements</b>” in the Fannie Mae MBS Prospectus.</p>
Business Day.....	<p>For the Pass-Through Certificate, if issued, any day other than a Saturday or Sunday, a day when the fiscal agent or paying agent is closed, a day when the Federal Reserve Bank of New York is closed or is authorized or obligated by law or executive order to remain closed, or, for purposes of withdrawals from a certificate account, or a day when the Federal Reserve Bank is closed in the district where the certificate account is maintained if the related withdrawal is being made from that certificate account.</p>
Trust Documents.....	<p>If issued, the Pass-Through Certificate will be issued pursuant to the 2017 Multifamily Master Trust Agreement effective as of December 1, 2017, as supplemented by a trust issue supplement for that issuance. Fannie Mae summarizes certain pertinent provisions of the trust agreement in the Fannie Mae MBS Prospectus. An investor should refer to the trust agreement and the related trust issue supplement for a complete description of an investor’s</p>

rights and obligations as well as those of Fannie Mae in its various capacities. The trust agreement and the related trust issue supplement is available on Fannie Mae's website.

Trustee.....	Fannie Mae serves as the trustee for the trust pursuant to the terms of the trust agreement and the related trust issue supplement.
Paying Agent.....	An entity designated by Fannie Mae to perform the functions of a paying agent. The Federal Reserve Bank of New York currently serves as Fannie Mae's paying agent for the Pass-Through Certificate.
Fiscal Agent.....	An entity designated by Fannie Mae to perform certain administrative functions for the trust. The Federal Reserve Bank of New York currently serves as Fannie Mae's fiscal agent for the Pass-Through Certificates.
Multifamily Mortgage Loan Pool...	<p>The Mortgage Loan is a fixed-rate loan included in one of the following categories:</p> <ul style="list-style-type: none"><li>• Fixed rate loans with monthly payments of principal and interest during their entire loan terms, with balloon payments at maturity;</li><li>• Fixed-rate loans with monthly payments of interest only during specified initial periods, followed by monthly payments of principal and interest for their remaining loan terms, with balloon payments at maturity;</li><li>• Fixed-rate loans with monthly payments of interest only during their entire loan terms, with balloon payments at maturity; and</li><li>• Fixed-rate loans that fully amortize over their loan terms.</li></ul>
Multifamily Mortgage Loans.....	The Mortgage Loan was acquired from a multifamily mortgage loan seller that Fannie Mae has approved. The Mortgage Loan may have been originated by the seller or may have been acquired by the seller from the originator of the loan, which may or may not be an approved mortgage loan seller. Each mortgage loan that Fannie Mae acquires either meets Fannie Mae's published standards (except to the extent that Fannie Mae permits waivers from those standards) or is reviewed by Fannie Mae before delivery to determine its suitability. Fannie Mae may modify its standards from time to time.
Types of Property.....	<p>The Mortgage Loan is secured by a lien on one or more of the following types of property:</p> <ul style="list-style-type: none"><li>• Multifamily residential properties;</li><li>• Cooperative housing projects;</li><li>• Dedicated student housing;</li><li>• Manufactured housing communities;</li><li>• Military housing; or</li><li>• Seniors housing.</li></ul> <p>Annex A discloses the type of property securing the Mortgage Loan in the pool and the priority of its lien. Any type of property may also be considered affordable housing; Annex A discloses certain affordable housing characteristics.</p>
Termination.....	The trust will terminate when the certificate balance of the Pass-Through

Certificates has been reduced to zero, and all required distributions have been passed through to certificateholders. Fannie Mae has no unilateral option to cause an early termination of the trust other than by purchasing the Mortgage Loan from the pool for a reason permitted by the trust documents.

Federal Income Tax Consequences. The mortgage pool will be classified as a fixed investment trust. Each beneficial owner of a Pass-Through Certificate will be treated as the owner of a pro rata undivided interest in the Mortgage Loan included in the pool. Accordingly, each owner will be required to include in income its pro rata share of the entire income from the Mortgage Loan in the pool, and generally will be entitled to deduct its pro rata share of the expenses of the trust, subject to the limitations described in the Fannie Mae MBS Prospectus.

Legal Investment Considerations... Under the Secondary Mortgage Market Enhancement Act of 1984, the Pass-Through Certificates offered by the Fannie Mae MBS Prospectus will be considered “securities issued or guaranteed by . . . the Federal National Mortgage Association.” Nevertheless, an investor should consult its own legal advisor to determine whether and to what extent the certificates of an issuance constitute legal investments for such investor.

ERISA Considerations..... For the reasons discussed in “**ERISA CONSIDERATIONS**” in the Fannie Mae MBS Prospectus, an investment in the Pass-Through Certificates by a plan subject to the Employee Retirement Income Security Act (“ERISA”) will not cause the assets of the plan to include the Mortgage Loan underlying the Pass-Through Certificate or the assets of Fannie Mae under the fiduciary provisions of ERISA or the prohibited transaction provisions of ERISA or section 4975 of the Internal Revenue Code of 1986, as amended (the “Code”).

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## APPENDIX H

### TERM SHEET

Information provided by Lender for Preliminary Official Statement

*Represents an excerpt of the term sheet schedules to the Annex A, edited for purposes of the Preliminary Official Statement*

<b>Information Contained Herein is Preliminary and Subject to Change</b>	
<b><i>Pool Statistics</i></b>	
Issuance UPB (\$) (anticipated)	\$19,000,000
Maximum Issuance Principal Balance (anticipated)	\$19,000,000
Security Maturity Date (anticipated)	07/01/2036
Term to Maturity (months) (anticipated)	204
Weighted Average Remaining Term to Maturity (months) (anticipated)	204
Amortization Term (months) (anticipated)	420
Security Funds Transfer Type	Wire
Security Type	MBS
Transaction ID Pool Number	[ ]
CUSIP	[ ]
Settlement Date (anticipated)	07/03/2019 Estimated
Pool Issue Date (anticipated)	06/01/2019 Estimated
MBS First Payment Date (anticipated)	07/25//2019 Estimated
Number of Loans	1

<b><i>Loan Information</i></b>	
Seller Name	Regions Bank
Servicer Name	Regions Bank
First Loan Payment Date (anticipated)	08/01/2019 Estimated
Note Date (anticipated)	06/ /2019
Loan Maturity Date (anticipated)	07/01/2036
Original UPB (\$) (anticipated)	\$19,000,000
Loan Issuance UPB / Unit (\$) (anticipated)	\$113,095
Pass-Through Rate to Investor (anticipated)	%
Servicing Fee (anticipated)	0.345%
Guarantee Fee (anticipated)	0.615%
Note Rate (anticipated)	%
Original Loan Term (months) (anticipated)	204
Remaining Loan Term (months) (anticipated)	204
Original Amortization Term (Months)	420
Amortization Type	Amortizing Balloon
Interest Only Term (Months)	0
Interest Only End Date	N/A
Interest Type	Fixed
Interest Accrual Method	Act/360
Prepayment Lockout Term (months)	N/A
Yield Maintenance Premium* Period, Years 1-10 (anticipated)	Closing Date – 06/30/2029 Estimated
Yield Maintenance End Date	06/30/2029 Estimated
1% Prepayment Premium** Period, Years 11-16	07/01/2029 – 06/30/2035 Estimated
Prepayment Premium End Date (anticipated)	06/30/2035 Estimated
Lien Priority	First Lien
Loan Purpose	Acquisition & Moderate Rehabilitation

\* A portion of this prepayment premium, if collected, may be shared with certificateholders under the circumstances described in “YIELD, MATURITY AND PREPAYMENT CONSIDERATIONS—Maturity and Prepayment Considerations—Prepayment of a Mortgage Loan” in the Fannie Mae MBS Prospectus.

\*\* No portion of this prepayment premium, if collected, will be shared with certificateholders under any circumstances as is described in “YIELD, MATURITY AND PREPAYMENT CONSIDERATIONS—Maturity and Prepayment Considerations—Prepayment of a Mortgage Loan” in the Fannie Mae MBS Prospectus.

Ownership Interest	Fee Simple
Balloon Maturity (Y/N)	Y
Additional Debt (Y/N) (anticipated)	Y
Cross Collateralized (Y/N)	N
Cross Defaulted (Y/N)	N
Tax Escrow (Y/N)	Y
Pricing Tier	2
Tier Drop Eligible	No
Good Faith Deposit (anticipated)	1.0%
MBS Disclosure	Yes, see comments below <sup>†</sup>
Modified Loss Share	No
Physical Occupancy (anticipated)	99.50%
Physical Occupancy As-Of-Date (anticipated)	12/28/2018
Underwritten Economic Occupancy (anticipated)	95.00%
Underwritten Total Income (anticipated)	\$2,535,312
Underwritten Total Operating Expense (anticipated)	\$1,189,371 (includes replacement reserves)
Underwritten Annual Replacement Reserves (anticipated)	\$33,600
UW NCF (anticipated)	\$1,345,941
Property Value (anticipated)	\$23,560,000 <sup>†</sup>
Property Value As-Of-Date (anticipated)	03/12/2019
Maximum Allowable LTV	90%
Underwritten Actual LTV (anticipated)	80.65%
Monthly Debt Service (anticipated)	\$
Minimum Allowable DSCR	1.15x
Underwritten Actual DSCR (anticipated)	1.29x
Estimated Actual DSCR Interest Only	N/A
<sup>†</sup> Property Valuation – Regions Bank, for its UW Value, is using the purchase price + capital improvements to be included in the Rehabilitation Resave Agreement; this is lower than the appraiser’s concluded value	

<b><i>Property Information</i></b>	
Property Name	Northgate Village Apartments
Address	12303 Plano Road, Dallas, TX 75243
Property County	Dallas
Units	168
Property Type	Multifamily, Affordable
Affordable Housing Type	LIHTC and Project Based Section 8
% Units with Income or Rental Restrictions	100%
# of Units At or Below 30% Area Median Income	Tenant income not to exceed 60% on average across all units (See “Income and Rent Restrictions” section of the Preliminary Official Statement for more detail)
# of Units At or Below 50% Area Median Income	Tenant income not to exceed 60% on average across all units (See “Income and Rent Restrictions” section of the Preliminary Official Statement for more detail)
# of Units At or Below 60% Area Median Income	Tenant income not to exceed 60% on average across all units (See “Income and Rent Restrictions” section of the Preliminary Official Statement for more detail)
HAP Contract (Y/N)	Y
Remaining Term of HAP Contract (months)	240 Months
Additional Affordability Detail	See “Income and Rent Restrictions” section contained in the Preliminary Official Statement for further detail
Age Restricted (Y/N)	N

## APPENDIX I

### FORM OF PROPOSED ADDITIONAL DISCLOSURE ADDENDUM

*The following information supplements the information in the Fannie Mae MBS Prospectus. In the event of any inconsistency between the information provided in this Addendum and the information in the Fannie Mae MBS Prospectus, the information in this Addendum shall prevail.*

The mortgaged property is subject to affordable housing regulatory agreements that impose income restrictions on tenants of the mortgaged property and is an Affordable Housing Loan. See **“The Mortgage Loans—Affordable Housing Loans”**; **“RISK FACTORS—RISKS RELATING TO YIELD AND PREPAYMENT—Prepayments Relating to Specific Types of Mortgage Loans and Mortgaged Properties—*The successful operation of a mortgaged property securing an affordable housing mortgage loan may depend upon additional factors*”**; and **“RISK FACTORS—RISKS RELATING TO YIELD AND PREPAYMENT—Prepayments Relating to Specific Types of Mortgage Loans and Mortgaged Properties—*An affordable housing mortgage loan may be secured by a mortgaged property that has received an allocation of low-income housing tax credits but that fails to remain in compliance with the requirements for maintaining eligibility to receive the tax credits due to operations of the property or a casualty on the property*”** in the Fannie Mae MBS Prospectus for additional information.

The MBS certificates will initially serve as collateral for a tax exempt issue of multifamily housing bonds (the “Bonds”) issued by the Texas Department of Housing and Community Affairs (the “Issuer”) pursuant to and secured by an indenture of trust by and between the Issuer and The Bank of New York Mellon Trust Company, N.A., as trustee, and will be held as collateral for the Bonds. The mortgage loan documents provide that the mortgage loan is cross-defaulted with certain agreements relating to the Bonds entered into at the time of the issuance of the Bonds, including but not limited to the indenture authorizing the Bonds and any housing regulatory agreements that limit rents, impose income restrictions or otherwise restrict the use of the property.

Because the mortgage loan documents provide that the mortgage loan is cross-defaulted with certain of the agreements relating to the Bonds, a default under any of the cross-defaulted documents may trigger an event of default on the mortgage loan. If Fannie Mae accelerates the mortgage loan as a result of any event of default under the mortgage loan, the mortgage loan will be paid in full, and the stated principal balance of the MBS certificates will be passed through to the holder of the MBS certificates. In this case, no yield maintenance or other prepayment premiums will be payable to the holder of the MBS certificates.

In addition to the matters described above, the eligible multifamily lender acquiring the mortgage loan may request the disclosure of additional matters relating to the mortgage loan or upon delivery of the mortgage loan to Fannie Mae, in Fannie Mae’s discretion it may determine that matters identified in the Term Sheet attached as APPENDIX H hereto or otherwise may need to be disclosed in the Additional Disclosure Addendum provided in connection with the issuance of the MBS certificates.

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## APPENDIX J

### FORM OF NOTICE OF REQUEST TO EXCHANGE

**[(M-TEBS in bold to be completed when preparing actual notice)]**

Texas Department of Housing and Community Affairs  
Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019

[TRUSTEE]

The undersigned Beneficial Owner of Texas Department of Housing and Community Affairs Multifamily Housing Revenue Bonds (Pass-Through – Northgate Village), Series 2019 (the “Bonds”), hereby requests The Bank of New York Mellon Trust Company, N.A., as trustee (the “Trustee”) to exchange Bonds in an original face amount and current principal amount equal to \$\_\_\_\_\_ and \$\_\_\_\_\_, respectively, for a like original face amount and current principal amount of the Pass-Through Certificate. The Bonds were issued pursuant to an Indenture of Trust dated as of June 1, 2019 (the “Indenture”), by and between Texas Department of Housing and Community Affairs (the “Issuer”) and the Trustee. The undersigned has arranged with its securities dealer (and/or DTC participant) to deliver such Bonds to the Trustee (via DTC withdrawal or Deposit/Withdrawal At Custodian (“DWAC”)) on or before the Business Day next succeeding the date hereof (such Business Day being the “Exchange Date”). Once the Issuer has validated the exchange requested hereby and the DTC DWAC has been verified and approved by the Trustee, the Trustee is hereby requested to deliver free the above-referenced original face and current principal amount of the Pass-Through Certificate using the automated book-entry system maintained by the Federal Reserve Banks acting as depositories for the issuer of the Pass-Through Certificate in accordance with the Beneficial Owner’s Fed delivery instructions. Such Pass-Through Certificate will be (1) in book-entry form and (2) transferred in accordance with current market practices, including the applicable provisions of the *SIFMA’s Uniform Practices for the Clearance and Settlement of Mortgage-Backed Securities and Other Related Securities*. The undersigned Beneficial Owner shall pay the Trustee’s exchange fee and the Issuer’s exchange fee by wire transfer on the Exchange Date. If the Exchange Date is subsequent to a Record Date and prior to a corresponding Payment Date for the Bonds, the Trustee shall wire the applicable principal and interest payments on the exchanged Bonds to the undersigned Beneficial Owner using the wire instructions set forth below. The undersigned acknowledges that the submission of this notice of request (the “Notice”) is subject to all of the terms and conditions of the Indenture.

Capitalized terms used in this Notice but not defined herein shall have the meanings assigned such terms in the Indenture.

Dated: \_\_\_\_\_

Signature: \_\_\_\_\_

SIGNATURE GUARANTEED:

\_\_\_\_\_

NOTICE: Signature(s) must be guaranteed by a member firm of the New York Stock Exchange or a commercial bank or trust company.

Beneficial Owner's Fed delivery instructions: \_\_\_\_\_

Beneficial Owner's wire instructions: \_\_\_\_\_

Trustee's wire instructions: \_\_\_\_\_